



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.01.2020

CORAM:

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

Writ Petition (MD)No.11338 of 2010

The Management,
India Cements Limited,
represented by its Sr.General Manager,
Sankar Nagar 627 357,
Tirunelveli District.

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Tiruchendur Road,
Tirunelveli.

2.Shanmugam

... Respondent

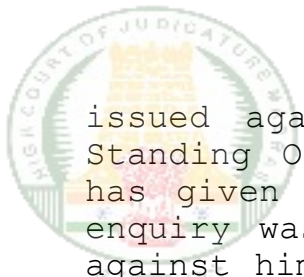
Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent in the proceedings in I.D.No.78 of 2003, dated 30.03.2010 and quash the same and consequently direct the first respondent to decide the case in I.D.No.78 of 2003 on the basis of the pleadings of the parties and to pass such further or other orders as may be deemed fit and proper.

For Petitioner	:	Mr.Raguvaran Gopalan for Mr.K.Prabhakar
For R2	:	Mr.J.Ashok for M/s. Jeyapaul Associates

O R D E R

This writ petition has been filed challenging the order of the first respondent/Labour Court in I.D.No.78 of 2003, dated 30.03.2010 and quash the same.

2. The case of the petitioner Management is that the second respondent was working as Machinery Attendant in the petitioner Management since 1979. On 28.09.1987, he threatened the Manager (Personnel) and also assaulted him. Therefore, a charge memo was



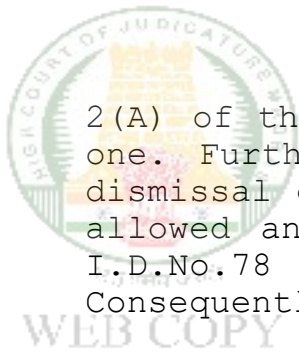
issued against the second respondent on 03.10.1987, as per the Standing Orders. Thereafter, on 08.10.1987, the second respondent has given his explanation, which was not satisfactory, a domestic enquiry was conducted against him and all the charges were proved against him. Thereafter, a show cause notice, dated 05.08.1988, was issued against the second respondent and he did not submit any explanation. Hence, he was dismissed from service on 25.11.1988. In a murder case in S.C.No.267 of 1989, the second respondent was acquitted on 03.10.1996. After lapse of seven years, the second respondent has raised an Industrial Dispute before the Labour Court, Tirunelveli in I.D.No.78 of 2003, under Section 2(A) of the Industrial Disputes Act, 1947, as if the petitioner was denied employment, after his acquittal in the murder case. Further, he did not disclose the earlier dismissal order passed by the petitioner Management dated 25.11.1988 and the same was received by him on 28.11.1988. Without challenging the order of dismissal, filing the I.D.No.78 of 2003 before the Labour Court, Tirunelveli is unsustainable one and hence, the petitioner has filed the present writ petition.

3. The learned counsel appearing for the petitioner Management would submit that this writ petition is filed on the sole ground that the earlier order of dismissal was not challenged before the Labour Court. The said order of dismissal was marked as Ex.M7 and the acknowledgment receipt of the same was marked as Ex.M8. Without challenging that order of dismissal, filing the Industrial Dispute in I.D.No.78 of 2003 before the Labour Court, Tirunelveli under Section 2(A) of the Industrial Disputes Act, 1947, is legally unsustainable one and hence, prayed for allowing this writ petition.

4. The learned counsel appearing for the second respondent has not disputed the fact submitted by the learned counsel for the petitioner. However, he contended that the Labour Court has considered the earlier order of dismissal, which was marked as Ex.M7 and passed the order.

5. Heard the learned counsel for the petitioner, learned counsel for the second respondent and perused the materials available on record.

6. Admittedly, the second respondent was working as Machinery Attendant in the petitioner Management since 1979 and on 28.09.1987, he was issued a charge memo as if he threatened the Manager with dire consequence and also assaulted him. It is also an admitted fact that the second respondent was dismissed from service 25.11.1988 and the same was communicated to him on 28.11.1988. The said order of dismissal was marked as Exs.M7 and on perusal of the order of Labour Court, dated 30.03.2010, it is seen that the second respondent did not challenge the order of dismissal and without challenging the order of dismissal, filing the Industrial Dispute in I.D.No.78 of 2003 before the Labour Court, Tirunelveli under Section



2(A) of the Industrial Disputes Act, 1947, is legally unsustainable one. Further, the second respondent did not disclose the earlier dismissal order in his claim petition. Hence, this Writ Petition is allowed and the order passed by the Labour Court, Tirunelveli in I.D.No.78 of 2003, dated 30.03.2010 is set aside. No costs. Consequently, the connected Miscellaneous Petition is closed.

/True copy/

Sd/
Assistant Registrar(P & A)

/ /2021
Sub Assistant Registrar(CS-)

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Presiding Officer,
Labour Court,
Tiruchendur Road,
Tirunelveli.

+1 CC to M/s.J.ASHOK, Advocate (SR-504[F] dated 07/01/2021)

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07.01.2021

AKV
PK/01.02.2021 : 3P/3C