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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:04.01.2021

CORAM:

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

W.P.(MD)No.5863 of 2010
and
M.P.(MD).No.2 of 2011

Madura Coats Private Limited
through its Group Industrial Relations Manager,
Papavinasam Mills Post,
Ambasamudram,
Tirunelveli District. ... Petitioner

**Vs.**

1. The Labour Court,
   Tirunelveli.

2. Paul Premkumkar Selvadas ... Respondents

**Prayer**: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relating to the award passed in I.D.No.118 of 2004 on the file of the first respondent, dated 31.07.2009 and quash the same.

For Petitioner : Mr.S.Ravindran, Senior counsel
for Mr.M.P.Senthil
For R2 : Mr.J.Ashok
for M/s.Jeyapal Associates

**O R D E R**

Challenging the award passed by the Labour Court, Tirunelveli, dated, 31.07.2009, the present writ petition has been filed.

2. The case of the petitioner is that the second respondent worked as a clerical staff in the Marketing Department of Madura Textiles, which is a division of the petitioner Company. The second respondent was appointed vide order dated 27.10.1982, on consolidated pay of Rs.700/- per month. In the appointment order itself, it was specifically stated that the second respondent is liable to be transferred to any department or any of the branches at any time, during his service. The second respondent has accepted the same and joined duty on 17.11.1983. In the year 2001, due to business

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exigencies, in order to stabilise the business and to close down the division viz., Madura Textiles, the Executives, the Managers including the Assistants were transferred to different department and to different units to accommodate them, so as to provide continuity of job to them and to avoid retrenchment/discharge. While so, the performance of the second respondent was unsatisfactory, in order to give berth to him, he was transferred to Mill area. However, the second respondent did not discharge his duty to the satisfaction of the Management. In spite of the same, in order to protect the second respondent's employment, he was transferred to Mumbai Branch of Madura Textiles, by order dated 27.12.2001. But, the second respondent did not report duty to the transfer place and disobeyed the order of the Management, which is a clear insubordination. Therefore, the petitioner Management has issued a show cause notice, dated 14.02.2002, against the petitioner under S.O.No.20(1)(a) of the Standing Orders of the petitioner Company. However, the second respondent has refused to receive the show cause notice and hence, the same was returned to the petitioner Company. Thereafter, an enquiry notice was sent to the second respondent on 28.02.2002, calling upon him to appear on 05.03.2002. However, the second respondent refused to receive the same.

3. Further, the second respondent continuously refused to receive the enquiry notice and failed to appear for the enquiry. Hence, the Enquiry Officer, without any other option, proceeded with the enquiry and submitted his report before the Management on 23.03.2002. Based on the said report, the second show cause notice was issued on 19.03.2002, for which the second respondent has submitted an unsatisfactory explanation. As such, the petitioner Management has dismissed the second respondent from service with effect from 01.08.2002. Challenging the same, the second respondent has filed I.D.No.118 of 2004 before the Labour Court, Tirunelveli, the first respondent herein under Section 2(A) of the Industrial Disputes Act. The Labour Court, on 31.07.2009, without adverting to the documentary evidence, set aside the order of dismissal and directed the petitioner Management to reinstate the second respondent with continuity of service. Challenging the same, the present writ petition has been filed by the petitioner Management.

4. The learned Senior counsel appearing for the petitioner Management submitted that the second respondent was superannuated on 01.06.2011. However, the petitioner Management is ready to settle the issue by paying compensation to the second respondent. He further submitted that even if the second respondent is continued the job till 01.06.2011, he is entitled to receive a sum of Rs.6,91,201/- towards back wages, Rs.1,60,728/- towards gratuity, Rs.86,907/- towards bonus and Rs.18,474/- towards leave wages, totally Rs.11,22,146/- as full and final settlement.

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5. Per contra, the learned counsel appearing for the second respondent submitted that the calculation submitted by the petitioner Management is inappropriate and the second respondent is entitled to receive more amount than the learned counsel for the petitioner Management submitted.

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

7. Considering the facts and circumstances of the case, the facts in the present case is not disputed and the petitioner Management is ready to settle the issue by paying compensation in favour of the second respondent. Further, the second respondent was superannuated on 01.06.2011 and his job is also not a pensionable one. So, in order to give quietus to all these issues, this Court is inclined to modify the award passed by the labour Court and fix a sum of Rs.11,50,000/- as compensation. Accordingly, the award passed by the Labour Court, Tirunelveli in I.D.No.118 of 2004, dated 31.07.2009 is modified and the petitioner Management is directed to settle a sum of Rs.11,50,000/- (Rupees Eleven Lakhs and Fifty Thousand only) as compensation to the second respondent within a period of six weeks from the date of receipt of a copy of this order. This Writ Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

// True Copy //

/ /2021
Sub Assistant Registrar(CS- )

**To**

The Labour Court,
Tirunelveli.

+1 CC to M/s.J.ASHOK, Advocate (SR-29[F] dated 05/01/2021)
+1 CC to M/s.M.P.SENTHIL, Advocate (SR-135[F] dated 05/01/2021)

AKV
TE : 18/01/2021 : 3P/4C

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