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W.P.No.29035 of 2010



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.09.2022

DELIVERED ON : 31.10.2022

CORAM:

THE HON'BLE MR.JUSTICE K. KUMARESH BABU
W.P.No.29035 of 2010

The Management of
M/s Teletherm Instrument Co., Pvt., Ltd.,
Represented by its Director S.Sridharan,
No.15, Brindhavan Nagar,
Yogam Garden, Valasaravakkam,
Chennai – 600 087.

... Petitioner

Vs

1.The Presiding Officer,
IInd Additional Labour Court,
Chennai – 600 104.

2.R.Vasanthaselvakumari

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari, calling for the records of the 1st respondent/ Labour Court relating to its Award dated 05.10.2010 and passed in I.D.No.619 of 1999 and quash the same.

For Petitioner : Mr.G.Ananda Kumar

For Respondents : R1 – Labour Court
: Mr.S.T.Varadarajulu for R2

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ORDER

This Writ Petition has been filed by the Management challenging the Award made by the IInd Additional Labour Court, Chennai in I.D.No.619 of 1999 dated 5.10.2010, wherein, the 2nd respondent herein was directed to be reinstated with continuity of services, backwages and other attendant benefits.

2.Heard Mr.G.Ananda Kumar, learned counsel appearing for the petitioner and Mr.S.T.Varadarajulu, learned counsel appearing for the 2nd respondent. The appearance of the 1st respondent is dispensed with as it is an adjudicating authority.

3.Mr.G.Ananda Kumar, learned counsel appearing for the petitioner would submit that the petitioner Company is a Private Limited Company carrying on the business of manufacturing Electronic Process Controller instrumentation products such as Striplite indicators, Digital Indicators, Scanners, Trans packs and Action Packs, etc., The petitioner Management had soldering Division and after serious discussions with

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the employees of the said Division, took a decision of closing the same, as it was found that the outsourcing of the soldering work would be economically mable. It was agreed between the employees in the Soldering Section including the 2nd respondent herein for retrenchment of all the employees. Except the 2nd respondent all other employees received the compensation amount as per law. Thereafter, calculating the entitled amount to the 2nd respondent, a demand draft representing the retrenchment compensation and exgratia was sent to the 2nd respondent which was refused to be received by her on 08.06.1998, however, she had sent a letter dated 13.06.1998 stating that she was in medical treatment and enclosed ESI medical certificate to substantiate the same, which was replied by the petitioner that she had been retrenched with effect from 01.06.1998 and they had enclosed two cheques towards the retrenchment compensation and leave salary respectively. The 2nd respondent had also encashed the same on 06.08.1998. Suppressing all that, the 2nd respondent had raised an industrial dispute before the Labour Officer, Chennai which ended in a failure report and thereafter, the 2nd respondent had raised an industrial dispute in I.D.No.619 of 1999, seeking to reinstate her in services with continuity of services, backwages and other



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attendant benefits. The petitioner company was sold to one Virtual Instrumentation & Software Applications Private Limited as an on going Company by a Memorandum of Understanding dated 09.06.1999 due to financial crisis. The petitioner had filed a detailed counter explaining all the aforesaid facts before the Labour Court. It was also pleaded before the Labour Court that the 2nd respondent was at that time beneficially engaged outside. However, the Labour Court without appreciating the facts and circumstances of the case on hand by the impugned Award, had held that the 2nd respondent was illegally terminated and therefore, ordered reinstatement of the 2nd respondent with continuity of services, backwages and other attendant benefits.

4.Mr.G.Ananda Kumar, learned counsel appearing for the petitioner would vehemently plead that when the 2nd respondent was issued with appropriate compensation for retrenchment which she had encashed and therefore cannot be said to be illegally terminated. Further he contended that the Labour Court has also not considered the closure of the Soldering Division under which she was employed. According to him, the 2nd respondent was gainfully employed by starting her own



institute namely Crown Diamond Processing Institute and therefore, the

Labour Court ought to have rejected the claim of the 2nd respondent.

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5.He further contended that the finding of the Labour Court that the order of retrenchment was passed when she was on medical leave and therefore she ought not to have been terminated, is wholly contrary to the evidence that has been let in before the Labour Court. He contended that only after the petitioner had sent her the retrenchment compensation, which was refused to be received by her, she has produced the medical certificate and that the discussion for retrenchment with the employees of the Soldering Division has been initiated much prior to the date of her medical incapacity and therefore, the same should not have been considered by the Labour Court. Hence, he pleaded that the Award be set aside.

6.Countering his arguments, Mr.S.T.Varadarajulu, learned counsel appearing for the 2nd respondent would heavily contend that the 2nd



respondent has been illegally terminated and that she had encashed the amount under protest. He would vehemently contend that, when the employee was under medical leave, no order of termination should be passed. In the present case, the 2nd respondent was on medical leave when the order of termination was passed. Hence, he said that the order of termination is therefore, wholly illegal and the Labour Court was right in setting aside the same and therefore, the order of reinstatement with continuity of services, backwages and other attendant benefits need not be set aside by this Court and the Award of the Labour Court may be confirmed.

7.I have considered the arguments made by the learned counsels for the rival parties and also perused the materials available on record before this Court.

8.The Labour Court had recorded that there was no dispute as regards to the factual aspects. The Labour Court had given a finding that the co-employees of the 2nd respondent are continuing to work with the petitioner. The said finding has been arrived at by the Labour Court based



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on the oral evidence of the 2nd respondent. It had also recorded a finding that the said fact has not been controverted by the Management. It is true that the strict law of evidence need not be adopted. But, however, to substantiate the claim that the co-employees of the 2nd respondent were continuing to work with the petitioner company, the 2nd respondent had not produced any documentary evidence. The 2nd respondent had marked only three exhibits which were communication between the 2nd respondent and the petitioner. The petitioner had under Ex.M.8 had filed a document enumerating the details of the employees who had been retrenched and the amount of compensation that has been paid to them. When such a document was there before the Labour Court, it is very surprising that the Labour Court has accepted the oral evidence of the 2nd respondent, when she had not substantiated the claim by any other independent witness or other documentary evidences. The Labour Court had in fact not given any finding as to whether the Soldering Division was closed and whether the retrenchment of the 2nd respondent was valid in law to hold that the order of termination is bad in law.

9.It is an admitted case that the Labour Court has recorded that the



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facts as placed by the parties have not been disputed by each other. It is also not in dispute that the petitioner by its letter dated 03.06.1998 had enclosed a demand draft towards the retrenchment compensation to the 2nd respondent. The 2nd respondent has also not disputed that she had refused to receive the same. Again by another letter dated 08.06.1998, the petitioner has sent a retrenchment compensation which was also not acknowledged by her. But by letter dated 13.06.1998, she had sent a letter to the petitioner stating that she is under ESI medical treatment from 10.06.1998, wherein, she has also enclosed a medical certificate.

10.A reading of the said letter would show that the 2nd respondent was on medical leave only from 10.06.1998 ie., after the order of retrenchment was made by the petitioner. In such event, the argument of the learned counsel for the 2nd respondent that no order of termination could be passed when the employee was under medical leave is wholly without any basis and deserves no consideration. Further, the Labour Court had recorded a finding that the evidence and documents on the side of the workmen/ 2nd respondent are all true and that the evidences and documents filed by the Management/ petitioner are all doubtful. To come



to such a finding, the Labour Court has not recorded any reasonings.

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11.On the above said reasonings, I am of the view that the Award of the Labour Court is wholly perverse as the same is without any proper reasoning and appreciation of the materials on record.

12.In the light of the above the Award dated 05.10.2010 made in I.D.No.619 of 1999 is set aside and the Writ Petition stands allowed. However, there shall be no order as to cost.

31.10.2022

Index: Yes/no
Speaking/non-speaking
gba

To

The Presiding Officer,
IInd Additional Labour Court,
Chennai – 600 104.



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K. KUMARESH BABU, J.

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A Pre-delivery order in
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