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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.23286 of 2013
and M.P.No.1 of 2013

The Management,
Kancheepuram - Thiruvallur District
Co-operative Milk Producers Union Limited,
Kuruvappa Maistry Street,
Ayanavaram, Chennai - 23. ..Petitioner

Vs.

1.K.Irusan (Deceased)

2.The Presiding Officer,
III Additional Labour Court, Chennai.

3.John Wesely
S/o.K.Irusan (Late) .. Respondents

(R3 substituted as LR of Deceased R1 vide Order
dated 31.08.2021 made in WMP.No.17265 of 2021
in W.P.No.23286 of 2013 by MSRJ)

PRAYER: This Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorari, to call for the records pertaining to the Award dated 30.04.2013 passed by the learned III Additional Labour Court at Chennai, made in I.D.No.143 of 2007 and to quash the same.

For Petitioner : M/s.S.Sathish Rajan

For Respondents1 & 3 : M/s.N.Vanaraj

ORDER

The admitted case of the Management before the Labour Court was that the workman was appointed as a Watchman from 28.06.1983, on daily wages.

2. The Management is aggrieved against the Award passed in I.D.No.143 of 2007, dated 30.04.2013, by the III Additional Labour Court, Chennai, whereby they were directed to be reinstate the first respondent back into service, together with back wages, continuity of service and other attendant benefits.



3. Pending the writ petition, the first respondent/workman died and is now represented by the third respondent, who is his son.

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4. The late workman/first respondent, was appointed as a Watchman in the petitioner/Management in the year 1983 and subsequently, he was disengaged from service and again re-appointed on 01.04.1994 as Junior Factory Assistant. When he was transferred to Baluchetty Chilling Centre, it is alleged that he had misappropriated sales money and thereafter he had worked for one day and absented himself from reporting to duty. In this connection, the Management had issued a charge-memo, dated 03.10.2002, and subsequently, without conducting an enquiry, dismissed him from duty on 20.08.2003. Challenging the dismissal order before the Labour Court, the workman claims that he was not retrenched as per the procedure contemplated under the Industrial Disputes Act and therefore, the dismissal is illegal.

5. The Labour Court had taken into consideration of the exhibits before it and found that the workman had worked for 240 days continuously in 12 calendar months and thereby came to the conclusion that the procedure adopted for dismissing him from the service, was illegal. It is in this connection that the Award for reinstatement together with back wages and other benefits was ordered.

6. I do not find any infirmity in the findings of the Labour Court. When it is substantiated before the Labour Court that the first respondent was a 'workman', as defined under the Industrial Disputes Act since he had put in 240 days of continuous service in the preceding 12 calendar months, there is a duty cast on the Management to have adopted the procedure under the Act, while retrenching his services. Having failed to do so, the order of dismissal itself is deemed to be illegal.

7. When such illegal orders of termination are passed, the Hon'ble Supreme Court in the case of Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & others reported in CDJ 2013 SC 765, has held that in all cases of illegal termination, the concerned workman would be entitled for full back wages and other benefits. In the light of the above decision, the order for payment of full back wages, is justifiable. As such, I do not find any merit in the ground raised by the petitioner in the present writ petition.

8. Since the first respondent has expired, the third respondent being his son would be entitled for the full back wages.



9. Pursuant to the interim orders of this Court, the petitioner Management had deposited the entire back wages before the III Additional Labour Court. The third respondent herein / legal heir of the deceased workman, is at liberty to make an appropriate application before the Labour Court, seeking for withdrawal of the back wages and on receipt of such application, the Labour Court shall permit him to withdraw the back wages along with the accrued interest. Such orders shall be preferably passed on the same day of filing of the application.

10. With the above observation, the writ petition stands closed. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Pns

To

The Presiding Officer,
III Additional Labour Court, Chennai.

+1cc to Mr.S.Sathish Rajan, Advocate, S.R.No.27664

+1cc to Mr.N.Vanaraj, Advocate, S.R.No.27673

W.P.No.23286 of 2013

GPL(CO)
SB(23/05/2022)