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W.P.No. 1762 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No. 1762 of 2018
and WMP.Nos.8025, 8026 & 2185 of 2018

M/s.Hindustan Unilever Limited,
NH 45 A Personal Products Factory,
Vadamangalam, Puducherry,
Represented by Regional Legal Manager/ Authorize Signature
Vidhya Chaadraserkar ..Petitioner

Vs.

1. Presiding Officer,
Labour Court, Puducherry.

2. Mr.S.Sivaprakash,
S/o. V.Swamydoss .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for Writs of Certiorari, call for the records of the connected with Award dated 16.11.2017 made in I.D(L).No.09/2014 on the file of the 1st respondent being the Presiding Officer, Labour Court, Puducherry.

For Petitioner : Mr.Sanjay Mohan
for M/s.S.Ramasubramaniam
Associates

For Respondent : R1- Court

Mr.P.R.Thiruneelakandan



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ORDER

WEB COPY The prayer sought for herein is for issuance of a writ of certiorari, to quash the award dated 16.11.2017 made in I.D.(L)No.09 of 2014 on the file of the 1st respondent being the Presiding Officer, Labour Court, Puducherry.

2. The second respondent was a workman at the petitioner's industry. It is having three manufacturing units in Puducherry, two at Vadamangalam Village manufacturing soaps, detergents etc., and the third unit at Kirumambakkam Village for blending and packing of Tea. The second respondent was working in the petitioner's company at the personal products factory since 26.07.2002 as Operator and his services were confirmed on 29.10.2002.

3. While so on 24.06.2011, when the second respondent was working in the 'A' shift at talcum powder section, two temporary women employees viz., one Visalakshi and one Karunajothi had given oral complaint to the Managerial staff one Chidambaram, who is the shift officer on the said day. Pursuant to which, the oral complaint was



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reduced into writing, based on which, a domestic enquiry was conducted and on the findings given by the domestic enquiry officer one Ms.Nafeesa Begum, the petitioner/Management has taken a decision to remove the second respondent from service.

4. Accordingly the order of termination was referred by the Government by their reference letter dated 07.02.2014 for adjudication before the Labour Court i.e., Industrial Tribunal cum Labour Court at Puducherry, where it was taken on file as I.D(L) No. 09 of 2014 in the matter of S.Sivaprakash Vs. The Managing Director.

5. The said Industrial dispute having been tried was disposed by passing an award by the Industrial Tribunal cum Labour Court by award dated 16.11.2017. In the said award, the I.D. was allowed by the Labour Court holding that the industrial dispute raised by the workman against the Management over his non-employment is justified by declaring the termination of service of the workman from the Management establishment was illegal and the award was passed directing the Management to reinstate the second respondent in service within one



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month from the date of the order and further directed the Management to pay 30% backwages from the date of termination till the date of reinstatement with continuity of service and other attendant benefits.

6. Aggrieved over the said award passed by the Labour Court, the petitioner/Management has filed the present writ petition with the aforesaid prayer.

7. Mr.Sanjay Mohan, learned Senior counsel appearing for the petitioner had submitted that there was a serious allegation against the second respondent by two temporary women workers on alleged sexual harassment, based on which, a domestic enquiry was conducted and accordingly the Management decided to remove the second respondent from service, as against which, when industrial dispute was raised, the Labour Court without considering the oral as well as the documentary evidence made on behalf of the Management has erroneously passed the award directing the reinstatement with 30% backwages and continuity of service.



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8. *Per contra*, Mr.P.R.Thiruneelakandan, learned counsel appearing for the second respondent/workman would submit that on behalf of the workman 32 documents were filed in support of the case of the workman and the workman himself was examined as W.W.1. On behalf of the Management there was a oral evidence, who was examined as R.W.1 and on behalf of the Management 21 exhibits were marked.

9. In this context, the learned counsel appearing for the second respondent/workman would contend that one of the two women workers, who said to have given complaint on the alleged sexual harassment against the second respondent has given a letter to the advocate notice by letter dated 24.08.2011 that there was no such incident has taken place and no complaint to that effect was given by the said woman along with another woman and the said document even though was produced before the Management, they have not taken into account in a proper prospective and accordingly passed the order of removal of service, he contended.



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10. However, learned counsel appearing for the Management would submit that the letter given jointly by the two women temporary workers that is by way of oral complaint, which was reduced into writing, which triggered the Management to take up the matter and had a domestic enquiry and without considering the said evidence adduced on behalf of the Management or without considering the same in a proper perspective, the Labour Court since have passed the award in favour of the workman, therefore, the said award is liable to be set aside, he contended.

11. I have considered the said rival submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

12. The Labour Court though had considered the evidence recorded by both sides, insofar as the two crucial documents one is the complaint orally given by two women workers against the workman, which was reduced into writing and another one is reply to the advocate notice by one temporary woman worker viz., Visalatchi by letter dated



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24.08.2011, which was marked as Ex.W12, which are very crucial documents on the issue raised therein before the Labour Court. In order to verify the veracity of these documents and also to verify any such incident had taken place in the work place, where such an allegation was made against the second respondent/workman allegedly by two temporary women workers and that was very much banked by the petitioner/Management, the Labour Court ought to have issued summons to the alleged victim or complainant because one among the two women had given a detailed letter on 24.08.2011 stating that no such incident had taken place and no such complaint had been given.

13. The reason being that, if the oral complaint, which was reduced into writing given by the two women workers as alleged by the Management's side is proved, then it will be a very serious issue, as such sexual harassment case should have been dealt with in the manner known to law by all authorities concerned and in this regard, apart from domestic enquiry, a disciplinary action and punitive action should have been taken against the erring person by setting the criminal law in motion.



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14. Otherwise if the episode as alleged by the Management side has not been taken place as stated in the letter of one of the alleged victim in her letter dated 24.08.2011 i.e., Ex.W.12, then it is again a serious matter, where unnecessarily innocent temporary women workers were made as scapegoat by the Management for their design to oust the second respondent/worker for his alleged trade union activities. Even in that case, a punitive action for such an action on the part of the Management shall be taken and the criminal law should be set in motion.

15. Therefore in order to ascertain this factor, this Court feels that it become necessitated to remit the matter back to the Labour Court for retrial, where apart from other evidence let in by both sides, these crucial aspects as indicated above shall be tried by giving summons to the alleged victims, who had given the letter dated 24.08.2011 and accordingly the actual truth shall be unearthed by the Labour Court, based on which, a revised order can be passed or the earlier order can also be confirmed depending upon the satisfaction of the Labour Court.



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16. In that view of the matter, this Court is inclined to dispose of

this writ petition with the following orders:

- ◆ That the impugned order is set aside and the matter is remitted back to the Labour Court for retrial, where it is open to the Labour Court to issue summon on the alleged victims for the alleged sexual harassment complaint, which was made against the second respondent/workman by the petitioner/Management and to record the evidence as to which version, whether the version of the Management or the version of the workman, was proved and based on which, final award can be passed.
- ◆ Since the matter have been pending for considerable time, three months time is given to the Labour Court to complete the task as indicated above and to complete the process, on a day to day basis or an alternative day basis, the matter can be taken up for trial, for which, both the Management as well as the workman shall give their full co-operation to the Labour Court.
- ◆ Till the disposal of the said I.D, the second respondent/workman is entitled to get 17 (b) wages, which is being paid by the petitioner/Management.



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R.SURESH KUMAR.J,

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With these directions and observations, this writ petition is disposed of accordingly. No costs. Connected miscellaneous petitions are closed.

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Index : Yes/No

Internet: Yes/No

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To

Presiding Officer,

Labour Court, Puducherry.

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