



W.P.(MD)No.15039 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.02.2022

DELIVERED ON : 04.08.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.15039 of 2012

and

M.P.(MD)No.1 of 2012

The Management,
The Sri Ganapathy Mills Co.Ltd.,
Madurai Road,
Sankarnagar Post,
Tirunelveli District,
Represented by its Personnel Manager.

... Petitioner

VS

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.S.Vembu

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned award, dated, 30.01.2012 (received on 16.07.2012) passed by the first respondent



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in C.P.No.17 of 2008 and quash the same as illegal.

For Petitioner : Mr.M.E.Ilango

For Respondents : Mr.D.Saravanan for R2
Labour Court for R1

ORDER

This Writ Petition in W.P.(MD)No.15039 of 2012 is filed to quash the impugned award, dated 30.01.2012 (received on 16.07.2012 passed by the first respondent in C.P.No.17 of 2008.

2. The brief facts of the case stated in W.P.(MD)No.15039 of 2012 are that the second respondent was employed as Doffer in the petitioner's mill. The second respondent voluntarily abandoned his employment on and from 01.09.1997. The second respondent was a non-permanent workman, therefore the petitioner did not initiate any disciplinary action for his unauthorized absence and left the matter at that stage. However, alleging that he was denied the



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employment, the first respondent ordered reinstatement with backwages but without continuity or service. Aggrieved over the said order, the petitioner company has preferred a writ petition in W.P.(MD)No.9923 of 2008 and the same is pending.

3. In the meanwhile, the second respondent filed an application under Section 33C(2) of the Industrial Dispute Act, 1947 in C.P.No.17 of 2008 claiming monetary benefits to the tune of Rs.6,38,894.25/- and it is stated as under:

<i>“a) Backwages for the period 01.09.1997 to 30.04.2008 at the rate of Rs.3,846/- pm</i>	<i>- Rs.4,89,442.00</i>
<i>b) Bonus</i>	<i>- Rs.40,687.21</i>
<i>c) Wages for National and Festival Holidays</i>	<i>- Rs.12,691.00</i>
<i>d) Family Pension Fund</i>	<i>- Rs.58,613.00</i>
<i>e) Gratuity</i>	<i>- Rs.38,613.04”</i>

4. By the impugned order dated 30.01.2012, the Labour Court has awarded a sum of Rs.4,88,442/- to the second respondent. The Labour Court while allowing the claim of the backwages had chosen to disallow the other claims. For



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coming to such conclusion the Labour Court has adopted the last drawn wages of Rs.3,846/- per month. The said amount was denied by the petitioner company. The second respondent was reinstated after his Industrial Dispute in I.D.No.56 of 1998 came to be allowed and during October 2008 he had received wages at the rate of only Rs.26 per day, since the second respondent was only a temporary workman. Even according to the second respondent in his claim statement he had claimed wages for National and Festival Holidays amounting to Rs.12,691/- for 99 holidays and a gratuity amount of Rs.38,460/- for 300 days which comes to only Rs.128/- per day. Hence the contention of the petitioner is that it would be clear that the second respondent would not have received Rs.3,846/- per month and that too during 1997. The first respondent has taken the salary slip of a permanent co-worker as a basis for calculating the backwages. Aggrieved over the same, the Management has preferred this writ petition.

5. Heard Mr.M.E.Ilango, learned Counsel appearing for the petitioner and Mr.D.Saravanan, learned Counsel appearing for the second respondent.

6. It is seen from the records that the petitioner has joined the service of the



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petitioner Management. According to the petitioner management the second respondent had abandoned his employment from 01.09.1997. The Labour Court in the I.D.No.56 of 1998 has passed an award dated 29.08.2005 directing the first respondent to reinstate with backwages but without continuity of service. The said litigation has ended up after filing of writ appeal. Now the second respondent has filed a C.P.No.17 of 2008 claiming backwages for a period from 01.09.1997 to 30.04.2008 at the rate of Rs.3,846/- per month. The contention of the petitioner Management is that after reinstatement the second respondent was taken into service in the same position as temporary worker and he had received wages at the rate of Rs.26/- per day. Further he had received National and Festival Holidays amount for Rs.12,691/- for 99 holidays and a gratuity amount of Rs.38,460/- for 300 days which comes to only Rs.128 per day. The contention of the petitioner Management is that the Management has produced the salary slip of a permanent co-worker and on that basis he has submitted a calculation for backwages. The Labour Court has not granted continuity of service but has granted backwages. Actually, under the principle of “No Work No Pay”, the second respondent is not entitled to any backwages. However, since the Labour Court has granted backwages to that period but has not granted any continuity of



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service. The award of the Labour Court is strange since it has granted reinstatement without continuity of service but has granted backwages. As rightly pointed out by the petitioner Management the second respondent has received only Rs.12,691/- for 99 days holidays and gratuity amount of Rs.38,460/- for only 300 days which comes to only Rs.128 per day. In such circumstances, the claim of the salary of Rs.3,846/- is incorrect. The contention of the petitioner Management is that the Management has become defunct. The allegation against the second respondent is unauthorized absence since he was a temporary worker, the Management has not taken any disciplinary action as applicable to the permanent staff.

7. Therefore in order to meet the ends of justice, this Court is directing the petitioner Management to pay of Rs.1,00,000/- in favour of the second respondent as full and final settlement of wages for a period from 01.09.1997 to 30.04.2008. The impugned order is set aside and the petitioner Management is directed to pay Rs.1,00,000/- within a period of eight weeks from the date of receipt of a copy of this order.



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8. With the above direction, the Writ Petition is disposed of. No costs.

Consequently, connected miscellaneous petition is closed.

04.08.2022

Index : Yes / No

Internet : Yes

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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,
Tirunelveli.



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S.SRIMATHY, J

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Pre-delivery Order made in
W.P.(MD)No.15039 of 2012

04.08.2022