



W.P.(MD)No.16298 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.16298 of 2012

and

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

The Management of
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.T.Subramanian

... 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, 26.10.2012 (received on 09.11.2012) passed by the first respondent in C.P.No.26 of 2010 and quash the same as illegal.



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For Petitioner : Mr.M.E.Ilango

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

ORDER

The Writ Petition in W.P.(MD)No.16298 of 2012 is filed to quash the impugned award dated 26.10.2012 (received on 09.11.2012) passed by the first respondent in C.P.No.26 of 2010.

2. The brief facts of the case in W.P.(MD)No.16298 of 2012 are that the second respondent was employed as temporary worker and he was terminated from service. An Industrial Dispute was raised by the workman and the same was allowed. The writ petition as well as the writ appeal filed by the Management were dismissed. The amount of Rs.1,00,000/- deposited by the Management during the pendency of proceedings before this Court has also been withdrawn by the workman. Further he was also paid the last drawn wages during pendency of the proceedings before this Court as mandated under Section 17B of the Industrial Disputes Act, 1947. After the industrial dispute attained finality, the



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second respondent workman was reinstated in service on 26.03.2011 as a temporary worker. The contention of the petitioner is that at the time of his earlier dismissal, he was only employed as a temporary worker and hence at the time of reinstatement he was classified only in that category i.e., temporary worker. However, the second respondent approached the Deputy Chief Inspector of Factories, Tirunelveli claiming permanent status on the ground that he had completed 480 days. By an order dated 21.10.2002, the Deputy Chief Inspector of Factories allowed the claim of the workman and granted permanent status with retrospective effect from 03.02.1985. Even though the authority has granted permanent status, the authority has not made any observation with regard to the wages payable to the second respondent. Against the said order, the Management has preferred a petition, but it ended up futile. Hence the petitioner classified the second respondent as a permanent worker. However, the second respondent filed a claim petition under Section 33 C (2) of the Industrial Dispute Act before the first respondent claiming difference in wages between a temporary worker and a permanent worker for the period from 03.12.1985 to 21.10.2003 amounting to Rs. 5,96,938/-. In the said application he has also claimed leave encashment of Rs. 32,448/- and also a sum of Rs.14,422/- towards casual leave. After deducting the



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amount of Rs.1,00,000/- withdrawn by the second respondent, he had claimed Rs. 5,94,484/-.

3. The petitioner contested the case on the ground that the Deputy Chief Inspector of Factories has only directed the Management to grant permanent status to the workman. But the Inspector of Factories did not fix any wages for the second respondent, hence the petitioner Management contended that since the wages was not fixed, the difference of wages payable to the temporary worker and the permanent worker as claimed by the second respondent was erroneous and that without any pre-adjudication of this dispute as to whether the workman was entitled to wages on par with other permanent workman, the present claim is not maintainable. But unfortunately without appreciating this issue, the first respondent has passed the impugned order awarding a total sum of Rs.5,80,062/- to the workman is erroneous. While claiming the amount, the first respondent has only negated the claim of the workman with regard to encashment of casual leave amounting to Rs.14,422/- and had allowed all other claims made by the second respondent. The contention of the petitioner Management is that during the second respondent cross-examination, he himself has stated that the monthly



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salary mentioned in the claim statement does not pertain to him and that is relates to a co-worker. However, the second respondent has miserably failed to examine his co-employee, but marked a Xerox copy of the salary slips of the other person. The contention of the petitioner Management is that further allowing the claim of the workman with regard to leave encashment is totally arbitrary and the first respondent has failed to note that the second respondent was gainfully employed during his non-employment period. Moreover, the textile industry is under recession and particularly the petitioner is suffering continued cash loss and the petitioner Management is further saddled with the huge amount, it would be put to utmost hardship and irreparable loss. The petitioner Management has already deposited a total sum of Rs.1,00,000/- before the Court. Therefore, the petitioner Management prayed to set aside the impugned order of the Labour Court.

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

5. The contention of the petitioner Management is that the second respondent was terminated from service because of his act of misconduct. The



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second respondent has filed Section 2A petition before the Labour Court and the said applications are ended up in futile, which are against the petitioner Management. The petitioner Management has deposited Rs.1,00,000/- during pendency of the proceedings before this Court and the same was withdrawn by the workman. Moreover, the second respondent was paid 17B wages based on his last drawn wages during the pendency of the proceedings. The contention of the petitioner Management is that based on the proceedings the second respondent was reinstated in service on 26.03.2011 as temporary worker.

6. On perusing the records it is seen that the Labour Court has not granted any backwages and therefore the claim of the petitioner ought to be adjudicated before any monetary benefits are conferred to the second respondent. Moreover, the petitioner Management has now become a defunct company.

7. Therefore, this Court is of the considered opinion that in order to meet the ends of justice the petitioner Management is directed to pay Rs.1,00,000/- to the second respondent as full and final settlement within a period of eight weeks from the date of receipt of a copy of this order.



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S.SRIMATHY, J

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Pre-delivery Order made in
W.P.(MD)No.16298 of 2012

04.08.2022