



W.P(MD)No.20875 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Orders reserved on
16.08.2022

Orders pronounced on
26.08.2022

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

W.P(MD)No.20875 of 2013

G.Ramachandran

... Petitioner

Vs

1.The Management,
Sri Nachammai Cotton Mills,
Chettinadu, Karaikudi,
Sivagangai District.

2.The Presiding Officer,
Labour Court,
Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records in connection with the impugned order passed by the Labour Court, Madurai in I.D.No.255 of 2001, dated 19.10.2011, quash the same insofar as it relates to the denial of backwages to the petitioner from 19.08.1999 to till the date of reinstatement and consequently directing the first respondent to reinstate the petitioner and pay all consequential backwages to the petitioner with effect from the date of award.



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For Petitioner : Mr.S.Bharathi Kannan

For R - 1 : Mr.V.O.S.Kalai Selvam

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the Labour Court, Madurai in I.D.No.255 of 2001, dated 19.10.2011, insofar as it relates to the denial of backwages to the petitioner from 19.08.1999 to till the date of reinstatement and consequently directing the first respondent to reinstate the petitioner and pay all consequential backwages to the petitioner with effect from the date of award.

2. Learned counsel appearing for the petitioner submitted that the petitioner joined in the first respondent Mill on 12.09.1993. On 18.03.1998, the petitioner and one Shanmugam were working on night shift and the generator was working due to the power cut. At about 00.30 hours the generator was running at a high speed resulting in an increase of voltage and that was the cause for damage caused to the machines. The petitioner was not in any way responsible for the erratic run of the generator. However, the



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petitioner and Shanmugam were charged for a serious misconduct and after enquiry, they were terminated from service. The petitioner raised an Industrial Dispute in I.D.No.255 of 2001 before the Labour Court, Madurai seeking reinstatement with continuity of service and backwages for the relevant period. The Labour Court, Madurai / the second respondent herein, by an order dated 19.10.2011, directed the first respondent to reinstate the petitioner into service with continuity of service and other attendant benefits, but without backwages. The denial of backwages, when the petitioner was ordered to be reinstated with continuity of service, is contrary to law. The reasons stated for denial of backwages are that the incident relating to erratic run of the generator and damage caused to the machineries, which are beyond the control of the petitioner; however, it is further stated that the denial of backwages would make good for the damages caused to the machineries and the misconduct committed by the petitioner. These are contrary findings without any reasons, especially, when there is no expert report available to show the assessment of damage caused to the machineries. The damage to the machineries was calculated at Rs.2,07,500/-. The petitioner is entitled for more than this amount as wages from the date of his dismissal till the date of the Award. The aforesaid damage has to be apportioned between the petitioner



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and Shanmugam, if really, the damage is true and correct. Without doing this exercise, the denial of backwages which is more than the amount of Rs.2,07,500/- is not justified.

3. Per contra, learned counsel appearing for the first respondent submitted that the petitioner and Shanmugam were grossly negligent in performing their duty, resulting in damages to the machineries to an extent of Rs.2,07,500/-. Therefore domestic enquiry was conducted and on finding that the charges framed against them were proved, they were dismissed from service. After the Award passed by the Labour Court, Madurai, the petitioner submitted a representation before the first respondent for reinstatement. The first respondent sent a reply asking the petitioner to join duty. In fact, the petitioner had joined duty in the first respondent Management and worked only for some days. Thereafter, the petitioner did not come to work, but repeatedly sent various letters containing false allegations. The petitioner was given several opportunities for joining duty in the first respondent Management. The petitioner has not joined duty. He has gainfully employed and running a canteen at Annamalai University and that is the reason why the petitioner is not willing to join duty in the first



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respondent Management. The petitioner filed a claim petition before the Labour Court, Madurai, in C.P.No.122 of 2014 claiming salary and other monetary benefits from 19.10.2011 to 31.10.2014. After detailed enquiry, the claim petition came to be dismissed as devoid of merits, by an order dated 24.09.2018. Therefore, the petitioner is not entitled for reinstatement or backwages.

4. Considered the rival submissions and perused the records.

5. As admitted by the parties, the Presiding Officer, Labour Court, Madurai in I.D.No.255 of 2001 directed the first respondent to reinstate the petitioner with continuity of service, but without backwages. Now, this Writ Petition is filed claiming backwages. The first respondent had not challenged the order of reinstatement.

6. Learned counsel appearing for the parties produced typedset of papers in support of their case.

7. It is seen from the typedset of papers filed by the learned counsel appearing for the first respondent that the petitioner



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addressed a letter, dated 30.12.2011 to the first respondent seeking reinstatement in pursuance of the Award passed in I.D.No.255 of 2001. In response to this letter, the first respondent sent a letter, dated 14.01.2012, directing the petitioner to join duty on 20.01.2012. It is submitted by the learned counsel appearing for the first respondent, that the petitioner had joined duty on 20.01.2012. A copy of the notice, dated 07.02.2012 is produced by the first respondent stating that the petitioner refused to receive the salary for the month of January, 2012. The petitioner acknowledged the receipt of this notice by affixing his signature. Thus, it is clear that in pursuance of the Award passed in I.D.No.255 of 2001, the petitioner had joined duty in the first respondent Management. Subsequently, the petitioner applied for medical leave from 12.02.2012 to 26.02.2012. The petitioner has produced the copy of the medical certificate stating that he was suffering from Typhoid fever during this period.

8. On 11.02.2012, the petitioner sent a letter to the first respondent stating that he was attending the work from 20.01.2012, but he was not given any work and was treated as trainee. Then he sent a letter dated 04.05.2012 intimating that



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when he reported to duty after completion of medical leave on 27.02.2012, he was not permitted to meet the General Manager and that his medical leave was denied. The first respondent sent a letter to the petitioner on 17.02.2012 stating that the petitioner was not attending the work from 13.02.2012 without any intimation. On 22.02.2012 a notice was sent to the petitioner informing that he was absent from 13.02.2012 without any permission and with a direction to join the training. It was followed by notices, dated 25.02.2012, 27.02.2012, 03.03.2012 and 06.03.2012. In all these notices, the petitioner was directed to report to duty and continue the training. The copies of acknowledgment cards were produced to show that these notices were received by the petitioner.

9. Notice, dated 07.03.2012 was sent to the petitioner asking him to get the due amount for February, 2012. A letter, dated 09.03.2012 was sent to him narrating the sequence of events from 20.01.2012 till 06.03.2012. It was informed to him that he abandoned his duty and was directed to resume his training. The petitioner raised a dispute before the District Labour Officer, Ramanathapuram on 22.02.2012. The first respondent sent a letter dated 07.04.2012 to the second respondent informing that the



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petitioner has not resumed his training. It also sent a reply to the District Labour Officer on 20.04.2012 informing that the petitioner was wilfully absent from continuing the training. A reply, dated 04.06.2012 was filed before the District Labour Officer by the first respondent. On 20.06.2012, a notice was sent detailing the events from 20.01.2012 to 20.04.2012 with a direction to the petitioner to join the training. Then a show-cause notice was issued on 12.07.2012 as to why disciplinary proceedings cannot be initiated against him for his continued absence. It was followed by notice, dated 28.07.2012. The first respondent filed a detailed reply to the Labour Officer, Madurai on 24.08.2012. Even in this reply, it was urged that the petitioner be directed to join duty. A notice dated 25.09.2012 was sent to the petitioner for resumption of training followed by reminders dated 09.10.2012 and 10.12.2012.

10. A perusal of the aforesaid communications sent from the first respondent and other communications produced shows that the petitioner was reinstated with continuity of service as per the Award passed by the Labour Court in I.D.No.255 of 2001. Thereafter, he was given some training. Then he claims to have proceeded on medical leave. According to the Management, the petitioner was absent from duty without any prior information. The petitioner



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continued to remain absent despite sending several letters and notices stated supra with a request to join duty and resume training. Despite that, it appears that the petitioner has not joined duty. All these letters are supported by the copies of the acknowledgment cards. The petitioner has not given any explanation as to why he did not accept the opportunity given to him for resumption of his work. Therefore, it is patently clear that the petitioner did not want to work in the first respondent Management and deliberately avoided sending reply to the notices or joining in service. The claim of backwages can be entertained only if the petitioner joins the duty. The petitioner is not interested in joining duty in the first respondent Management. Therefore, the claim of reinstatement and damages, in the considered view of this Court, is not justified. His claim is that he would have earned more than the damage caused to the machineries, during the non-employment period, as wages, and therefore, the denial of backwages is not correct. This claim also in the considered view of this Court cannot be entertained for the reason that the petitioner did not joint duty despite several opportunities given to him.



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11. In the result,

"This Court finds no reason to interfere with the Award passed by the Labour Court, Madurai in I.D.No.255 of 2001, dated 19.10.2011 in denying backwages to the petitioner. The Award passed by the Labour Court, Madurai in I.D.No.255 of 2001, dated 19.10.2011 is confirmed and the Writ Petition is dismissed. Petitioner is not entitled for the reliefs claimed in the Writ Petition."

There shall be no order as to costs.

26.08.2022

Internet :Yes
Index :Yes / No
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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

- 1.The Management,
Sri Nachammai Cotton Mills,
Chettinadu, Karaikudi,
Sivagangai District.
- 2.The Presiding Officer,
Labour Court,
Madurai.



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G.CHANDRASEKHARAN, J.

ps

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