



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) .No.9895 of 2013

and

M.P. (MD) .No.1 of 2013

1.The Managing Director,
Arasu Rubber Corporation,
Vadaseri,
Nagercoil.

2.The Divisional Manager,
Arasu Rubber Corporation,
Myladi Division,
Chithur Post.

... Petitioners

Vs.

1.The Presiding Officer,
Labour Court,
District Court Building,
Tirunelveli.

2.K.Mani

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the first respondent in I.D.No.166/1996 and quash the preliminary award dated 06.05.2008 and the consequential final award dated 30.01.2012.

For Petitioner : Mr.T.Ravichandran

For R-1 : Labour Court

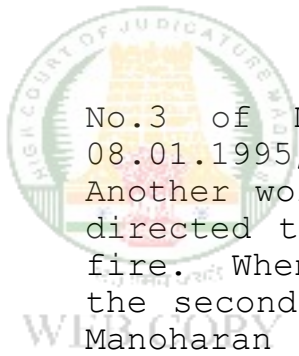
For R-2 : Mr.P.Senthil

ORDER

This Writ Petition has been filed to quash the preliminary award dated 06.05.2008 and the consequential final award dated 30.01.2012 passed by the Labour Court in I.D.No.166 of 1996.

2. The brief facts of the case are that the second respondent was working in the petitioner's Corporation as a tapper in the Coupe

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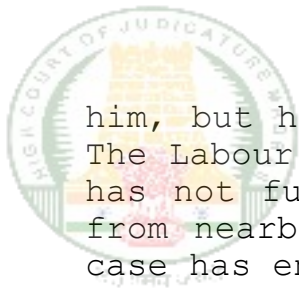


No.3 of Mylar Division of the petitioner's Corporation. On 08.01.1995, one Bennet was working as night watcher in Coupe No.3. Another worker namely, Manoharan was allotted security work and was directed to help the said Bennet since it was a season for forest fire. When Manoharan was on duty and going on round, at about 9 pm, the second respondent came from dark in a nearby bush has attacked Manoharan on his head with stick and caused blood injury. The second respondent also caused injuries to Manoharan by beating on his left hand, below the knee, back etc., Then the said Manoharan preferred a criminal complaint at the Pechiparai Police Station, under Section 332 of I.P.C. Hence the said second respondent was placed under suspension and the charge memo dated 11.01.1995 was issued, since the issue was a punishable misconduct under Standing Order No.23. After 20 days suspension, the petitioner was reinstated without prejudice to the pending disciplinary proceedings vide order dated 31.01.1995. Thereafter an enquiry officer was appointed and the enquiry was conducted after following the principles of natural justice. The second respondent did not give his deposition or brought any witnesses. The enquiry officer submitted his findings that charges were proved. A second show cause notice dated 20.03.1995 was issued, the second respondent has not given any reply inspite of reminder letter dated 07.04.1995. Since no reply was received, the final order dated 27.04.1995 was passed, dismissing the second respondent from service. The second respondent filed a dispute before the conciliation officer. Since the conciliation failed, he filed a dispute before the first respondent, which was taken on file in I.D.No.166 of 1996. The petitioner's Corporation filed a detailed counter statement stating that after enquiry, the preliminary award dated 06.05.2008 was passed wherein it has been held that the enquiry conducted by the petitioner is bad. Thereafter final enquiry was conducted and final award dated 30.01.2012 was passed. The Labour Court has passed the award directing the Corporation to reinstate the petitioner with back wages. Aggrieved over the same, the Corporation has filed this Writ Petition challenging the preliminary award dated 06.05.2008 as well as the final award dated 30.01.2012.

3. The learned counsel for the second respondent relied on the documents, counter and the petition filed by the Labour Court and prayed to dismiss the writ petition.

4. Heard Mr.T.Ravichandran, learned counsel for the petitioner and Mr.P.Senthil, learned counsel for the second respondent.

5. The contention of the petitioner is that the second respondent has compromised the criminal case and thereafter he was acquitted from the criminal case. Since the second respondent has compromised, it is proved that the second respondent committed the crime and the final award has not taken this into consideration. The second respondent has not submitted any explanation for the second



him, but he has challenged the final order before the Labour Court. The Labour Court has erred in stating that the petitioner Management has not furnished any evidence to prove the second respondent came from nearby bush and attacked Manoharan more so, when the criminal case has ended in compromise.

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6. It is seen from the records that the petitioner was dismissed from service on 27.04.1995 and the final award was passed on 30.01.2012. The second respondent was placed under suspension from 11.01.1995 to 31.01.1995. Thereafter, the second respondent was reinstated on 25.06.2012 without prejudice to the present writ petition challenging the Labour Court award. The second respondent attained superannuation on 30.09.2016 and he has worked from 25.06.2012 to 30.09.2016 and has received salary for the said period. The learned counsel for the petitioner submitted that the second respondent was paid gratuity by taking the service of 38 years and he has paid 2,48,592/- as gratuity on 14.11.2016. The learned counsel for the second respondent submitted that the Labour Court has granted back wages and the same was not paid by the Corporation and also has not paid any subsistence allowances for 20 days when the second respondent was placed under suspension.

7. Taking all these facts into consideration, this Court is of the considered opinion that the second respondent is entitled to subsistence allowances for the period from 11.01.1995 to 31.01.1995. As far as the back wages are concerned, since the petitioner has not worked during that period from 27.04.1994 to 30.01.2012 under the principle no work no pay, the second respondent is not entitled to any back wages. However, since the second respondent was kept under the daily wages for Rs.53 and was not gainfully employed and he has not worked elsewhere, the second respondent is entitled to 50% back wages.

8. This Court is of the considered opinion that to meet the ends of justice, the respondents are directed to pay 50% back wages. The said exercise shall be completed within a period of six (6) weeks from the date of receipt of a copy of this order.

9. With the above direction, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

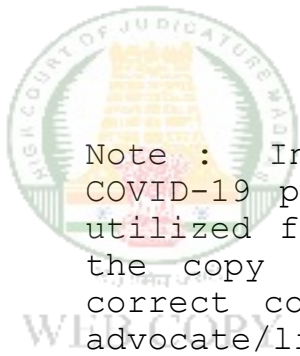
Sd/-

Assistant Registrar (AD II)

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/ /2022

Sub Assistant Registrar(CS)



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,
District Court Building,
Tirunelveli.

+1 CC to M/s.M.P. SENTHIL, Advocate (SR-20694[F] dated 22/04/2022)

W.P. (MD) .No.9895 of 2013
21.04.2022

MK/25.05.2022/4P/3C