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WP.No.11404 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.07.2023

PRONOUNCED ON : 20.07.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.11404 of 2013

and

M.P.No.1 of 2013

R.M.Subramaniam

...

Petitioner

Vs

1. The Presiding Officer,
Labour Court,
Salem.

2. The Management,
Karur Srinidhi Yarn Mill Ltd.,
Goundipalayam,
Nallur,
Paramathi Velur,
Namakkal District 637 203.

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Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records from the 1st respondent connected with the impugned award in I.D.No.271 of 2002, dated 29.01.2011 and quash the same and consequently direct the 2nd respondent to reinstate the petitioner into service with full back wages, continuity of service and other attended monetary and service benefits.



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For Petitioner : Mr.R.Rajaram
For R1 : Court
For R2 : Mr.V.Anil Kumar
for Mr.S.R.Raghunathan

ORDER

This Writ Petition has been filed challenging the award dated 29.01.2011 in I.D.No.271 of 2002 on the file of the first respondent, thereby dismissing the industrial dispute raised by the petitioner.

2. The petitioner joined in the second respondent/ Management as a casual worker on 04.05.1995 and he had put up continuous service. The second respondent factory is a yarn mill and it has employed a large number of women workers. Due to their poverty, they could not go to school and they were forced to work in the yarn mill. Therefore, there was a large scale of exploitation and sexual harassment. However, they were unable to protest against the bad behaviour of their superiors, since there was no workers union. Therefore, all of them were decided to join CITU union and formed a workers union in the second respondent mill and also got it affiliated to “Center for Indian Trade Union – Namakkal District Panchalai Thozhilalar Sangam”.



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3. While being so, on 17.01.2000, the petitioner was elected as Branch President of the union and other office bearers including executive members were also elected and informed to the second respondent by a letter dated 17.01.2000. Though they were working continuously for long years, they were not made permanent and as such, they held several demonstrations and gate meeting before the second respondent. They were also urged the Management to pay high salary, revision of wages and also implementation of labour laws, such as, Payment of Wages Act, Bonus, Factories Act, Conferment of Permanent Status Act, etc, in the form of representation. Due to which, the second respondent/Management had inimical intention against the Union and was not willing to discuss any of the demands raised by the Union. Therefore, they filed an application before the Payment of Wages Authorities for payment of earned leave salary and national festival holiday salary and also to restrain the Management from illegally deducting Rs.3/- from their daily wages.

4. Because of so many activities held by the Union in order to victimise the employees, the petitioner was suspended from service on 12.08.2000 on certain charges. Thereafter, he was issued charge memo



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alleging that the petitioner along with other workers abused the General Manager of the second respondent in bad language. On the charges, the second respondent conducted a domestic enquiry. Though there was no evidence to prove the charges, the Enquiry Officer filed a report as all the charges proved. On receipt of the enquiry report, the second show cause notice was issued to the petitioner and submitted his explanation. However, without accepting the explanation submitted by the petitioner, the petitioner was terminated from service by an order dated 03.05.2001. Aggrieved by the same, the petitioner raised Industrial Dispute before the Labour Officer. The conciliation was ended in failure and referred before the Labour Court. Before the Labour Court, the petitioner raised a preliminary objections that the domestic enquiry was not conducted in a fair and proper manner. On the preliminary issue, the Labour Court passed an order holding that the enquiry was conducted in a fair and proper manner and thereafter, passed an award, thereby dismissed the Industrial Dispute raised by the petitioner and confirmed the order passed by the second respondent.

5. The learned counsel for the petitioner raised the following grounds :



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(i) the second respondent failed to seek any approval on the petitioner's termination as contemplated under Section 33(2)(b) of Industrial Disputes Act.

(ii) the conclusion of the Labour Court that since it had held in the preliminary award that the enquiry was conducted in a fair and proper, it need not go into the merits of the finding of the Enquiry Officer is in total violation of the Section 11-A of the Industrial Disputes Act.

6. The Labour Court further concluded that the petitioner is not a workman and therefore, the industrial dispute raised by the petitioner is not maintainable and it is against the definition of workman under Section 2(s) of the Industrial Disputes Act. The Labour Court also failed to look into the perversity committed by the Management, while dismissing the petition.

7. In support of his contention, he relied upon the following Judgments :

(i) In the case of *Elumalai Vs. Management of Simplex Concrete Piles (India) Ltd., Madras and another* reported in (1970) 2 *MLJ* 233.



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(ii) In *W.P.No.1385 of 1965* in the case of *The Pilot Pen*

Company (India) Private Ltd., Vs. The Presiding Officer, Additional Labour Court, Madras and another

(iii) In the case of *Mavji C.Lakum Vs. Central Bank of India* reported in *2008-III-LLJ-1 (SC)*

(iv) In the case of *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd., Vs. Ram Gopal Sharma and others* reported in *2002 (1) L.L.N.639.*

8. The Labour Court has framed the following issues :

(i) Whether the claimant is coming under the definition of workman ?

(ii) The order of termination is valid or not ?

(iii) The order of dismissal is proportionate to the charges framed against the claimant ?

(iv) The order of acquittal passed in favour of the petitioner binding upon the Labour Court or not ?

(v) Other reliefs if any ?



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9. Insofar as the preliminary objections raised by the petitioner is concerned, the industrial dispute under Section 2A(2) of the Industrial Disputes Act ended in failure. The Management, by an order dated 08.01.2008, thereby concluded that the domestic enquiry conducted as against the petitioner was fair and proper. Though the petitioner raised ground that at the time of passing an order of removal from service in respect of other demands, there was a dispute pending before the Conciliation Officer as raised by the Union under Section 2K of the Industrial Disputes Act.

10. On perusal of the counter filed before the Labour Court by the Management revealed that neither dispute nor any conciliation was pending before Conciliation Officer or before any other forum as per Section 33 of the Industrial Disputes Act and as such, there is no violation in passing the final orders. Therefore, there is no violation as pointed out by the learned counsel for the petitioner under Section 33 of the Industrial Disputes Act. Though, the petitioner is coming under the definition of workman under Section 2(s) of the Industrial Disputes Act, he failed to prove that he continuously worked for 240 days. Therefore, the Labour Court has rightly concluded that the petitioner is not a



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workman. Hence, the judgment cited by the petitioner is not helpful to the case on hand. Finally, the Labour Court has rightly concluded that the Management removed the petitioner from service after conducting due enquiry in a fair and proper manner. Therefore, this Court finds no infirmity or illegality in the order dated 29.01.2011 in I.D.No.271 of 2002 passed by the Labour Court.

11. Accordingly, this Writ Petition stands dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Index:Yes/No
Internet:Yes/No

To

The Presiding Officer,
Labour Court,
Salem.



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G.K.ILANTHIRAIYAN,J.

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Pre-delivery order in
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