



W.P.Nos.22629 of 2004 and 22234 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.09.2023

DELIVERED ON : 10.10.2023

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.22629 of 2004 and 22234 of 2006
and W.P.M.P.No.27358 of 2004

W.P.No.22629 of 2004:-

The Management of Pariyur
Amman Spinning Mills Ltd.,
Polavakkalipalayam (Post),
Gobichettipalayam-638 476.

... Petitioner

-Vs-

1. The Presiding Officer,
Labour Court,
Salem.

2. Pushpalatha
3. K.Velliyangiri
4. S.Vijayalakshmi
5. S.Ganesh Kumar
6. A.Chitra
7. Rajamani
8. S.Palanisamy

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9. P.Lille Pushpam
10. M.Ramesh Kumar
11. T.Ganesh
12. B.Gopi
13. M.Vijaya
14. T.Logeshvari
15. B.Jeyalakshmi
16. E.Arulmani
17. N.Vijaya
18. N.Jeyaprakash
19. N.Lakshmi
20. S.Sembagavalli
21. R.Janagarathinam
22. M.Tahmbi
23. P.Palaniyammal
24. C.Karuppannasamy
25. C.Senkottaiyan
26. S.Selvananthi
27. Kala
28. V.T.Vijayalakshmi
29. S.Ponkodi
30. K.Nirmala
31. S.Chitra Devi
32. T.Maheswari
33. S.Mohanal
34. P.V.Lakshmi
35. M.Shahavar
36. P.T.Velusamy
37. Poonkodi



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38. S.Kumar
39. P.Jeyabal
40. Saravanan
41. M.Eswaran
42. V.Minnaldurai
43. Nataraj
44. Kalamani
45. G.Pavunayal
46. C.Padmavathi
47. S.Indrani
48. N.S.Ravi
49. M.Revathi
50. Manikandan
51. P.Jothilakshmi
52. S.Krishnaveni
53. K.Pathmavathi
54. S.Kalamani
55. Palanisamy
56. L.Chitra
57. S.Jothimani
58. Annamalaisamy
59. P.Mani
60. N.R.Easvaramoorthy
61. S.Marakatamani
62. M.Rukumani
63. Arundavaselvi
64. K.Lakshmi
65. P.Renjenthkumar
66. R.Maheswari



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67. P.Selvamani
68. G.P.Vasantha
69. P.Murugasan
70. T.Murugasan
71. N.Revathi
72. A.Veerammal
73. N.Vasantamani
74. A.Vijaya
75. M.Sundaram
76. Rathnam
77. S.Vijayalakshmi

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorari, to be issued to the first respondent herein namely, the Presiding Officer, Labour Court, Salem to call for the records bearing I.D.Nos.20 of 1998 to 29 of 1998, 31 of 1998 to 73 of 1998, 77 of 1998 to 92 of 1998, 114 of 1998 to 118 of 1998 and 540 of 1998 and 542 of 1998 and quash the award (common award) passed therein dated 20th August 2003.

W.P.No.22234 of 2006:-

1. N.S.Ravi
2. K.Velliyangiri
3. S.Vijayalakshmi
4. A.Chitra
5. Rajamani
6. S.Palanisamy
7. M.Ramesh Kumar



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8. T.Ganesh
9. B.Gopi
10. M.Vijaya
11. T.Logeshvari
12. B.Jeyalakshmi
13. E.Arulmani
14. N.Jeyaprakash
15. N.Lakshmi
16. R.Janagarathinam
17. M.Thambi
18. P.Palaniyammal
19. C.Karuppannasamy
20. C.Senkottaiyan
21. S.Selvanathi
22. B.Kala
23. V.T.Vijayalakshmi
24. S.Poonkodi
25. S.Chitra Devi
26. T.Maheswari
27. S.Mohanal
28. P.V.Lakshmi
29. M.Shahayar
30. P.T.Velusamy
31. A.N.Poongodi
32. S.Kumar
33. P.Jeyabal
34. V.Saravanan
35. M.Eswaran
36. V.Minnaldurai



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37. N.Kalamani
38. G.Pavunayal
39. C.Padmavathi
40. M.Revathi
41. R.Manikandan
42. K.Pathmavathi
43. S.Kalamani
44. C.Palanisamy
45. L.Chitra
46. Annamalaisamy
47. P.Mani
48. A.R.Easvaramoorthy
49. S.Marakatamani
50. P.Arundavaselvi
51. K.Lakshmi
52. P.Ranjenthkumar
53. R.Maheswari
54. P.Selvamani
55. P.Murugesan
56. N.Revathi
57. A.Veerammal
58. N.Vasanthamani
59. A.Vijaya
60. M.Sundaram
61. Rathnam
62. S.Vijayalakshmi

... Petitioners

-Vs-



W.P.Nos.22629 of 2004 and 22234 of 2006

1. The Presiding Officer,
The Labour Court, Salem.

2. The Management of Pariyur
Amman Spinning Mills Ltd.,
Polavakkalipalayam (Post),
Gobichettipalayam,
Erode District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus, after calling for the records relating to the Common Award of the first respondent Labour Court dated 20.08.2003 in Industrial Disputes Nos.20 to 29 of 1998, 31 to 73 of 1998, 77 to 92 of 1998, 114 to 118 of 1998, 316 to 318 of 1998, 540 of 1998 and 542 of 1998, quash the same and consequently direct the second respondent to reinstate the petitioners with continuity of service, backwages award costs.

In W.P.No.22629 of 2004

For Petitioner : Mr.Balan Haridas
For Respondents
R1 : Court
R2 to R77 : Mr.A.Ajay Khose

In W.P.No.22234 of 2006

For Petitioners : Mr.A.Ajay Khose
R1 : Court
For R2 : Mr.Balan Haridas



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COMMON ORDER

These writ petitions have been filed challenging the common award passed by the Labour Court, Salem, dated 20.08.2003, thereby ordered to pay compensation to each workman.

2. The respondents 2 to 77 in W.P.No.22629 of 2004 and the petitioners in W.P.No.22234 of 2006 are hereinafter called as Workmen. The petitioner in W.P.No.22629 of 2004 and the second respondent in W.P.No.22234 of 2006 are hereinafter called as Management.

3. The Workmen were the employees of the Management. The Management had started its Mill in the year 1992 and there were more than 200 workers. The Workmen were aggrieved by the action of the Management in not extending the benefits of E.S.I., P.F., Festival Holidays, Casual Leave, Earned Leave, etc., and as such they issued a strike notice and struck down work from 24.02.1997. Though there was conciliation before the Conciliation Officer, the Conciliation Officer



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advised the Workmen to resume work unconditionally. Therefore, all the Workmen reported for work on 17.04.1997. However, the Management insisted that the workers should sign an undertaking that the Workmen should not hold Union membership and they will not participate in a strike and if they do participate, they will be stopped from the work etc. Therefore, the Workmen refused to sign the undertaking and as such, the Management had taken a stand that unless the Workmen sign the undertaking, they will not be permitted to resume duty. Therefore, they raised a dispute under Section 2(A) of the ID Act, before the Labour Officer on 20.04.1997. Since no settlement was reached, the Labour Officer gave a report to the Government. Thereafter, on reference, the Workmen filed their claim petitions. The Labour Court ordered only compensation and denied reinstatement with all other benefits.

4. The learned counsel for the Workmen submitted that the action of the Management in insisting upon the workers to sign an undertaking before resuming



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work is illegal. Even then, the Labour Court concluded that insisting upon an undertaking is not violative of any legal procedures. It further held that there was no evidence to show that the Management insisted upon an undertaking, though Ex.M39 series was marked before the Labour Court. The Workmen were never offered any job and as such, there was no question of abandoning their service. Therefore, the refusal of employment to the Workmen would amount to illegal termination. When the Labour Court concluded in favour of the Workmen, the Labour Court ought to have ordered for reinstatement with other attendant benefits. The denial of employment is void ab initio as non-employment amounts to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act.

5. The learned counsel for the Management submitted that the Workmen were only trainees. It is a well settled position that statutorily recognized practice to engage persons as apprentice, other than apprentices under the Apprentice Act,



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1961, in industries to impart training and help them to acquire certain skills.

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Without considering the same, the Labour Court concluded that the trainees are Workmen, as defined under Section 2(s) of the Industrial Disputes Act. The certified standing order of the Management is constituted under the Industrial Employment (Standing Orders) Act, 1946. Section 1(3) of the said Act, applies to every industrial establishment wherein 20 or more Workmen are employed or were employed on any day of the preceding 12 months. Therefore, it is binding upon the employer and employee and it has a statutory force. It is not the case of the Management that the Workmen are not Workmen under Section 2(s) of the Industrial Disputes Act. In fact, the apprentice is also included in the definition of Section 2(s) of the Industrial Disputes Act. Therefore, it is not a case of retrenchment as per Section 2(oo) of the Industrial Disputes Act and there was no violation of Section 25(F) of the Industrial Disputes Act. Therefore, Section 2(oo)(bb) is only applicable to this case, since the Workmen were taken only as an Apprentice on contract basis for a specific period. They were engaged in training



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for specific period viz., three years. Therefore, there was no antecedent formalities

to terminate the contract of apprenticeship, much less a domestic enquiry.

Therefore, after the period of apprenticeship, the employee has no right of appointment. During the period of apprenticeship, if any employee committed any misconduct, they will be relieved from the apprenticeship as per the contract of apprenticeship. When the Labour Court accepted that the Workmen were indulged in illegal strike, which is a misconduct, it ought not to have granted any compensation.

6. Heard Mr.Balan Haridas, the learned counsel for the Management and Mr.A.Ajay Khose, the learned counsel for the Workmen and perused the materials available on record.

7. The Workmen were engaged as casual employees by the Management. Thereafter, the scheme for training was framed by the Management for their betterment. The total training period was fixed as 36 months consisting of 12 stages. During the period of training, they were paid stipend. Under the said



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scheme, the settlement was drawn under Section 18(1) of the Industrial Disputes Act, 1947 and all the Workmen agreed to the terms of settlement and signed the settlement as token of its acceptance. The scheme as well as the settlement were marked before the Labour Court.

8. As per the scheme clause 8, the contract will automatically come to an end at the efflux of time unless it was extended by specific order issued by the Management. Further, if the work of an employee is not satisfactory, the Management is empowered under the scheme to discharge them summarily. As per Section 18(1) Settlement which was marked as R29, all the employees of the Management Mill were given training in order to their betterment of employment. During the course of their employment, an employee viz., T.Kumar attempted to commit theft by entering into the administrative office of the Management. Immediately, on raising of alarm, he was caught red handedly. On the complaint, he was brought into the police custody. On hearing the said news, the Workmen



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who were in the IIIrd shift, stopped the work abruptly and gathered in front of the Administrative Office. They also prevented the Police personnels to take further action as against the said T.Kumar. Thereafter, they did not resume work and went on strike. Though some of the employees were reporting for work, some of the employees prevented and obstructed them from reporting to work and threatened them with dire consequences. Therefore, the Management lodged complaint.

9. On receipt of the same, FIR was registered in Crime No.234 of 1997 under Sections 147, 448 and 506(2) of IPC. Immediately, thereafter, the Management issued notice to the Workmen to report for duty. On receipt of the same, some of the employees reported for work. However, on 05.03.1997, some of the Workmen, numbering 27, had prevented the employees from the Mill after their work and they were also assaulted and threatened not to go for work. Again, the Management lodged another complaint and the same was registered in Crime No.272 of 1997 for the offences under Sections 147, 341 and 323 IPC. After



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completion of investigation, the Inspector of Police, Gobichettipalayam Police Station filed a final report and the same had been taken cognizance in C.C.No.132 of 1997 on the file of the learned Judicial Magistrate I, Gobichettipalayam. In fact, the Labour Officer advised the Workmen to report for work. Thereafter, again the Management issued notice to the Workmen to report for work immediately on 16.04.1997. However, the Workmen had not reported for work. The Management had insisted for individual employee to give undertaking at the time of reporting for work. It was also accepted by some of the Union and the employees had given their undertaking. However, the Workmen in the present writ petitions refused to do so and they failed to report work. Thereafter, they raised dispute under Section 2A of the Industrial Disputes Act individually, alleging that they were refused employment.

10. According to the Management, the Workmen were entertained only as an Apprentice that too under the contract of apprenticeship training for the period



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of 36 months. Therefore, Section 2(oo)(bb) of the Industrial Disputes Act alone is applicable to them and Section 25(F) of the Industrial Disputes Act is not attracted against them. Whereas, the Workmen contended that the Management violated Section 2(oo) and Section 25(F) of the Industrial Disputes Act. The apprentice is also a workman under Section 2(s) of the Industrial Disputes Act. It is also seen that the Management, immediately filed the writ petition against the award passed by the Labour Court. But the Workmen challenged the award after a period of three years from the date of the award, insofar as its non awarding reinstatement into service with backwages. Out of 61 Workmen, 14 Workmen had already entered into settlement under Section 18 (1) of the Industrial Disputes Act with the Management. The remaining Workmen only challenged the award that too after a period of three years from the date of the award. That apart, after filing final report in Crime No.234 of 1997 registered for the offences under Sections 147, 448, 506(2) of IPC, accused persons admitted their guilt and paid their fine before the concerned Magistrate.



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11. In so far as C.C.No.132 of 1997 on the file of the Judicial Magistrate I, Gobichettipalayam is concerned, all the accused persons were convicted by the Criminal Court for the offences under Sections 147, 341 and 323 of IPC.

12. It is seen from the Judgment of the Hon'ble Supreme Court of India reported in **2001 SCC OnLine Bom 1266** in the case of ***Maharashtra Labour Union vs Pride Hotels Pvt. Ltd and Another***, wherein it was held that though the Workmen had taken a specific stand that strike is legal, they did not follow the legal formalities and they also indulged in criminal activities, before going on strike and when the act on the part of the Management is justified, the Management is entitled to ask for a bond and undertaking of good behaviour in writing from such Workmen. The Management is also entitled to ask them to write such undertaking or bond in a particular form provided for protecting its interest. As a natural corollary, it goes without saying that it is legally entitled not to allow



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such Workmen to enter the premises till he furnishes such undertaking or bond of good behaviour. Therefore, the Labour Court had rightly awarded compensation instead of reinstatement of Workmen into service.

13. Further, the period of contract also was over. Therefore, the Labour Court denied reinstatement of service, instead awarded compensation of Rs.20,000/-.

14. The award was based on the facts and it cannot be reopened on the plausible plea that a further enquiry should be made because that would be just. If findings of fact were allowed to be disturbed by this Court in such writ proceedings, that may lead to an interminable search for correct findings and would virtually convert this Court into Appellate Court competent to deal with questions of fact. Therefore, entertaining petitions for writs of Certiorari, it is necessary to remember that findings of fact recorded by the Labour Court which



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have to be clothed with jurisdiction to deal with them, should be treated as final

between the parties, unless, of course, it is shown that the impugned finding is

based on no evidence as held by the Hon'ble Supreme Court of India reported in

AIR 1964 SC 477 in the case of ***Syed Yakoob Vs K.S.Radhakrishnan and others.***

15. In view of the above, this Court finds no infirmity or illegality in the award passed by the labour Court dated 20.08.2003 and these writ petitions are devoid of merits and are liable to be dismissed. Accordingly, these writ petitions are dismissed. Consequently, connected Miscellaneous petition is closed. There shall be no order as to costs.

10.10.2023

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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G.K.ILANTHIRAIYAN, J.

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To

1. The Presiding Officer,
Labour Court,
Salem.

2. The Management of Pariyur
Amman Spinning Mills Ltd.,
Polavakkalipalayam (Post),
Gobichettipalayam,
Erode District.

Pre-delivery order made in
W.P.Nos.22629 of 2004 and 22234 of 2006

10.10.2023