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W.P.No.18359 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

Writ Petition No.18359 of 2013
and M.P.No.1 of 2013

SuperFil Products Ltd
Rep.by Managing Director
Mangalam Post, Pondicherry.

.... Petitioner

-Vs-

1.The Presiding Officer
The Labour Court
Puducherry.

2.Selvame (Died)

3.S.Dhanalakshmi

4.Minor S.D.Praveen
S/o Selvame, Rep.by mother and natural
guardian S.Dhanalakshmi

(R3 & R4 are substituted as LR's of
deceased 2nd respondent as per order
dated 14.11.2019 made in WMP No.
18750/2018 in WP No.18359/2013
by SMSJ)

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records from the 1st respondent herein in I.D.No.37 of 2007 and quash the award dated 15.02.2013.



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For Petitioner : Mr.Prasad Vijayakumar
For Respondents : R1 – Court
R2 – Died
R3 & R4 – Mr.R.Thiruneelakandan

ORDER

Heard Mr.Prasad Vijayakumar, learned counsel appearing for the petitioner Management and Mr.Thiruneelakandan, learned counsel appearing for the respondents 3 and 4 / legal representatives of the deceased 2nd respondent / workman.

2. The writ petitioner Management had taken over Swastik Filaments Pvt Ltd., in the year 2003. It had agreed to absorb the previous employees of Swastik Filaments as its employees, but as new entrants. After taking over, on 10.03.2004 the Union raised a charter of demands for revision of pay, confirmation of probationers and other benefits.

3. On 14.03.1995, when the officials of the writ petitioner Management made a surprise inspection, they found that certain workmen were sleeping. They took photographs of the same. The deceased 2nd respondent workman raised a hue and cry, assaulted the officials and also exposed the film which had captured the workmen sleeping. Soon thereafter, the 2nd respondent workman himself was found sleeping and therefore he was placed under suspension



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pending enquiry.

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4. After a few months, since the manufacturing activities of the petitioner Management were affected, they declared a lock-out. Nearly an year later on 24.02.2006, a 12(3) settlement was entered into between the union and the Management. In terms of the 12(3) settlement, it was agreed that the 2nd respondent workman shall resign from service and the writ petitioner Management will settle his dues. Contrary to the 12(3) settlement, the 2nd respondent did not resign and therefore the Management treated him as having abandoned his service. This was the cause of action for I.D.No.37 of 2007.

5. It is a dispute raised under Section 2A(2) of the Industrial Disputes Act by the deceased 2nd respondent workman stating that the 2nd respondent was not given employment and he had been orally terminated. The stand taken by the Management is that 12(3) settlement is binding on everyone and therefore, by virtue of the said settlement, the workman is deemed to have resigned from service.

6. The labour Court found that the workman had been victimised and no enquiry had been conducted by the Management prior to deciding that the deceased 2nd respondent workman had abandoned his service and ordered



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reinstatement. Challenging the same, the present writ petition has been filed by the Management.

7. Mr.Prasad Vijayakumar, learned counsel for the Management would vehemently argue that the 12(3) settlement is binding on all the persons and therefore as per one of the terms of the 12(3) settlement, it was agreed upon between the parties that the deceased 2nd respondent workman should resign from the post. He would also state that since the workman did not report for duty, it was decided that he had abandoned his service and consequently he was not given any employment. He would further state that since there was 12(3) settlement and there had been abandonment of service pursuant to the 12(3) settlement, there was no necessity to conduct an enquiry.

8. Per contra, Mr.Thiruneelakandan learned counsel appearing for the workman would state that as per Rule 58(2)(c) workmen should have been included in the settlement and the Union cannot agree to the resignation of the workman.

9. For the purpose of the disposal of the case, I am not going into the issue whether under 12(3) settlement Union can decide on the removal of an employee. A 12(3) settlement has been entered into and it has also been acted



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upon. However, unfortunately for the petitioner Management the letter of resignation as per 12(3) settlement was not valid. If resignation has not been obtained which terminates the relationship of an employer-employee, then it is deemed that the workman continues in the employment of the writ petitioner management.

10. Resignation is a positive act of termination and it cannot be deemed unless and until the rules so provide. In this particular case, though the 12(3) settlement speaks about the 2nd respondent resigning from service, no such resignation had ever taken place. Therefore, at best his non-reporting to duty could have been treated only as abandonment of service. Even if it is treated as abandonment of service, there is a duty cast upon the management to hold an enquiry and come to a conclusion.

11. It is admitted on either side that there is no such enquiry conducted. Therefore, merely because the 12(3) settlement states that the workman was asked to resign, I cannot presume that there was an act of resignation or treat the 12(3) settlement as a letter of resignation qua Rule 58(2)(c).

12. I am not in agreement with Mr.Thiruneelakandan that Section 12(3)



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cannot relate to rationalisation of workmen. In any event, that does not arise for consideration in the present case because, I am not satisfied with the case of the writ petitioner Management which has not held an enquiry. They have not taken the letter of resignation from the deceased 2nd respondent. Therefore, I have no other option than to confirm the order of the labour Court.

13. Mr.Thiruneelakandan, learned counsel for the workman brings to my notice that the 2nd respondent passed away on 24.01.2018. Therefore, there is no question of reinstating him in service. I would only modify the order of the labour Court from the relief of backwages with continuity of service and full attendant benefits to the relief of payment of 50% backwages to the legal representatives of the deceased workman / respondents 3 and 4 herein. They are entitled to 50% of the backwages from the date of the 12(3) settlement ie., 24.02.2006 till the date of the death of the 2nd respondent workman. The other terminal benefits will also be included in the payment to the respondents 3 and 4. The writ petition stands partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Neutral Citation : Yes/No
KST
To



The Presiding Officer
The Labour Court
Puducherry.



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V. LAKSHMINARAYANAN, J.

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