



W.P.No.27165 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2023

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.No.27165 of 2010
and WMP.Nos.1 of 2010 and 1 of 2011

The Management,
Salem Textiles Limited,
Narasingapuram,
Attur,
Salem District.

... Petitioner

vs.

1.The Presiding Officer,
Labour Court,
Salem.

2.N.P.Manickam

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records in I.D.No.111 of 2007 on the file of the Labour Court, Salem the first respondent herein, quash the award dated 20.01.2010 passed therein.

For Petitioner : Mr.M.Vijayakumar for
Mr.M.R.Raghavan

For R1 : Court

For R2 : Mr.Nazarullah for
M/s.K.V.Shanmuganathan



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ORDER

This Writ Petition is filed to call for the records in I.D.No.111 of 2007 on the file of the Labour Court, Salem the first respondent herein, quash the award dated 20.01.2010 passed therein.

2.The Management has filed the writ petition challenging the award of the Labour Court, directing it to pay 50% of the back wages to the second respondent for the period 04.04.2006 till 02.04.2009 with continuity of service and other attendant benefits.

3.The petitioner will be referred to as the Management and the second respondent as workman.

4.The workman was working as a Fitter in Maintenance Department of the Management. According to the Management, the workman indulged in misconducts and so two charge memos were issued on 26.12.2005 (Ex.M20) for misconducts under Clause 14(1) (11) (13) and (17) of the Standing orders. The charge memo was received by the workman on 10.01.2006 and



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he sent a reply on 04.04.2006 explaining the charges levelled against him. After several communications, the workman raised the dispute against his illegal termination. As the conciliation proceedings failed the dispute was referred and registered as I.D No.111 of 2007. It is pertinent to note that during the pendency of the ID, the petitioner reinstated the workman in service on 02.05.2009 vide the memo dated 17.12.2008. The Labour Court on the basis of the pleadings of the parties and also on the basis of the evidence filed before it passed the impugned order on 20.01.2010.

5.As the workman was reinstated pending the dispute, the only point to be considered in this writ petition is whether the Labour Court was justified in awarding 50% back wages to the workman for the period from 04.04.2006 till 02.05.2009 along with continuity of service and other attendant benefits. The learned counsel appearing for the Management submitted that the as workman had not pleaded about his gainful non-employment during the period of unemployment, the Labour Court was not justified in awarding 50% back wages for the aforesaid period. The learned counsel relied on the judgment of the Hon'ble Supreme Court in the case of ***J.K.Synthetics Limited Vs. K.P.Agrawal and Another*** reported in ***2007 (2) SCC 433*** in support of



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his submission that it was necessary for the employee to plead that he was not gainfully employed during the period of non-employment.

6.The learned counsel appearing for the workman on the other hand submitted that the award of the Labour Court was based on proper appreciation of the materials on record and therefore, the same did not call not any interference.

7.I have heard both the learned counsels and have perused the materials on record.

8.It is seen that the workman in his claim petition clearly pleaded that during the period of non-employment he was not gainfully employed. The Labour Court had also given it's factual finding based on the said plea. In his evidence as WW1 the workman spoke about his gainful non-employment during the relevant period. In the light of the factual situation, I am of the view that the Judgment relied on by the learned counsel for the petitioner ***J.K.Synthetics Limited Vs. K.P.Agrawal and Another*** reported in ***2007 (2) SCC 433*** is not applicable to the facts of the case. In the said Judgment of the



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Hon'ble Supreme Court it is held that the workman should plead or assert on oath that he was not gainfully employed and that on such pleading or assertion by the workman, the burden shifts on the employer to prove that the workman was gainfully employed. In the present case, the workman had specifically pleaded that he was not gainfully employed but the Management did not specifically deny the same. There was only a general denial of averments in para No.5. In my view in the absence of a specific denial regarding gainful non-employment of the workman by the Management, the Management cannot deny the claim for backwages by the workman. The Management has further failed to discharge the burden of proving that the workman was not entitled to backwages.

9.In view of the same, I find no infirmity in the award dated 20.01.2010 passed in I.D.No.111 of 2007 on the file of the Labour Court, Salem. Hence, the award of the Labour Court is confirmed and the writ petition is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petitions stand closed.

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Index : Yes / No

Internet : Yes / No



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Speaking order/Non-speaking order
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To

The Presiding Officer,
Labour Court,
Salem.



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N.MALA, J.

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