



WEB COPY



W.P.No.20364 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.02.2023

PROUNOUNCED ON : 25.04.2023

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.No.20364 of 2013

The Managing Director

Leo Fasteners Unit-II

Pondicherry

..Petitioner

Vs.

1.The Presiding Officer, Labour Court, Pondicherry

2.R.Joseph Raj

..Respondents.

Prayer: Petition filed praying to issue a writ of certiorari calling for the records relating to the Award of the 1st respondent in I.D.No.2/2010 dated 10.10.2012, quash the same.

For petitioner : Mr.R.Parthiban

For respondents : R1- court

R2- Ms.S.Kaavya for Mr.Balan Haridas.



W.P.No.20364 of 2013

ORDER

WEB COPY

This writ petition is filed seeking to quash the award passed in I.D.No.2 of 2010 dated 10.10.2012.

2. The writ petitioner herein is the management. The petitioner challenges the award of the Labour Court, whereby, the learned Judge held that the non employment of the workman and his dismissal from service is unjustified and set aside the same and directed the management to reinstate the workman into service with continuity of service and back wages and other attendant benefits.

3. Mr.R.Parthiban, learned counsel for the petitioner-management submits that the award is erroneous and contrary to law. The conclusion arrived by the labour court holding that without conducting the domestic enquiry, action should not have been taken by the management, is erroneous.

4. The learned counsel submitted that the workman was absent from 02.09.2009 onwards and has also not replied to show cause notice dated



W.P.No.20364 of 2013

09.09.2009. The willful absence from duty was proved by the management and therefore, the award directing to reinstate the workman with continuity of service and backwages and other attendant benefits is contrary to law.

5. Per contra, the learned counsel for the 2nd respondent submits that the 2nd respondent-workman gave a complaint to the Labour Officer on 16.07.2009 with regard to ill treatment to which he was subjected to. The workman raised a dispute challenging the refusal of employment before the Labour court which was referred for adjudication and was taken on file as I.D.No.2 of 2010.

6. After trial, the learned Judge, Labour court, found that in the case of alleged abandonment, it is necessary for the employer to have conducted an enquiry, but no enquiry conducted in the case, therefore, non-employment of the workman was bad.

7. Mr.S.Kavya, learned counsel for the 2nd respondent-workman



W.P.No.20364 of 2013

would submit that the petitioner-management did not choose to file a single documentary evidence before the labour court to establish its stand.

The labour court did not prevent the petitioner management to adduce evidence.

8. The learned Judge, has considered, analyzed and re-appreciated the oral and documentary evidence produced before it and come to the conclusion that the refusal of employment is not justified. The award of the labour court is well founded and require no interference.

9. Heard both sides and perused the records.

10. It is seen that at the time of admission of this writ petition, on 25.07.2013, this court directed the writ petitioner-management to comply with Section 17(b) of ID Act by paying the last drawn wages every month from the date of filing of the writ petition, to the 2nd respondent-workman on or before 10th day of subsequent months on the workman filing non employment affidavit before this court. On the same day, interim stay was granted on condition the petitioner management deposits



W.P.No.20364 of 2013

entire backwages to the credit of I.D.No.2 of 2010 on the file of labour court.

11. It is seen from the records that 2nd respondent-workman filed M.P.No.2 of 2013 to vacate the stay granted by this court. In the said petition, this court by order dated 04.06.2014, in paragraph 3, ordered as under:-

" 3. In such view of the matter, the order dated 25.07.2013 is directed to be complied with by the writ petitioner by paying last drawn wages from the date of filing of writ petition. The payment of last drawn wages from the date of filing writ petition till the month of June 2014 will have to be made by the writ petitioner within a period of eight weeks from today. Thereafter, the writ petitioner will have to comply with the order passed by this court on 25.07.2013. So far as the back wages are concerned, out of the sum of Rs.2,30,153/- deposited, the vacate stay petitioner/2nd respondent-workman is permitted to withdraw a sum of Rs.1,15,075/- without prejudice to the orders to be passed in the writ petition. Accordingly, the vacate stay petition-M.P.No.2 of 2013 is closed and the interim stay granted on 25.07.2013 in M.P.No.1 of 2013 is made absolute



W.P.No.20364 of 2013

subject to the compliance of the conditional order passed today. “

WEB COPY

12. The learned counsel for the petitioner-management has relied on the decision of the Supreme court in the case of [*The Workmen of M/s.Firestone Tyre & Rubber Co.op India (Pvt) Ltd., and The Management and others [Civil Appeal Nos.1461, 1995, 1996 and 2386 of 1972, 6th March, 1972]*]. The Supreme Court in the cited decision held that, if there has been no enquiry held by the employer or if the enquiry is held to be defective, it is open to the employer even now to adduce evidence for the first time before the tribunal justifying the order of discharge or dismissal.

13. The learned counsel for the 2nd respondent-workman relied on the decision of this court dated 14.02.2022 passed in W.P.No.18785 & 32959 of 2015 [*M.Pandiyan Vs. 1.The Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, I floor, B. Wing, 26 Haddows Road, Shastri Bhavan, Chennai-600 006 and 3 others*].

This court, following settled proposition of law held that when the



W.P.No.20364 of 2013

termination itself, has been held to be illegal by the CGIT, the workman would be entitled for full back wages, while awarding reinstatement. The learned counsel for the 2nd respondent thus submitted that the agony of the workman who cannot afford of spending money on a lawyer has to be ended and the award passed by the labour court with continuity of service, backwages and other attendant benefits has to be confirmed.

14. This court is in complete agreement of the reasonings of the learned Judge, labour court. The findings of the learned Judge is very clear that there is no enquiry conducted by the management in the case on hand and therefore, the Industrial Dispute was decided in favour of the workman. In such circumstances, the decision relied on by the learned counsel for the petitioner management will not in any way advance their case. Taking such view, this court finds that the Award passed by the learned Judge, is well founded and did not call for any interference. In the result, this writ petition is dismissed. The award passed by the learned Judge, labour court is confirmed. The petitioner-management shall implement the award within eight weeks from the date of receipt of a



W.P.No.20364 of 2013

copy of this order. No costs.

WEB COPY

25.04.2023

Index: Yes/No

Speaking/Non-speaking order

nvsri

To

1.The Presiding Officer, Labour Court, Pondicherry.



WEB COPY



W.P.No.20364 of 2013

J.NISHA BANU, J.

nvsri

W.P.No.20364 of 2013

25.04.2023