



W.P.No.4302 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.No.4302 of 2010

U.Valarmathi

... Petitioner

Vs

1.The Management,
M/s.Faizan Shoes (Pvt) Ltd.,
M.C.Road, Solur,
Ambur – 635 814
Vellore District.

2.The Presiding Officer,
Labour Court,
Vellore, Vellore District.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records from the second respondent relating to the award dated 24.03.2009, passed in ID.No.226/2003, and quash the portion of denying employment and other benefits and consequently direct the first respondent Management to reinstate the petitioner in service with back wages, continuity of service and all other attendant benefits and pass such other order.

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For Petitioner : Mr.S.T.Varadarajulu

For Respondents : R1- No Appearance
R2 – Labour Court

ORDER

The Workmen being aggrieved against the award wherein the respondent Management was directed to pay compensation of Rs.30,000/- in lieu of the reinstatement, had approached this Court by way of this instant Writ Petition.

2.Heard Mr.S.T.Varadarajulu, learned counsel appearing for the petitioner. In spite of notice had been served on the first respondent, they have neither appeared in person nor through their counsel before this Court.

3.The learned counsel appearing for the petitioner would submit that the petitioner was working as Switcher as being employed by the first respondent Management. While she was working in the Upper Section, the Section Supervisor abused her and attempted to physically

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assault her in front of the other workers. Therefore, she had made a complaint to the Labour Officer, Vellore with regard to the incident. The Labour Officer had warned the Supervisor who had also promised that no such incident would occur in future. Since she had made a complaint to the Labour Officer against the first respondent Management decided to terminate her service. The husband of the petitioner had also lodged a complaint before the Ambur Rural Police Station. On the same day, she was forced to receive an alleged settlement and was thrown out of the employment. Legal notice was sent and thereafter she was reemployed. Subsequent to that, the respondent Management had kept on transferring the petitioner from one section to another section. Due to death of her father-in-law she had availed leave on 22.06.2003, when she reported back to the duty on 23.06.2003, the Supervisor again abused her and sent her out of the factory. The petitioner had again issued a legal notice, upon receipt of the said legal notice, the petitioner had taken back to work. But however, the petitioner was forced to sign in blank papers. The learned counsel appearing for the petitioner would submit that the first

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respondent Management had handed over a cheque for a sum of Rs.7657/- by stating that the resignation submitted by the petitioner had been accepted.

4.The learned counsel for the petitioner would submit that the petitioner had not submitted any resignation and the respondent Management was trying to use the signed blank paper by her and therefore, she had raised an industrial dispute. Since no settlement was arrived at in the Conciliation proceedings, she had approached the Labour Court. The Labour Court had passed an award on 24.03.2009, holding that the petitioner had not voluntarily resigned from the job as claimed by the first respondent by giving a finding that the resignation letter dated 04.07.2003, had obtained by force and therefore non-employment of the petitioner was found to be illegal, but however, the Labour Court had come to a conclusion that the reinstatement of the petitioner in the given case would not give cordial relationship between the petitioner and the Management and had awarded the compensation for a sum of Rs.30,000/- in lieu of her reinstatement.

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5.He would submit at the outset that the Industrial Tribunal ought to have seen that the petitioner had been illegally kept out of employment from the year 2003 and at that time, the petitioner was only aged about 28 years and if the petitioner had been reinstated with continuity of service and other attendant benefits, she would have been entitled for a higher compensation. He would submit that even as of today, she would have been in service of the respondent Management, if the reinstatement was ordered. He would submit that the finding of the Labour Court would only point out that the Management had been acting in an unfair manner. Therefore, he would seek interference of the award passed by the Tribunal and direct reinstatement of the petitioner into service

6.I have heard the submissions made by the petitioner and also perused the materials placed on record.

7.It is an admitted fact that the petitioner was in employment of

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the first respondent Management. The Industrial Tribunal had given a finding that the petitioner had not submitted her resignation voluntarily and held that the non-employment of the petitioner was invalid in law, which would entitle the petitioner to be reinstated into service. But however, the Tribunal had given a reason that if the petitioner is reinstated, there will be no cordial relationship between the petitioner and the Management and therefore, the Tribunal had directed the Management to pay compensation to the workmen/petitioner.

8.The order of the Industrial Tribunal holding that the alleged non-employment of the petitioner is based on a resignation, which had been taken by force by the Management, had not been challenged by the first respondent Management. It would mean that the first respondent had accepted the same and was willing to pay damages as made by the Labour Court.

9.The case of the respondent Management is that the petitioner had acted in a subversive manner and she had not maintained discipline

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during her course of employment which has also necessitated, the Management had taken action against the petitioner by issuance of charge memo dated 02.07.2003. After a charge memo was issued to the petitioner, the petitioner had chosen to submit a resignation on 04.07.2003 and the same had been accepted and she had been given a cheque for her dues which also she had acknowledged. But however, she had come up with this false petition. I am not convinced with the reasonings given by the Labour Court in holding that it may not be a proper to order reinstatement, as there would be strained relationship between the petitioner and the Management. From the reasonings and findings given by the Labour Court in the manner in which the Management had conducted itself for non-employing the petitioner would itself show it is the Management at fault, particularly the Supervisor, who has been at vengeance with the petitioner. But however, from exhibit M2, it could be seen that the said supervisor had left the employment of the respondent company.

10.This aspect had not been taken note of by the Tribunal in

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holding that the petitioner could be compensated in lieu of reinstatement. Therefore, the reasonings assigned by the Industrial Tribunal to award compensation in lieu of reinstatement does not appear to be a good reason and this Court opines that the petitioner is entitled for reinstatement into service with the first respondent Management. But however, considering the fact that the petitioner had not been working from the year 2003, I hold that the petitioner would be entitled to only 25% of the backwages for the period between the date of termination and the date of reinstatement .

11.In fine, this Writ Petition is allowed and the award passed by the Industrial Tribunal insofar as awarding compensation in lieu of reinstatement is set aside. The first respondent is directed to reinstate the petitioner and to pay 25% backwages for the period between 04.07.2003 till the date of reinstatement. However, there shall be no order as to costs.

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Index : Yes/No
Speaking order : Yes/No
Neutral Citations : Yes/No



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K.KUMARESH BABU,J.

Pbn

To

The Presiding Officer,
Labour Court,
Vellore, Vellore District.

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