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W.P.No.440 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.No.440 of 2018
And
W.M.P.No.500 of 2018**

The Management of
Simply Sauve
Rep. by its Proprietor,
Syed Layak Ali

... Petitioner

Vs.

1.The Presiding Officer,
II Additional Labour Court,
Chennai.

2.M.Kumar

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to
issue a Writ of Certiorari calling for the records of the first respondent
in I.D.No.86 of 2011 and quash its award dated 29.06.2017.

For Petitioner : Mr.Anand Gopalan
for M/s.T.S.Gopalan and Co.

For Respondents : Ms.Akshara Kannan for R2
Legal Aid Counsel



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ORDER

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The petitioner has filed this writ petition seeking issuance of Writ of Certiorari calling for the records of the first respondent in I.D.No.86 of 2011 and to quash its award dated 29.06.2017.

2.The case of the petitioner is that the petitioner is a proprietary concern in the business of tailoring. The second respondent used to work as a tailor in the petitioner concern and he lastly reported for work during January, 2007 and he collected his salary dues on 07.02.2007. Thereafter, after a lapse of three years, the petitioner received a legal notice dated 10.05.2010 from the second respondent stating that the second respondent was denied employment from 08.10.2006.

3.The further case of the petitioner is that thereafter the second respondent approached the Conciliation Authority alleging that he was denied employment from 08.10.2006. Before the Conciliation Authority, the petitioner offered to provide employment to the second respondent, however, the second respondent raised industrial dispute before the first respondent and the first respondent passed the impugned award directing the petitioner to reinstate the second



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respondent in service with backwages, continuity of service and all other attendant benefits. Challenging the same, the petitioner has filed this writ petition.

4.The learned counsel appearing for the petitioner submitted that the second respondent on his own volition stopped working in the petitioner concern and all along the petitioner was ready to engage the second respondent for working, however, the second respondent did not accept the same. The Labour Court without considering all these aspects, passed the impugned award which is perverse and not sustainable one.

5.The learned legal aid counsel appearing for the second respondent submitted that the second respondent was denied employment from 08.10.2006. Hence, the second respondent sent legal notice dated 10.05.2010 to the petitioner stating that he was denied employment from 08.10.2006, for which, the petitioner had sent reply dated 20.12.2010 asking the second respondent to report for work. Though in paper the petitioner stated to provide employment for the second respondent, practically, the petitioner did not provide employment to the second respondent. Thereby the



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second respondent raised industrial dispute and the first respondent after considering all the factual aspects passed award in favour of the second respondent, which warrants no interference.

6. Heard the arguments advanced on either side and perused the materials available on record.

7. Admittedly, the second respondent used to work as a tailor in the petitioner concern and he lastly reported for work during January, 2007 and he collected his salary dues on 07.02.2007. Thereafter, after a lapse of three years, the petitioner received a legal notice dated 10.05.2010 from the second respondent stating that he was denied employment from 08.10.2006, for which, the petitioner had sent reply dated 20.12.2010 asking the second respondent to report for work. Thereafter, the second respondent approached the Conciliation Authority and even before the Conciliation Authority, the petitioner offered to provide employment to the second respondent, however, the second respondent raised industrial dispute before the first respondent. The said facts reveal that right from the beginning, the petitioner offered to provide employment to the second respondent, however, the second respondent did not accept the same.



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8. Further, though the second respondent was served with notice, he neither entered appearance through counsel nor appeared in person. Hence, this Court vide order dated 14.09.2023, appointed Legal Aid Counsel to argue the case on his behalf.

9. Though the second respondent raised industrial dispute seeking to set aside the order of non-employment dated 08.10.2006, the aforesaid facts reveal that the second respondent did not accept the re-employment offered by the petitioner. Hence, in order to strike the balance in between the parties, this Court is inclined to modify the award dated 29.06.2017 made in I.D.No.86 of 2011 by the II Additional Labour Court, Chennai, as follows:

(i) The petitioner Management is directed to pay a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) as full and final settlement to the second respondent Workman, within a period of six weeks from the date of receipt of a copy of this order.

10. The writ petition is accordingly disposed of. No costs. Consequently, the connected miscellaneous petition is closed.



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M.DHANDAPANI,J.

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11.The State Legal Services Authority is directed to pay admissible fees to Ms.Akshara Kannan, learned Legal Aid Counsel appointed by this Court.

20.09.2023

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

To

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