



WEB COPY



WP.No.4751 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.4751 of 2018
& W.M.P.Nos.5867 of 2018

The Management,
Patel Samrock (P) Ltd.,
No.335/341, New Colony
15, Velampalayam, Tiruppur-641652

...Petitioner

Vs

1.The Presiding Officer,
Additional Labour Court,
Coimbatore.

2.K.M.Pappathi

...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of certiorari or any other appropriate Writ or Order or Direction, call for the records of the 1st Respondent in I.D.No.125/2009 dated 15.11.2017 quash the same.

For Petitioner	: M/s.Abrar & Abdullah
For Respondent-2	: Mr.S.Saravanan



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ORDER

Aggrieved by the impugned order of the 1st respondent/Labour Court in I.D.No.125/2009, the petitioner management has filed this Writ Petition.

2. It is the case of the petitioner that the 2nd respondent was appointed as a permanent worker in the petitioner management and was working upto 2003. Alleging non-employment, the 2nd respondent raised an industrial dispute before the 1st respondent/Labour Court in I.D.No.55 of 2005 which was dismissed vide award dated 31.07.2007 directing the 2nd respondent to report for duty, pursuant to which, the 2nd respondent continued to work intermittently from 04.07.2007 to 21.05.2008. For various misconducts, a show cause notice was issued to the 2nd respondent, however, there was no reply from the 2nd respondent. Though, enquiry notice was issued to the 2nd respondent and sufficient opportunities were given to her, she failed to appear for enquiry. Hence the enquiry was



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conducted based on the oral and documentary evidence based on which the enquiry officer submitted the enquiry report proving the charges against the 2nd respondent. Based on the said report, the 2nd respondent was dismissed from service on 19.05.2008. Challenging the said dismissal, 2nd respondent raised an industrial dispute under Section 2A-(2) of the Act before the 1st Respondent/Labour Court claiming difference of wages, wherein, the impugned award has been passed directing the petitioner management to pay a compensation amount of Rs.1,50,000/- to the 2nd respondent. Challenging the same, the petitioner management has filed this Writ Petition.

3. Learned counsel for the petitioner management would submit that admittedly, the 2nd respondent was chargesheeted for serious misconducts for which, she was dismissed from service. Though numerous opportunities were given to the 2nd respondent to put forth her case, however, she did not turn up for enquiry and hence the enquiry was conducted based on the oral and documentary evidences and the charges were proved against the 2nd respondent and the fairness of the enquiry was already held by the Labour



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Court. Therefore, the averment of the 2nd respondent in the claim petition that no sufficient opportunity was given to him before the said dismissal is wholly unsustainable. Further, the 2nd respondent has not adduced any materials to show that she was gainfully employed during the period of non-employment and hence, she is not entitled for the compensation amount awarded by the Labour Court. He further submitted that in the year 2010, petitioner company was closed and hence, it would not be possible for the petitioner to settle the award amount as ordered by the Labour Court. Accordingly, he prays for dismissal of this Writ Petition.

4. On the above contention, this Court heard the learned counsel appearing for the 2nd respondent and perused the materials available on record.

5. Admittedly, the 2nd respondent was appointed as a permanent worker in the petitioner management. For various misconducts, she was dismissed from service after conducting a domestic enquiry. However, alleging non-employment, the 2nd respondent has raised a dispute under 2A-



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(2) of the ID Act in I.D.No.125 of 2009, wherein the impugned award has come to be passed.

6. A careful perusal of the records reveal that there were several litigations between the petitioner management and the 2nd respondent. Finally, the impugned award in I.D.No.184 of 2011 has come to be passed. The entire episode clearly reveal that all is not well between the workman and the Management and any further continuance of the workman in the employment of the Management would not be conducive to either party.

7. Further, at the time of arguments, it was brought to the notice of this Court that the petitioner company was closed in the year 2010. In view of the closure of the company, order of reinstatement, as directed would not be possible. In such a backdrop, it has been the consistent view of the Courts that when there is no possibility of a conducive settlement between the parties, in lieu of reinstatement, a fair compensation could be fixed to be paid to the workman.

8. However, in order to strike the balance between the warring parties



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and to render substantial justice, in lieu of reinstatement, this Court modifies the award by directing the petitioner management to pay a one time compensation of Rs.1,50,000/- to the workman towards full quit. Accordingly, the petitioner management is directed to deposit the compensation amount of Rs.1,50,000/- by way of demand draft in favour of the 2nd respondent within a period of four weeks from the date of receipt of a copy of this order. The 2nd respondent is at liberty to withdraw the said amount. Apart from the compensation amount, the 2nd respondent is entitled for gratuity amount. Therefore, the 2nd respondent is at further liberty to claim the gratuity amount in the manner known to law.

9. Accordingly, this Writ Petition stands disposed of with the above observation and direction. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

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Index : Yes (or) No

Neutral Citation : Yes (or) No

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To

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