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W.P.No.36677 of 2016

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2023

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THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.36677 of 2016

The Management of Tenneco Automotive India Pvt. Ltd.,
(Formerly known as Renowned Auto Products Mfts. Ltd.)
Rep. by its Head HR-South, Louis Ambrose,
No.122, SIPCOT Industrial Complex,
Hosur – 635 126.

...Petitioner

Vs.

1. The Presiding Officer,
Labour Court, Salem.

2. G.Murugan

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the 1st respondent in I.D.No.287 of 2005 its Preliminary Order dated 25.09.2013 in I.D.No.287 of 2005 and consequential Final Award dated 30.12.2015 in I.D.No.287 of 2005 and quash the same.

For Petitioner : Mr.S.Ravindran, Sr.C
for Mr.S.Bazeer Ahamed

For Respondents : Mr.G.M.Anantha Kumar, for R2



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ORDER

This Writ petition has been filed seeking quashment of the preliminary order dated 25.09.2013 and consequential Final Award dated 30.12.2015 made in I.D.No.287 of 2005.

2. The case of the petitioner is that the petitioner management is engaged in the manufacture of shock absorbers for two wheeler and four wheeler automobiles and the 2nd respondent/workmen joined the service of the petitioner in the year 1989 and was working as a Member-Quality assurance in the petitioner corporation. While so, due to the misconduct committed by the 2nd respondent by approving the wrong part, the petitioner incurred a loss of about Rs.2,00,000/-. Therefore, charge sheet dated 24.07.2004 came to be issued as against the 2nd respondent and after conducting domestic enquiry by affording appropriate opportunity, the 2nd respondent was terminated from service, vide order dated 13.10.2004, challenging which, the workmen raised an industrial dispute in I.D.No.287 of 2005 and the 1st respondent took up for consideration the fairness of the enquiry held against the workmen as a preliminary and after adjudication,



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the 1st respondent, vide preliminary order dated 25.09.2013, held that, the enquiry was not conducted in a proper manner and subsequently passed the final award on 30.12.2015, directing the petitioner management to reinstate the 2nd respondent with continuity of service and 10% back wages. Challenging the above said preliminary as well as the final award, the petitioner has come up with this Writ petition.

3. Learned Senior counsel appearing for the petitioner submitted that, due to the carelessness of the 2nd respondent, the petitioner management incurred a huge loss and if the same was not found out at right time, it would have resulted in serious consequences to the petitioner. Therefore, the petitioner management initiated departmental proceedings as against the workmen and subsequently as the charges levelled against the workmen was proved, he was dismissed from service, after affording sufficient opportunity to prove his innocence. While so, the 1st respondent, without considering any of the above said facts, passed the present impugned orders, which is not sustainable. Hence, he prayed for appropriate orders.



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4. Learned counsel appearing for the 2nd respondent/workmen submitted that, though a serious allegations has been made against the 2nd respondent that he has given wrong drawing for the first off approval and as per which, the operator had set the settings and the items were wrongly printed, however, no action has been initiated as against the said operator. Further, the alleged wrong drawing said to have been prepared by the workmen was not produced before the 1st respondent and even for the alleged misconduct, imposing a punishment of dismissal from service is too harsh. Therefore, the 1st respondent, after taking into consideration all the above said facts passed the present impugned awards, which cannot be interfered with and accordingly, prayed for dismissal of this Writ petition.

5. Heard learned counsel on either side and perused the materials available on record.

6. Even at the very outset it could be stated without any contradiction that this is one case in which the punishment imposed on the workman shocks the conscience of the Court even without this Court going through the material. For committing certain error in the assignment of certain part,



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which resulted in loss to the Management, which is not chronic in nature, but an isolated incident, dismissal from service had come to be imposed.

Though it is the case of the Management that the act of the workman had caused loss to the Management, however, the same cannot be the basis to impose the punishment of dismissal on the workman. True it is that certain loss had occasioned to the Management, but it is the first instance and he is not a chronic defaulter. However, for the said act, dismissal from service is too harsh and the Labour Court had rightly appreciated the issue and directed the management to reinstate the workmen, which is just and reasonable.

7. However, insofar as, the back wages are concerned, this Court is of the opinion that to instill more caution in the mind of the workman and to be more sincere towards his job and prevent him from committing such recurring acts, this Court is not inclined to order for back wages and to that extent the order passed by the Labour Court is set aside.

8. Hence, the final award dated 30.12.2015 made in I.D.No.287 of 2005 is modified as hereunder:

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(i) The petitioner management is directed to reinstate the 2nd respondent back into service on the existing pay on the date of reinstatement with continuity of service and all other attendant benefits, within a period of two weeks from the date of receipt of a copy of this order. However, the 2nd respondent is not entitled for any back wages as awarded by the labour court.

(ii) The petitioner management, shall not recover the amount, if any paid to the 2nd respondent by way of 17B wages.

9. With the above observations and directions, this Writ Petition stands dismissed. No costs.

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skt

NCC : Yes / No
Speaking Order : Yes / No
Index : Yes / No

To

The Presiding Officer,
Labour Court,
Salem.

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M.DHANDAPANI., J.

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