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W.P.No.36678 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.36678 of 2016

and

W.M.P.Nos.37184 & 37185 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.V.Thygarajan (deceased)

3.Komathi

4.Kavya

5.Devi

... Respondents

[R3 to R5 – substituted as LR's of deceased R2 – V.Thygarajan
as per order dated 23.08.2017 made in W.M.P.No.21525 of 2017]

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the 1st respondent in I.D.No.285 of 2005 its preliminary order dated 25.09.2013 in I.D.No.285 of 2005 and consequential final award dated 30.12.2015 in I.D.No.285 of 2005 and quash the same.



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For Petitioner : Mr.S.Ravindran
Senior Counsel
for Mr.S.Bazeer Ahamed

For Respondents : Mr.R.Bharath Kumar [R3 to R5]

ORDER

This Writ Petition has been filed seeking for a Writ of Certiorari, to call for the records of the first respondent in I.D.No.285 of 2005 its preliminary order dated 25.09.2013 in I.D.No.285 of 2005 and consequential final award dated 30.12.2015 in I.D.No.285 of 2005 and quash the same.

2. The case of the petitioner is that, they were engaged in the manufacture of shock absorbers. On 20.06.2003, the second respondent indulged in riotous and disorderly behaviour, thereby, a charge sheet was issued to him for proven misconduct on 21.06.2003. Again, on 27.09.2003, the second respondent attempted to assault supervisor L.Govindaraj, for which, another charge sheet was issued to the second respondent on 29.09.2003. Thereafter, a common domestic enquiry was held in respect of the above charges as against the second respondent and based on the proven minute drawn by the Enquiry Officer and after providing opportunity to the second respondent, he was removed from service by order dated 03.11.2003. Aggrieved by the same, he



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raised an industrial dispute in I.D.No.285 of 2005 before the first respondent/Labour Court and the Labour Court set aside the order of dismissal and passed award for reinstatement with 10% backwages. Challenging the same, the above writ petition has been filed before this Court.

3. The learned Senior Counsel appearing for the petitioner submits that, for proven misconduct, as against the second respondent, a domestic enquiry was conducted and in the enquiry, all the charges were proved, thereby, there is no violation of principles of natural justice. However, the preliminary award was passed as against the petitioner as if the petitioner had not provided any fair opportunity to the second respondent and thereafter, on 30.12.2015, final award was passed for reinstatement with 10% backwages on the ground that the Labour Court had unnecessarily highlighted the non-filing of drawings wrongly made by the second respondent, which has been admitted by him during cross examination before the Labour Court. Since the misconduct is proved through the evidence of R.W.1 and the admission of the workman itself is sufficient for removal from service. However, the first respondent/Labour Court mechanically arrived at a conclusion for order for reinstatement with 10% backwages, which is not sustainable. Accordingly, he prays for allowing the writ petition.



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4. Per contra, the learned counsel appearing for the respondents 3 to 5 submits that, the misconduct as alleged by the petitioner was not established during the preliminary enquiry and no fair opportunity was given to the second respondent. For not providing opportunity, preliminary award was passed as against the petitioner, thereafter, final award was passed based on the available records and after perusing the evidence adduced by the respective parties, which cannot be interfered with.

5. Further, he submits that, the final award was passed in the year 2015. If the petitioner reinstated the second respondent in the year 2015, he is entitled to get full salary upto 2017. However, the second respondent passed away on 14.03.2017, thereby, there is no possibility for reinstatement. However, he is entitled to receive 10% backwages as awarded by the Labour Court from date of dismissal till 2015 and full backwages from 2015 till 2017. Accordingly, he prays for appropriate orders.

6. Heard the learned Senior Counsel appearing for the petitioner and the learned counsel appearing for the respondents 3 to 5 and perused the materials available on record.



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7. The allegation made against the second respondent is that he misbehaved with the supervisor L.Govindaraj, for which, a charge sheet was issued as against the second respondent. Prior to that, one charge sheet was issued for the alleged misconduct that he participated in the illegal strike. For the above said lapses, the petitioner removed the second respondent from service, which is highly disproportionate and the same was properly considered by the Labour Court and passed an award in favour of the second respondent, which cannot be interfered with.

8. It is seen from the records that the second respondent passed away in the year 2017. Hence, as per the award passed by the Labour Court, the second respondent is entitled to receive 10% backwages from the date of termination till the year 2015 since the award is of the year 2015. After the year 2015, the second respondent is entitled to receive full backwages upto the year 2017. Therefore, the petitioner management is directed to calculate the backwages of the second respondent and disburse the same to the respondents 3 to 5, who are the legal heirs of the second respondent, within a period of two (2) weeks from the date of receipt of a copy of this order.



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M.DHANDAPANI, J.,

sp

9. With the above terms, the Writ Petition is disposed of. No costs.

Consequently, the connected miscellaneous petitions are closed.

11.07.2023

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation Case : Yes / No

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To

The Presiding Officer,
Labour Court,
Salem.

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