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W.P.No.14746 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.14746 of 2018

And

W.M.P.No.17421 of 2018

The Management of
S.H. Electronics India Pvt. Ltd.

... Petitioner

Vs.

1.S.Madurai

2.The Presiding Officer,
I Additional Labour Court,
Chennai.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to the impugned award passed by the second respondent in C.P.No.336 of 2014 dated 10.01.2018 and quash the same.

For Petitioner : Mr.D.Nandagopal

For Respondents : Mr.S.Chandrabose for R1
R2 – Court

ORDER

The petitioner has filed this writ petition seeking issuance of



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Writ of Certiorari calling for the records relating to the impugned award passed by the second respondent in C.P.No.336 of 2014 dated 10.01.2018 and quash the same.

2.The case of the petitioner is that the first respondent was working as Electrician in the petitioner company from the year 2009. The first respondent was absent from 09.12.2013 without any intimation and as per clause 24(v) of the certified Standing Orders of the petitioner company, if an employee is absent without intimation for more than ten days continuously, it would amount to misconduct. Hence, charge memo dated 02.01.2014 was issued to the first respondent. Thereafter enquiry was conducted and the enquiry officer submitted his report dated 16.06.2014 holding the charges levelled against the first respondent as proved.

3.The further case of the petitioner is that before passing of the dismissal order dated 12.07.2014, the first respondent filed C.P.No.336 of 2014 before the second respondent seeking to compute the money value of wages payable to him from December, 2013 to June, 2014 and the second respondent passed order dated 10.01.2018 directing the petitioner to pay a sum of Rs.1,44,093/- to



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the first respondent. Challenging the same, the petitioner has filed this writ petition.

4.The learned counsel appearing for the petitioner submitted that the first respondent on his own did not attend duty, thereby, the petitioner issued charge memo to the first respondent and after conducting domestic enquiry, dismissed him from service, however, second respondent without considering the fact that there is no pre-existing right inbetween the petitioner and the first respondent workman mechanically passed the impugned order, which is not sustainable one.

5.The learned counsel appearing for the petitioner further submitted that challenging the order of dismissal, the first respondent raised industrial dispute in I.D.No.798 of 2015 before the II Additional Labour Court, Chennai and the same was dismissed for default on 23.05.2022, however, till date, the first respondent has not taken any steps to restore the industrial dispute. This makes it clear that the first respondent is not in employment from December, 2013 to June, 2014. When a person is not in employment, the wages awarded by the second respondent in petition filed under Section 33



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C (2) of the Industrial Disputes Act is not sustainable one.

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6.Per contra, the learned counsel appearing for the first respondent submitted that the petitioner claim that the first respondent was absent from 09.12.2013 without any intimation, however, they did not issue any suspension order to the first respondent to enable the first respondent to claim subsistence allowance before the Authority under the Subsistence Allowance Act, which is un-fair labour practice. The learned counsel further submitted that without issuing any suspension order, the petitioner continued with the enquiry and issued the order of dismissal. Further, I.D.No.798 of 2015 was dismissed for default and the same cannot be put against the first respondent. The second respondent after considering the factual aspects, passed the impugned order in favour of the first respondent which warrants no interference.

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

8.The facts in the present case is not in dispute. Admittedly, the first respondent was working as Electrician in the petitioner



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company from the year 2009. The first respondent was absent from 09.12.2013 without any intimation. Hence, the petitioner issued charge memo dated 02.01.2014 to the first respondent. Thereafter enquiry was conducted and the enquiry officer submitted his report dated 16.06.2014 holding the charges levelled against the first respondent as proved.

9.During the disciplinary proceedings period, the first respondent filed C.P.No.336 of 2014 before the second respondent seeking to compute the money value of wages payable to him from December, 2013 to June, 2014, which is not sustainable one. It can be filed only based on the pre-existing right. In the present case, there is no pre-existing right inbetween the petitioner and the first respondent. In the absence of any pre-existing right, the impugned order passed by the second respondent directing the petitioner to pay a sum of Rs.1,44,093/- to the first respondent is not sustainable one.

10.In view of the above, the writ petition is allowed. The order passed by the second respondent in C.P.No.336 of 2014 dated 10.01.2018 is set aside. However, liberty is granted to the first respondent to take steps to restore the industrial dispute in



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I.D.No.798

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M.DHANDAPANI,J.

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of 2015. If I.D.No.798 of 2015 is restored and award is passed in his favour, then the first respondent can claim backwages for the non employment period. No costs. Consequently, the connected miscellaneous petition is closed.

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

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