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W.P.Nos.37281 of 2016 & 22392 of 2021

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2023

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

W.P.Nos.37281 of 2016 & 22392 of 2021

W.P.No.37281 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. S.Chinnadurai

...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.284 of 2005 and quash its Award dated 30.12.2015.

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

For Respondents : Mr.V.Ajoy Khose, for R2



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W.P.No.22392 of 2021:

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S.Chinnadurai

...Petitioner

Vs.

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.

...Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the Award dated 30.12.2015 passed by the Labour Court, Salem in I.D.No. 284/2005 quash the same and consequently direct the respondent Management to pay the petitioner 90% back wages and other attendant benefits from the date of dismissal to the date of superannuation in addition to the reliefs already granted and to pay the petitioner terminal benefits by counting his entire service from the date of the petitioner appointment to the date of superannuation, award costs.

For Petitioner : Mr.V.Ajoy Khose

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



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COMMON ORDER

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Since the issue involved in both the Writ petitions are similar in nature, they are disposed of by way of this common order.

2. These Writ petitions have been filed seeking quashment of the award dated 30.12.2015 passed by the Labour Court, Salem in I.D.No. 284 of 2005.

3. For brevity, the petitioner in W.P.No.37281 of 2016 is herein after referred as the management and the petitioner in W.P.No.22392 of 2021 is herein after referred as the workmen.

3.1 It is the case of the management that it is engaged in the manufacture of shock absorbers for two wheeler and four wheeler automobiles. The workmen joined the service of the management in the year 1989 and he was always irregular to work and he is a well known chronic absentee. For unauthorised absence, a charge sheet dated 14.02.2004 was issued to the workmen and after conducting domestic enquiry by affording appropriate opportunity, he was terminated from service, vide order dated



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continuity of service and 10% back wages. Challenging the above said award, the management has come up with the Writ petition in W.P.No.22392 of 2021.

4. Learned Senior counsel appearing for the management submitted that, there were 84 workmen working in the management's factory situated at Hosur during 2003-2004 and the work force is compact and need based and any unscheduled absenteeism by workmen even for a day would have an adverse impact on production, as the same will affect the business fortunes of the management. While so, the workmen is a chronic absentee and for various misconducts committed by him, till 2003, he was issued with about 15 memos, warnings and punishment of suspension. Hence, the workmen was terminated from service, after conducting appropriate enquiry and being not satisfied with the reasons stated by him for the unauthorised absence from work. However, the Labour court, without considering any of the above said facts, passed the present impugned award, directing the management to reinstate the workmen with continuity of service and 10% back wages, which is not sustainable. Hence, he prayed for appropriate orders.



5. Learned counsel appearing for the workmen submitted that, though the allegation made against the workmen is that he was absent from service, however, for mere availing of leave for 3 days, imposing a punishment of dismissal is highly disproportionate and further, the workmen clearly explained that, as he received a sudden phone call from his native stating that his mother was unwell, he left to his native for 3 days. Further, the Labour court, without taking into consideration all the above said facts and without ascertaining that the workmen attained age of superannuation as early as on 31.08.2005 passed the present impugned award, ordering stoppage of annual increment for 3 years and directed the management to reinstate the workmen with 10% back wages, which is not sustainable. Hence, he prayed for appropriate orders.

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

7. 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 being absent for three days, the punishment of dismissal from service had come to be imposed. Though it is the case of the Management that the workman had absented himself without prior information and that the workman in the unit is need based, any absenteeism would have a cascading effect on the manufacturing process of the firm, however, the said situation cannot be the basis to impose the punishment of dismissal on the workman. True it is that the workman had absented himself without prior intimation. However, for the said act, dismissal from service is too harsh and the Labour Court had rightly appreciated the issue and modified the punishment punishment of dismissal imposed by the management, in which, this Court is not inclined to interfere with the same.

8. Insofar as, the reinstatement is concerned, as the workmen attained the age of superannuation as early as on 31.08.2005, reinstatement is not possible. Therefore, this Court is inclined to modify the impugned award and in the place of reinstatement, the management is directed to pay 50% back wages to the workman from the date of dismissal till the date of superannuation, within a period of two weeks from the date of receipt of a



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copy of this order with interest at the rate of 7.5% per annum .

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9. With the above observations and directions, the Writ Petition in W.P.No.37281 of 2016, filed by the management stands **dismissed** and the Writ petition in W.P.No.22392 of 2021 filed by the workmen is **allowed in part**. No costs.

13.07.2023
(3/3)

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.

skt

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