



WP.No.16398 of 2018

In the High Court of Judicature at Madras

Dated : 13.9.2023

Coram :

The Honourable Mr.Justice M.DHANDAPANI

Writ Petition No.16398 of 2018  
& WMP.No.19553 of 2018

The Managing Director, Rane  
Madras Limited, rep.by its  
Head - Human Resources  
T.A.Dayalan

...Petitioner

Vs

1.The Presiding Officer, Industrial  
Tribunal-cum-Labour Court,  
Puducherry.

2.Gayathri

...Respondents

**Prayer:** This petition is filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records and quash the award dated 20.3.2018 passed in I.D.(L) No.47 of 2015 by the first respondent - Presiding Officer, Industrial Tribunal-cum-Labour Court, Puducherry.

|                |   |                                            |
|----------------|---|--------------------------------------------|
| For Petitioner | : | Mr.C.Manohar Gupta for<br>M/s.Gupta & Ravi |
| For R2         | : | Mr.P.R.Thiruneelakandan                    |



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## ORDER

**WEB COPY** This is a petition filed by the petitioner seeking to quash the award dated 20.3.2018 passed in I.D.(L) No.47 of 2015 on the file of the first respondent.

2. The facts leading to filing of this case are as follows :

(i) The second respondent joined in the petitioner's factory unit at Puducherry on 02.5.2011 as a Company Apprentice under the Company Apprenticeship Scheme. In the meantime, a vacancy arose to the post of Temporary Operator, to which, she applied. Thereafter, she was engaged as a Temporary Operator vide appointment letter dated 01.6.2011 initially for a period of one year. During the training, the second respondent did not show much interest. As per the evolution done by her seniors in 2014, her performance got deteriorated.

(ii) Pursuant to the internal assessment, she was requested to attend a test on 31.5.2014 along with other temporary operators to find her suitability. But, she failed to write the screening test. From 25.10.2014, the second respondent stopped reporting for work. To their shock and surprise,



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vide notice dated 08.9.2015 sent by the second respondent, the petitioner came to understand that she filed the industrial dispute before the first respondent seeking reinstatement with full back wages, continuity of service and all other attendant benefits by making false allegations.

(iii) The second respondent had not initiated any conciliation proceedings before raising the industrial dispute before the first respondent. In the claim petition, though the second respondent made a reference as to the initiation of the conciliation proceedings before the Labour Officer concerned, there was no mention as to whether any notice was served on the petitioner by the Conciliation Officer and as to whether the petitioner participated in the conciliation proceedings.

(iv) In the said industrial dispute, the petitioner filed a counter. However, the first respondent passed the impugned award directing the petitioner to reinstate the second respondent into service within one month together with 30% back wages from the date of refusal of employment till the date of reinstatement, continuity of service and other attendant benefits. Challenging the same, the petitioner is before this Court.



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**WEB COPY** 3. By order dated 07.2.2019, in WMP.No.19553 of 2018, this Court granted an order of interim stay.

4. Further, the second respondent filed WMP.No.35039 of 2018 seeking to direct the petitioner to pay her full last drawn wages or minimum wages as may be applicable from time to time, which soever is higher from the date of award under Section 17B of the Industrial Disputes Act, 1947 and continue to pay the wages in future on or before 10th of every month during the pendency of the writ petition. By order dated 07.2.2019, allowed WMP.No.35039 of 2018.

5. The learned counsel for the petitioner submits that the second respondent is not a permanent employee of the petitioner company. Since the performance of the second respondent was not up to the mark, she was forced to attend a test on 31.05.2014 along with other temporary operators to find her suitability, due to which she did not report to duty. Though the second respondent had voluntarily stopped reporting duty, she raised the



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industrial dispute before the first respondent on the ground that there was oral termination seeking for reinstatement which is wholly unsustainable.

He further submits that though the second respondent has not approached the conciliation officer before raising the industrial dispute, the first respondent mechanically directed the petitioner to reinstate the second respondent in service along with backwages which is *per se* unsustainable. Hence, he prayed to allow this writ petition.

6. Per contra the learned counsel for the second respondent submits that though the second respondent entered the services of the petitioner management in the year 2011 and rendered four years of unblemished service, she was orally terminated from the services of the petitioner management without conducting any domestic enquiry, which is wholly unsustainable. Accordingly, she prayed to dismiss this writ petition.

7. Heard the learned counsel appearing on behalf of the petitioner and the learned counsel appearing for the second respondent and perused the materials placed on record.



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8. As per Section 2A of the Industrial Disputes Act, 1947 (in short 'the Act'), prior to 15.09.2010, any individual can raise a dispute challenging his discharge, dismissal, retrenchment or termination. However, with effect from 15.09.2010, sub-sections (2) & (3) were inserted under Section 2-A by way of Amending Act 24 of 2010. In view of the said amendment, the workmen should make an application to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute. In the present case on hand the second respondent had also approached the Labour Officer Conciliation at Puducherry on 11.12.2014 which is marked as Ex.P5, since there was no amicable settlement within the period of 45 days as per the amended act, she raised the industrial dispute before the Labour Court which is well within time frame.



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9. Admittedly, the second respondent entered into the services of the petitioner management in the year 2011, when her performance was not found to be unsatisfactory, she was forced to attend the written test in the year 2014 and in order to avoid the skill test, the petitioner claim that the second respondent did not report to duty from 2014. Hence, it would not be appropriate to reinstate the second respondent after a lapse of 8 years.

10. In order to put a quietus to the lis, this Court is inclined to fix a fair compensation in favour of the second respondent in full quit, and therefore the award passed by the Labour Court is modified as hereunder:

(i) The petitioner management is directed to pay a sum of Rs.5,00,000/- as compensation in full quit to the second respondent. However, it is made clear that the petitioner management is not entitled to recover 17B wages if any paid by them.

11. With the above directions and observation, this writ petition is



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disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes (or) No

Neutral Citation : Yes (or) No

Speaking Order : Yes (or) No

To

The Presiding Officer, Industrial  
Tribunal-cum-Labour Court,  
Puducherry.



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