



WP.No.42725 of 2016

In the High Court of Judicature at Madras

Dated : 04.8.2023

Coram :

The Honourable Mr.Justice M.DHANDAPANI

Writ Petition No.42725 of 2016

M/s.MRF Ltd. (Thiruvotriyur
Unit), rep.by its General
Manager, Chennai-19.

...Petitioner

Vs

1.K.Ezhumalai

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

...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 connected with I.D.No.151 of 2010 and quash the award dated 11.9.2015 passed by the second respondent - the Presiding Officer, First Additional Labour Court, Chennai.

For Petitioner : Mr.Sanjay Mohan for
M/s.S.Ramasubramaniam &
Associates

For Respondent-1: Mr.V.Prakash, SC for
Mr.K.Sudalaikannu



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ORDER

This is a petition filed by the petitioner seeking to quash the award dated 11.9.2015 in I.D.No.151 of 2010 on the file of the second respondent.

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

(i) By order dated 12.12.2005, the first respondent was enrolled as an apprentice in the petitioner company for a period of 18 months. It was made clear in the said order dated 12.12.2005 that he could be terminated without assigning any reason or notice and that the apprenticeship period could be extended for a further period of time. As the performance of the first respondent was not found satisfactory, even after the period of apprenticeship came to an end on 11.6.2007, it was extended for a period of six months for three more spells vide orders dated 11.6.2007, 11.12.2007 and 11.6.2008. He was also paid the stipend. Even thereafter, as the performance was not found satisfactory, vide letter dated 11.12.2008, the petitioner issued the apprenticeship termination letter and this was communicated to the first respondent.

(ii) Thereafter, at the instance of the first respondent, the conciliation



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proceedings initiated before the Labour Officer concerned ended in failure and the first respondent filed the industrial dispute before the second respondent. In that, the petitioner entered appearance and filed their counter statement. After contest, the second respondent passed the impugned award and directed the petitioner to reinstate the first respondent into the services as a regular workman with back wages and continuity of service. Challenging the same, the petitioner is before this Court.

3. When the matter came up for admission on 09.12.2016, this Court granted an order of interim stay for a period of two weeks and it was subsequently extended from time to time. Further, on 09.3.2017, the order of interim stay already granted in WMP.No.36650 of 2016 was made absolute subject to the condition that the petitioner should deposit the arrears of amount payable to the first respondent from the date of termination till the date of the award at the rate of Rs.5,000/- per month to the credit of the industrial dispute within a period of eight weeks and on such deposit, the first respondent was permitted to withdraw 50% of the amount so deposited. It was also made clear in the said order dated 09.3.2017 that the petitioner



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should comply with the provisions of Section 17B of the Industrial Disputes Act by making payment at the rate of Rs.5,000/- per month from the date of filing the writ petition till March 2017 within eight weeks and that the petitioner should continue to pay the last drawn wages at Rs.5,000/- per month during the first week of every English calendar month from April 2017.

4. The learned counsel for the petitioner submits that though based on the memorandum of settlement dated 07.06.1996 which was marked as Ex.M.20 and the letter of the petitioner which was marked as Ex.M.22, the Labour Court arrived at a conclusion to regularise the services of the first respondent in the petitioner management, however, the Labour Court miserably failed to consider clause 4 of the settlement dated 07.06.1996 stating that the apprentice will normally be given training for a period of 18 months and upon completion of the said training period, the apprentice will be appointed as a probationer for a period of six months and thereby he shall be entitled to draw wages attached to the grade of job which he performs, however, the period of probation shall be extended or terminated in cases



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wherever the management considers it necessary assigning reasons for the same. Hence, it is clear from the said settlement that unless the petitioner management is satisfied with the service rendered by the first respondent, he will not be appointed as a probationer and it is the absolute satisfaction of the management which cannot be construed in favour of the first respondent.

5. He further submits that as per the letter of the employees union dated 07.07.2001, the union agreed not to insist on the condition that the training can only be for a period of 18 months and it agreed to allow the management to enhance the period of training, whileso, the management extended the period of apprentice and by efflux of time the said period automatically came to an end. Since the work done by first respondent union was not satisfactory, he was terminated from service, however, without considering the said facts the Labour Court arrived at a conclusion to regularise the first respondent in the petitioner management which is *per se* unsustainable.

6. Per contra the learned counsel for the first respondent submits that



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as per the memorandum of settlement which was marked as W.10, the apprentice will normally be given training for a period of 18 months and upon completion of the said training period, the apprentice will be appointed as a probationer for a period of six months and thereby he shall be entitled to draw wages attached to the grade of job which he performs. In the present case on hand, the first respondent was appointed as apprentice in the year 2005, subsequently the apprentice period was extended for a further period of 18 months. He further submits that though upon completion of the said training period, the petitioner management failed to appoint the first respondent as probationer, which was properly adjudicated by the Labour Court and the same cannot be interfered with.

7. Heard the learned counsel appearing on behalf of the petitioner and the learned Senior Counsel appearing on behalf of the first respondent.

8. Admittedly the first respondent was appointed as a trainee for a period of 18 months on 12.12.2005. Though the period of apprenticeship came to end, it was extended for a further period of six months and for a



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subsequent period of six months in order to provide the first respondent an opportunity to improve his learning capacity. It is the claim of the petitioner that even after the said training the first respondent did not show any improvement in employment, hence, upon completion of the apprentice period, the services of the first respondent was terminated by the petitioner management. In order to ascertain the said facts this Court perused the settlement and the letter of the union marked as Ex.M20 and M.22 and the relevant portion of the memorandum of settlement dated 07.06.1996 is extracted as hereunder:

“4. An Apprentice will normally be kept on training for 18 (Eighteen) months. On completion of 18 months satisfactory training period, the apprentice will be appointed as Probationer for a period of six months and he shall be entitled to draw wages attached to the grade of job which he performs. However, the period of probation may be extended or terminated in cases wherever the Management considers it necessary assigning reasons for the same.”

9. On a perusal of the settlement dated 07.06.1996, reveals that the



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apprentice will be put to training for a period of 18 months and upon completion of the said period, the workman would be entitled for the post of probationer for a period of six months, subsequently he would be entitled to draw wages attached to the grade of job he performs. However, in the case on hand, the first respondent rendered his services as apprentice, initially for a period of 18 months, which was subsequently extended for three spells, i.e., for 18 more months and upon he being found not satisfactory, his services were terminated. When the settlement entered into between the Union and the petitioner provides the petitioner with the power to terminate the service of an apprentice, if his functioning is found not satisfactory, the said conclusion is in tune with the settlement and it cannot be said to be in contravention of the settlement arrived between the petitioner and the first respondent. Further, the settlement dated 07.06.1996 provides the appointment of an apprentice as a probationer for a period of six months before being taken in as a regular employee. In the case on hand, the first respondent is entitled to be appointed as probationer, but the petitioner cannot be directed to appoint the first respondent as a regular employee, without going through the phase of probation. The Labour Court is in error



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in holding that the first respondent is entitled for permanent status which is wholly unsustainable, since the permanent status will be granted only after successful completion of the probation as per settlement dated 07.06.1996. However, considering the fact that the petitioner had thrice extended the apprenticeship of the first respondent, now the petitioner cannot turn back and claim that the first respondent is unfit to be appointed. Therefore, continuation of the first respondent as a probationer with the petitioner before affording regular status would be the just and proper course.

10. Hence, this Court is inclined to set aside the Award dated 11.09.2015 on the file of second respondent in I.D.No.151 of 2010 with the following direction:

(i) The petitioner is directed to appoint the first respondent as probationer in terms of settlement dated 07.06.1996 within a period of two weeks from the date of receipt of a copy of this order and upon successful completion of the probation period the petitioner shall consider regularisation of the first respondent in the services



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of the petitioner management.

11. This writ petition is allowed with the aforesaid directions. No costs.

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Index : Yes (or) No

Neutral Citation : Yes (or) No

Speaking Order : Yes (or) No



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To
The Presiding Officer, First
Additional Labour Court,
Chennai.



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M.DHANDAPANI,J

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