



WP.No.2455 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.2455 of 2018
& W.M.P.Nos.2976 of 2018

The Management Shamrock,
S.F.No.335/341, New Colony,
15, Velamplayam Post, Tiruppur
Rep by its Authorized Signatory
V.Senthil

...Petitioner

Vs

1.The Presiding Officer,
Additional Labour Court,
Coimbatore.

2.A.Manoharan

...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of certiorari or any other appropriate Writ or Order or Direction, call for the records of the 1st Respondent in I.D.No.55/2008 dated 28.09.2017 quash the same.

For Petitioner
For Respondent-2

: M/s.Abrar & Abdullah
: Mr.S.Saravanan



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ORDER

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Aggrieved by the impugned order of the 1st respondent/Labour Court in I.D.No.55/2008, the petitioner management has filed this Writ Petition.

2. It is the case of the petitioner that the 2nd respondent joined the services of the petitioner management as an electrician on 01.10.2004 on a permanent basis and was working upto the 2007. Though, enquiry notices were issued, the 2nd respondent had failed to appear for enquiry. Hence, the enquiry was conducted based on the oral and documentary evidences based on which, the enquiry officer submitted the enquiry report holding the charges proved as against the 2nd respondent. Based on the said report, the 2nd respondent was dismissed from service on 19.05.2008. Alleging termination of employment, the 2nd respondent raised an industrial dispute under Section 2A of the Industrial Disputes Act, 1947. The Conciliation Officer sent his failure report on 20.12.2007. During the pendency of conciliation proceedings, the enquiry was held against the 2nd respondent.



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After conducting the enquiry, the enquiry officer, passed an order claiming a sum of Rs.2,36,356/- towards the damages caused to the petitioner management. As against the said termination, the 2nd respondent raised an industrial dispute under Section 2A-(2) of the Act before the 1st Respondent/Labour Court wherein, the impugned award has been passed directing the petitioner management to pay a compensation amount of Rs.2,50,000/- to the 2nd respondent. Challenging the same, the petitioner management has filed this Writ Petition.

3. Learned counsel for the petitioner management would submit that the 2nd respondent was not terminated from service and that he voluntarily left the services of the petitioner management. Further, he has committed various misconducts during the course of his employment for which, he was charge-sheeted and thereafter, he was orally dismissed from service. Though numerous opportunities were given to the 2nd respondent to put forth his case, however, he did not turn up for enquiry and hence the enquiry was conducted based on the oral and documentary evidences. Further, the 2nd



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respondent has not adduced any materials to show that he was not gainfully employed during the period of non-employment and hence, he is not entitled for 50% backwages awarded by the Labour Court. He further submitted that in the year 2010, petitioner company was closed and hence, it would not be possible for the petitioner to comply with the award passed by the Labour Court. Accordingly, he prays for dismissal of this Writ Petition.

4. On the above contention, this Court heard the learned counsel appearing for the 2nd respondent and perused the materials available on record.

5. Admittedly, the 2nd respondent was appointed as a permanent worker in the petitioner management. For various alleged misconducts, he was dismissed from service after conducting a domestic enquiry. However, as against his termination, the 2nd respondent has raised a dispute under Section 2A-(2) of the ID Act in I.D.No.55 of 2008, wherein the impugned award has come to be passed directing the petitioner management to reinstate the petitioner into service with 50% backwages along with



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continuity of service and other attendant benefits.

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6. A perusal of the impugned award reveals that, no averments have been made by the workman with regard to him not being in gainful employment during the period of dismissal. In the absence of any pleading in the claim petition relating to gainful employment during the non-employment period, the Labour Court was not justified in ordering payment of backwages.

7. However, at the time of arguments, it was brought to the notice of this Court that the petitioner company was closed in the year 2010. In view of the closure of the company, order of reinstatement, as directed would also not be possible. In such circumstances, it has been the consistent view of the Courts that when there is no possibility of a conducive settlement between the parties, in lieu of reinstatement, a fair compensation could be fixed to be paid to the workman.

8. However, in order to strike the balance between the warring parties and to render substantial justice, in lieu of reinstatement, this Court modifies



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the award by directing the petitioner management to pay a one time compensation of Rs.2,50,000/- to the workman towards full quit.

Accordingly, the petitioner management is directed to pay the compensation amount of Rs.2,50,000/- by way of demand draft in favour of the 2nd respondent within a period of four weeks from the date of receipt of a copy of this order. Therefore, the 2nd respondent is at liberty to claim the gratuity amount in the manner known to law.

9. Accordingly, this Writ Petition stands disposed of with the above observation and direction. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

14.09.2023

Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No

NHS

To

The Presiding Officer,

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Additional Labour Court,
Coimbatore.

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