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WP.No.32210 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

W.P. No.32210 of 2014

P.Kannappan

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Petitioner

Vs

1. The Presiding Officer,
2nd Additional Labour Court,
City Civil Court Building,
Chennai – 600 104.

2. The Management,
Cooksun India Limited,
No.16, North Phase,
Sidco Industrial Estate,
Chennai – 600 098.

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Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of Certiorari calling for the records and papers from the files of the first respondent in I.D.No.116 of 2004 and quash the impugned award made therein dated 11.09.2013 in so far as the first respondent has denied the petitioner's claim for back wages and all other attendant benefits.

For Petitioner	:	Mr.S.Kumarasamy
For R1	:	Court
For R2	:	Mrs.Sangeetha Rajakumar



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ORDER

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This Writ Petition has been filed challenging the Award dated 11.09.2013 passed in I.D.No.116 of 2004 by the first respondent, thereby awarded compensation for a sum of Rs.2,00,000/- without ordering reinstatement and any back wages.

2. The petitioner had joined the service of the second respondent on 01.05.1982 and his last drawn salary was Rs.4,610/-. He was terminated from service on 16.09.2003. The petitioner challenged the order of termination passed by the second respondent by raising an Industrial Dispute under Section 2A of the Industrial Dispute Act before the Labour Officer. However, the conciliation failed and as such a failure report was submitted by the Labour Officer. Thereafter, the petitioner raised an Industrial Dispute in I.D.No.116 of 2004.

3. The learned counsel appearing for the petitioner submitted that though the first respondent set aside the order of termination, they failed to order reinstatement of the petitioner into service on the ground that there were strained relationship and as such, the reinstatement could not be possible and ordered for compensation of Rs.2,00,000/-. Similarly



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placed persons were ordered to be reinstated for the very same set of charge and also along with two other charges. Thereafter, they were settled with all back wages around Rs.8,50,000/-. However, the Labour Court awarded only a very meagre amount of Rs.2,00,000/- to the petitioner.

4. Even according to the second respondent, the petitioner, along with twelve other workmen, had participated in the strike. The other workmen participated in the strike were ordered to be settled with all back wages. The petitioner, who was also one of the persons who participated in the strike, should not be discriminated with compensation of Rs.2,00,000/-. There is absolutely no evidence to show that the petitioner was engaged in strike. Even according to the second respondent Management, the petitioner only engaged the other employees to strike. There is no such finding from the Enquiry Officer about the petitioner's role leading and instigating the strike. The first respondent also held that the charges have not been proved and as such, the first respondent ought to have ordered reinstatement, continuity of service, back wages and all other attendant benefits to the petitioner.



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5. He also filed additional typed set of papers and relied upon the award passed against the persons, who participated in the same strike, along with the petitioner, in which the Labour Court has awarded reinstatement with continuity of service and back wages along with other attendant benefits. The workmen also filed claim petition pursuant to the award passed by the Labour Court and the same was also allowed. Further, after the order was passed in the claim petition the second respondent Management had settled all back wages and other attendant benefits. Therefore, the petitioner also made a representation before the second respondent for settling the amount by calculating the back wages.

6. The learned counsel appearing for the second respondent Management submitted that they offered a sum of Rs.8,00,000/- instead of Rs.2,00,000/- awarded by the Labour Court to the petitioner, however, he refused it. The Labour Court rightly awarded the compensation. The petitioner only instigated the other workmen to strike. During strike, the women worker viz., Sutapa Dey Dhara sustained injury and even today she could not to do any work. Therefore, a criminal case was proceeded with the accused one Shankar in C.C.No.1 of 2006 on the file of the District Munsif Court, Ambattur. It had ended in acquittal. The charge



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was serious in nature as against the women worker. Therefore, the first respondent rightly awarded compensation of Rs.2,00,000/- instead of reinstatement of service.

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

8. The petitioner had joined the service in the second respondent on 01.05.1982. The petitioner, along with twelve other workmen, had participated in the strike on 02.12.2002. Pursuant to the strike, the petitioner along with other workmen were issued charge memo dated 05.12.2002, which reads as follows :

“On 02.12.2002 taking objection to the work allocation given by the Management to Mr.Rajesh and Mr.Rameshbabu which they are doing in the past also, you and Mr.D.Jacob instigated the workmen, in which Mr.P.Kannappan also participated actively to strike work from 11.15 a.m. During the period of the said strike three of you instigated other workmen to surround these two employees and you were instrument in harassment of the above two employees.



On the next day 03.12.2002 also, three of you instigated other workmen and strike continued. When at 10.30 a.m Mr.Govindaraj – Deputy Manager Production, Dr.S.Sarkar – Director – Technical, Ms. Sutapa Dey Dhara – Manager – Production and Mr.Seetharaman – Technical Trainee started the production of Frysol Paste Fluk, on three of your instigation they were prevented from doing the work. While this was going on the Production Manager tried to take one of the raw material from the drum. Thereupon you put the lid on the top of the drum. When the Production Manager was taking out the lid, you caught hold of the lid and pulled the lid from her. In the process Production Manager sustained injuries in her fingers and in the wrist of her right hand.”

9. As per the charge, the petitioner and two others actively participated in the strike at 11.15 a.m. on 02.12.2002. During the strike, the petitioner and two others instigated the other workmen to surround two employees and the petitioner was instrumental in harassment of the above two employees. Without being satisfied with the explanation submitted by the petitioner, the second respondent ordered for domestic enquiry. In the domestic enquiry, the Enquiry Officer concluded that the charges framed against the petitioner were proved. On the strength of the enquiry report, the second respondent removed the petitioner from



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service by an order dated 16.09.2003. Therefore, the petitioner and two other workmen had raised an Industrial Dispute. The co-workmen were charged with criminal offences under Sections 341 & 323 of IPC. However, they were acquitted on the ground that the prosecution failed to prove the charges beyond any reasonable doubt.

10. The Industrial Dispute raised by the petitioner was ordered by an Award dated 11.09.2013. The Industrial Dispute raised by the other two workmen were ordered by an Award dated 20.06.2016 by some other Presiding Officer. Though the first respondent concluded that the petitioner only instigated to do strike by other co-workmen and as such, the punishment imposed on the petitioner is disproportionate to the charges. However, the reinstatement cannot be ordered, since already they had constrained relationship and as such, a sum of Rs.2,00,000/- was awarded as compensation.

11. In this record, the learned counsel for the petitioner relied upon the Judgment reported in **1975 SCR (3) 489** in the case of ***L.Michael and another Vsw.M/s.Johnston Pumps India Ltd.***, in which the Hon'ble Supreme Court of India held that an employer who believes or suspects that his employee, particularly one holding a position of confidence, has betrayed that confidence, can, if the conditions and terms



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of the employment permit, terminate his employment and discharge him without any stigma attaching to the discharge. But such belief or suspicion of the employer should not be a mere whim and fancy. It should be bona fide and reasonable. It must rest on some tangible basis and the power has to be exercised by the employer objectively, in good faith, which means honestly, with due care and prudence. If exercise of such power is challenged on the ground of being colourable or *mala fide* or an act of victimisation or unfair labour practice, the employer must disclose to the Court the grounds of his impugned action so that the same may be tested judicially. Therefore, the first respondent failed to justify that the relationship between the petitioner and the Management turned constrained one. Admittedly, the petitioner neither instigated nor participated in the one day strike on 02.12.2002 and therefore, it cannot be termed as constrained relationship. That incident cannot be said to create suspicion on the behaviour of the petitioner. Therefore, the petitioner is entitled for reinstatement, continuity of service, back wages and all other attendant benefits. Now, the petitioner attained the age of superannuation and as such, the reinstatement does not arise. The second respondent also failed to prove that during the period of termination, the petitioner was gainfully employed somewhere. Therefore, he is entitled



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for back wages till his attainment of superannuation and all other attendant benefits.

12. In view of the above, the Award dated 11.09.2013 in I.D.No.116 of 2004 passed by the first respondent is hereby quashed, insofar as the denial of reinstatement, back wages and all other attendant benefits are concerned. Accordingly, this Writ Petition stands allowed. There shall be no order as to costs.

03.08.2023

Index:Yes/No
Internet:Yes/No
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To

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