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W.P.No.25888 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.25888 of 2014

M.P.No.1 of 2014 & M.P.Nos.1 & 2 of 2015

M/s. ATC Limited,
(Formerly Asia Tobacco Company Limited)
No.35, Rajaji Nagar,
SIPCOT, Hosur.
Rep. by its Factory Manager

...Petitioner

-Vs-

1. The Presiding Officer,
Labour Court,
Salem.

2. K.Muniraj

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records connected with the award dated 08.01.2014 made in I.D.No.104 of 2003 on the file of the first respondent Labour Court, Salem and quash the same.

For Petitioners	: Mr.Sanjay Mohan
	For M/s. Sai Raaj Associates
For Respondents	
For R1	: Court
For R2	: Ms.S.Girija



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ORDER

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The writ petition has been filed challenging the award dated 08.01.2014 passed by the first respondent in I.D.No.104 of 2003, thereby directed the petitioner Management to reinstate the second respondent with continuity of service and also awarded 25% of back wages.

2. The petitioner Management is engaged in the manufacture of cigarettes and having its factory in Hosur. The second respondent was employed as casual employee with the petitioner Management. He was engaged purely on a day-to-day basis only where there was additional workload in the petitioner's factory, since the permanent employees were also engaged. The second respondent was paid on a daily wage basis at Rs.40/- per day.

3. In the month of February, 2001, the second respondent raised dispute that the petitioner Management refused employment and sought for relief of reinstatement. Even before that, the second respondent had instituted proceedings before the Deputy Chief Inspector of Factories, seeking conferment of permanent status under the Tamil



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Nadu Industrial Establishment (Conferment of Permanent Status) Act,

1987, on the ground that he had been working since October, 1990 and as such he is entitled to conferment of permanent status. However, it was rejected on the ground that the second respondent failed to prove that he had worked for 480 days in the given two calendar years. It was not challenged by the second respondent and it become final. Thereafter, the second respondent raised industrial dispute before the first respondent and the same was allowed. Aggrieved by the same, the petitioner Management filed the present writ petition.

4. Heard the learned counsel appearing on either side and perused the material placed before this Court.

5. The petitioner Management had taken specific stand that the second respondent was being casual workman any non-employment could not attract the provisions of Section 2(A) of the Industrial Disputes Act. The onus of establishing that the second respondent had completed 240 days in any preceding calendar years and he has failed to discharge that burden. The authority under the Tamil Nadu Establishment (Conferment of Permanent Status) Act, had after enquiry, dismissed the



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claim petition filed by the second respondent on the ground that he had failed to establish that he worked for more than 480 days in the given two calendar years. Further, the second respondent not even suggested the Management witness that he was engaged in dharna and as such he was terminated from service. Therefore, there is absolutely no evidence of victimization of the second respondent.

6. However, the Management witness admitted that the second respondent had been working from 1980, though the second respondent failed to establish that he had worked for 480 days continuously in the given two years. Further, the authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status) Act, dismissed the claim of the second respondent only on the ground that the second respondent failed to establish the continuous employment in the petitioner Management for the period of 480 days in the two calendar years and the said authority has no jurisdiction to order reinstatement. Therefore the second respondent terminated from his service.

7. That apart, the petitioner Management also failed to produce



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any attendance register or log book before the first respondent to prove their case. However, the second respondent produced a letter dated 02.02.2001 which was marked as Ex.W.4, thereby informing the Management with regard to the dharna conducted by the Union on 31.01.2001. Ex.W.5 also revealed that the second respondent had sent a letter dated 03.02.2001, asking the Management for reinstatement with back wages. Therefore, immediately after conducting dharna, the second respondent was terminated from service. Therefore, the first respondent rightly allowed the petition and directed the petitioner Management to reinstate the second respondent with continuity of service and also awarded 25% of back wages.

8. However, after the period of so many years, the reinstatement of the second respondent cannot be possible, since there was strained relationship between the petitioner and the second respondent. Therefore, this Court feels that it would be appropriate to compensate the second respondent as full and final settlement. Accordingly, the petitioner Management is directed to pay a sum of Rs.4,00,000/- (Rupees four lakhs only) in lump sum compensation as full and final settlement to the second respondent within a period of four



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weeks from the date of receipt of a copy of this Order.

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9. With the above directions, the Writ Petition stands disposed of. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

rts



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To

1. The Presiding Officer,
Labour Court,
Salem.



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G.K.ILANTHIRAIYAN. J.

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