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W.P.No.28868 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 22.02.2023

Orders delivered on 13.04.2023

CORAM :

THE HON'BLE Mrs.Justice **J.NISHA BANU**

W.P.No.28868 of 2014

and

M.P.No.1 of 2014

S.Jayachandran

..Petitioner

Vs

1. The Management of Caterpillar
India (P) Ltd.,
Melnallathur,
Thiruvallur - 602 004.

2. The II Additional Labour Court ,
City Civil Court Building,
High Court,
Chennai - 600 104

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorarified Mandamus to call lfor the records of lthe 2nd repsondent pertaining to the award mad ein I.D.No.145 of 2010 on the file



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of the 2nd respondent date d03.03.2014 and to quash the same and reinstate the petitioner with full backwages, continuity of service with all benefits.

For Petitioner : Mr.K.S.Sundar
For Respondents : Mr.Anand Gopal
for M/s.T.S.Gopal & Co. for R1
R2-Court

ORDER

This writ petition has been filed challenging the award dated 03.02.2014 made in I.D.No.145 of 2010 by the 2nd respondent, dismissing the dispute raised by the petitioner, to reinstate him with full backwages, continuity of service with all benefits.

2. The case of the petitioner in brief is as follows:

i) The petitioner was appointed as Stenographer in M/s. Hindustan Motors Ltd., by order dated 01.10.1986 and his service was confirmed w.e.f. 12.05.1987 by order dated 29.06.1987. His post was re-designated as



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Imports Assistant w.e.f. 01.07.1999 and in the year 2001, the Earth Moving Division of Hindustan Motors Ltd., was taken over by the respondent Company and a letter dated 05.10.2001 was issued stating that the petitioner's service was taken over w.e.f. 09.02.2001 with all benefits and on the same terms and conditions. His last drawn salary was Rs.25,074/- which includes Basis pay of Rs.13,235/- H.R.A. of Rs.5000/- conveyance allowance of Rs.800/- education allowance of Rs.200/- and other allowances Rs.5839/-. The petitioner had put in 22 years of unblemished service in the 1st respondent office and its erstwhile factory.

ii) The petitioner's services were abruptly terminated on 23.03.2009 without any prior notice. The petitioner issued legal notice on 25.03.2009 against his termination, for which, a reply dated 06.05.2009 was received and the petitioner also sent rejoinders dated 18.08.2009 and 09.07.2009 and the 1st respondent sent their reply on 29.07.2009. The condition of service of the petitioner was governed under the standing orders of the 1st respondent company, as the petitioner is a workman under Section 2(s) of the I.D.Act.



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iii) The termination of the petitioner by the respondent is not based on any domestic enquiry or any misconduct committed by him. The petitioner raised industrial dispute and the same was dismissed stating that the petitioner is not a workman but working as Loading Supervisor. Hence, this writ petition with the aforesaid reliefs.

3. Heard the learned counsel for the petitioner and the learned counsel appearing for the 1st respondent Management.

4. i) Learned counsel for the petitioner would submit that the petitioner was appointed in Hindustan Motors Ltd., as Stenographer under Ex.W.1 order dated 01.10.1986 issued by the Division General Manager. The petitioner was promoted within the Grade as S-6 and S-7 but the designation was only Stenographer. The Hindustan Motors Limited was taken over by Caterpillar India (Pvt) Ltd. and the petitioner was absorbed in the said company and his Grade S-7 was changed to M-2 and thereafter, the petitioner's designation was Assistant in Grade G-18. Ex.W-18 dated



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30.04.2006 is the Form 16 issued by Pay Roll Manager, mentioning the designation of the petitioner as Assistant.

ii) Learned counsel for the petitioner would submit that the termination order dated 23.03.2009 is not issued by the appointing authority viz., General Manager wherein the petitioner's designation and grade are not mentioned. He would further submit that the standing order or rules are not referred in the termination order and it was issued without prior notice and payment of retrenchment compensation to the petitioner and therefore, it is violative of principles of natural justice.

iii) Learned counsel would further submit that no employee staff of the factory is working under the petitioner and the petitioner is in charge of the incoming/dispatch of materials and his control is only over the materials and goods not over the employees. Before the Labour Court, MW3 and M.W.4 who are outsiders/contract employees admit that the supervisor is one Mr.Mahendran. M.W.5 also admits that Mr.Mahendran is the Supervisor and the petitioner was working under him and that the petitioner is only an Assistant as on the date of termination. The Labour Court has given findings



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ignoring the oral and documentary evidence. Hence, he would pray that the award of the Labour Court has to be set aside.

iv) Learned counsel would further submit that the petitioner attained superannuation on 31.03.2018 and hence, the petitioner may be granted backwages with continuity of service with all attendant benefits till 31.03.2018.

5 i) Per contra, the learned counsel appearing for the 1st respondent would submit that the petitioner was not a workman as defined under section 2(s) of the Industrial Disputes Act, 1947. When the petitioner was cross examined by the respondent he had stated that he was in charge of overseeing the material that were coming inside and going outside the factory. He had a computer log-in account as well as e-mail and there was a cordial relationship between him and the Management at the time when he was in employment. He had further deposed that Mr.Anand Radhakrishnan and Mr.Govinda Mahendran worked with him as Supervisors.

ii) M.W.2 Deliraj, who was examined on the side of the management



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would state that the petitioner and the said witness were given email IDs and login access to SAP system and was required to generate reports regarding the daily dispatch. M.W.3 Mr.Govindarajan would state that the petitioner was authorized to approve the deployment of additional manpower in case of increase of dispatch and the petitioner has the authority to verify and provide permission for the allowance of packaging materials; the petitioner supervises the contractors involved in dispatch work; the petitioner was authorised in bring additional manpower, whenever there is an substantial increase in the number of dispatched vehicles and he was assigned with the responsibility of authorising entry and exit of the vehicles for carrying packed vehicles.

iii) Learned counsel would further submit that the Labour Court has rendered a factual finding based on oral and document evidence that the petitioner is not a workman. The finding is supported by evidence including the co-employees who had stated that the petitioner was carrying on managerial activities. Therefore, this Court may not interfere with the factual finding rendered by the Labour Court.



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6. This Court, considered the submissions made on either side and perused the materials available on record.

7. The petitioner was initially working as Stenographer in M/s.Hindustan Motors Ltd., and his post was re-designated as Imports Assistant with effect from 01.07.1999. Subsequently, in the year 2001, the Earth Moving Division of Hindustan Motors Ltd. was taken over by the 1st respondent Company viz., Caterpillar India (P) Ltd. The petitioner continued to remain as workman with the 1st respondent company as Imports Assistant. Subsequently, re-categorisation was made and the petitioner was designated as M2 grade with effect from 01.01.2003. Earlier, his salary as assistant was about Rs.14,000/- and in the new category, the salary was Rs.15,310/-. In November, 2003, cadres were re-designated and CAT salary grades were introduced. Under this category, the minimum grade was 17 and maximum grade was 30. The petitioner's designation was made as Grade 18 CAT on 01.11.2003 and continued to draw the salary as before. The supervisory (officers) grade commence from CAT salary grade 21



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onwards. The initial salary of an officer is about Rs.27,000/- to Rs.35,000/-.

The salary slips issued from the month of August 2006 to January 2007 continues to mention his designation as Stenographer and as Assistant. The petitioner is also a member of Employees Group Superannuation Scheme of the 1st respondent. Form - 16, dated 30.04.2006, 20.04.2007 & 30.04.2008 shows his designation as Assistant and his grade as SG-18.

8. It is the contention of the petitioner that without any prior notice, abruptly, his service was terminated on 23.03.2009 and as the petitioner was a workman under section 2(s) of the I.D. Act, his conditions of service are governed under the standing orders of the 1st respondent company and his termination order is against the conditions of service and against the principle of natural justice. But it is the contention of the respondent Management that petitioner is not a workman under them and the employment of the petitioner was put to an end on 23.03.2009 due to poor performance. The petitioner was in-charge of the Logistics Department which is responsible for the functions of the Warehouse and Stores and good



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number of contract workmen were under the direct supervision of the petitioner. Grade 6 to Grade 16 employees would fall within the category of staff and Grade 17 to 30 would fall under the category of Supervisory, administrative and Managerial Staff. The petitioner falls under grade 18 and cannot be termed as the workman.

9. A perusal of the documents would reveal the nature of duties performed by the petitioner. It shows that the substantial part of the work of the petitioner consisted of looking after the incoming and outgoing of materials and his control is only over the materials and goods and not over the employees. The evidence of MW3 and MW4 also would go to show that one Mr.Mahendran is the Supervisor and the petitioner was working under him. There is also nothing in writing to show what duties were carried out by the petitioner.

10. Insofar as the contention of the 1st respondent that the petitioner was given email IDs and login access to SAP system and was required to



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generate reports regarding the daily dispatch and thus, he is in supervisory capacity is concerned, the 1st respondent office is a paperless office and no print out or typed paper is taken and the files are maintained as soft copies and the office files could be opened, only by logging through email ID and therefore, for typing in computer email ID is necessary and thus, the said contention of the respondent Management that the petitioner was given email ID and that he is a Supervisor, cannot be countenanced.

11. Further, the petitioner was given employee number as 151220 as found from the termination order issued by the 1st respondent dated 23.03.2009. It is also seen from the records that 5 witnesses were examined on the side of the Management to show that the petitioner was in a managerial cadre and was carrying out managerial functions and that he was authorised to sign documents pertaining to procurement orders placed by him and that he is responsible for the entry and exit of the vehicles and bringing additional manpower whenever there is increase in dispatch work. But it is the specific contention of the petitioner that all those witnesses



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were examined only in chief and no cross examination was done. The 4 salary certificates marked as Ex.W9, W10, W11 and W12, the designation of the petitioner was mentioned as Assistant. Exs. W-18, W19, W-20, Form-16, statutory certificate issued under the Income Tax Act is against the respondent Management own documents. The Management did not produce the list of workmen eventhough it was available with them. The purchase orders was not signed by the petitioner and the invoices were addressed to one Mr.Pattabiraman, the Manager who approved the invoices. The substantial duty of the petitioner was only that he was responsible for authorising entry and exit of the vehicles for carrying packed vehicles.

12. In the light of the above discussion, this Court is of the opinion that the finding of the Labour Court that the petitioner is not a workman within the meaning of section 2(s) of the Act is perverse and cannot be accepted. The petitioner falls within the definition of a workman in Section 2(s) of the Act. The order of termination is not based on any domestic enquiry or any misconduct committed by the petitioner. The termination is



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not in accordance with I.D. Act, 1947. The principles of natural justice or the procedure as per standing orders governing terms and conditions of service of the petitioner in the respondent Management was not complied with. It is brought to the notice of the Court that the petitioner attained the age of superannuation on 31.03.2018. Therefore, this Court is of the opinion that the petitioner is entitled for backwages with continuity of service along with other attendant benefits as if he has retired from service on 31.03.2018.

13. Accordingly, the Writ Petition is allowed. The award dated 03.02.2014 passed by the Labour Court is set aside. The petitioner is entitled for backwages with continuity of service and all other attendant benefits till 31.03.2018. No costs. Consequently, connected miscellaneous petition is closed.

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Index :Yes/No
Speaking/Non-speaking order
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To

The II Additional Labour Court ,
City Civil Court Building,
High Court,
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J.NISHA BANU, J.

vsi

Pre-delivery order in
W.P.No.28868 of 2014

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