



WEB COPY



WP.No.19955 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2023

CORAM

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

W.P.No. 19955 of 2014

1. M.V.Babu (deceased)
2. M.S.Bharathi
3. M.S.Lokeswari
4. M.S.Sudharshini
(P2 to P4 substituted as LR's of the
deceased sole petitioner vide order
dated 29.03.2023 made in
WMP No.9426 of 2023 in
W.P.No.19955 of 2014)

.... Petitioners

Vs

1. The Presiding Officer,
II Additional Labour Court,
Chennai.

2. The Management of Trinity Leather Ware
represented by its Managing Director,
No.17, Boopathi Nagar,
Chennai – 600 077.

.... Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records from the 1st respondent, the II Additional Labour Court, Chennai, in



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connection with the award pronounced on 04.02.2014 in I.D.No.310 of 2008 and quash the portion of the award relating to the relief granted to the petitioner that is Rs.1,00,000/- as compensation and further direct the 2nd respondent to reinstate the petitioner with full back wages and continuity of service and all other attendant benefits.

For Petitioners : Mr.K.Sudalai Kannu

For R1 : Court

For R2 : Mr.M.R.Dharani Chander

ORDER

This Writ Petition has been filed challenging the award passed by the first respondent, thereby awarded compensation as Rs.1,00,000/- to the petitioner herein.

2. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the second respondent and perused the materials available on record.

3. The first petitioner had joined the service of the second respondent factory with effect from 23.06.1995 as a Tailor. He had worked without any break from 23.06.1995 to 13.08.2007. The second respondent



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had also deducted Contribution of Employees Provident Fund from 1995 and his P.F. Account Number was 601681. He was covered by Employees State Insurance Scheme by Registration No.13822643. The second respondent was running a factory from the year 1989. Apart from that, the second respondent had three more factories viz., Trinity Leather Waren, Kilkattalai, Thirumurthy Chemicals, Thirumalisai and Trinity Leather (Tannery), Nagalkeni.

4. The deceased first petitioner was treated as temporary workman till the date of his termination of service on 13.08.2007. The petitioner was not made permanent as required under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act 1981. Therefore, he, along with the co-worker R.Udayakumar, had filed a petition before the Inspector of Factories and sought permanency and wage increase. The second respondent threatened them to withdraw the petition immediately and targeted them and started victimization. Without even conducting any enquiry and without framing any charge, both of them were terminated from service on 13.08.2007.

5. Therefore, the petitioner raised an Industrial Dispute before the



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first respondent, since there was no enquiry conducted by the second respondent Management. The second respondent failed to produce any evidence before the Labour Court and as such, the first respondent concluded that the termination would not be sustainable and it is liable to be set aside and instead of reinstatement, due to strained relationship between the petitioner and the second respondent, the first respondent awarded compensation of Rs.1,00,000/- to the first petitioner. Aggrieved by the same, the present writ petition.

6. Pending writ petition, the workman died and his legal heirs were substituted as petitioners.

7. The learned counsel appearing for the petitioners pointed out that the Management had examined MW.1. In the cross-examination, he categorically admitted that, except the termination order, no other charge was framed as against the petitioner and no iota of evidence proved in order to substantiate the domestic enquiry. He also admitted that no written complaint was lodged as against the petitioner. It shows that no charge was



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framed as against the petitioner and no domestic enquiry was conducted before passing the order of dismissal from service.

8. A perusal of the cross examination of the workman also revealed that only because of the application filed claiming permanent status under the Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 before the Inspector of Factories and on receipt of the notice from the Inspector of Factories, the petitioner was terminated from service by an order dated 13.08.2007.

9. According to the second respondent, as per the termination order, the petitioner and another workman harassed the women employees verbally and sexually. Therefore, he was called for preliminary enquiry on the complaint dated 25.07.2007. In the enquiry, the petitioner had accepted the said allegation and sought for apology. However, in order to substantiate the same, the Management did not even produce any iota of evidence before the Labour Court. Therefore, the Labour Court rightly concluded that there was no domestic enquiry conducted and no opportunity



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was given to the petitioner before passing the order of termination. In fact, the workman was not even put to any suggestion that the Management received a complaint from the women employees that they were subjected to verbal and sexual harassment by the petitioner. Therefore, the Labour Court rightly quashed the order of termination issued as against the petitioner and awarded a compensation of Rs.1,00,000/-.

10. The only contention raised by the learned counsel for the petitioner is that the compensation amount is very meagre and it was received without prejudice to the future right of the petitioner. Once the Labour Court concluded that the order of termination was illegal, the deceased petitioner was entitled to reinstatement along with the back wages. The Labour Court awarded only compensation that too very meagre compensation of Rs.1,00,000/-.

11. The learned counsel for the second respondent Management submitted that it is a Small Scale Industry and it was wound up in the year 2019 itself. Further, the workman died and there is no question of back



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wages. In order to substantiate his submission, he relied upon the Judgment of the Hon'ble Supreme Court of India in the case of ***Hindustan Steels Ltd., Vs. Roy and others*** in ***Civil Appeal No.2127 of 1969 dated 18.12.1969***, in which the Hon'ble Supreme Court of India, accepting the contention of the appellant company and without going into the merits of the case, held that the right of the employer to discharge or dismiss an employee from his service was not absolute but is subject to severe restrictions. Both in cases of discharge and dismissal, if there is *malafides* on the part of the employer, victimization or violation of principles of natural justice, the Tribunal could either grant the relief of reinstatement or compensation. The grant of either of the reliefs was originally held to be in the discretion of the concerned Tribunal which should take into consideration, while granting such relief, the interests of industrial harmony and peace and the question whether the imposition of such service of the employee on the unwilling employer would or would not be conducive to the industrial peace and harmony. In subsequent decisions the normal relief in such cases was held to be reinstatement and only in exceptional or unusual circumstances where, relief of reinstatement was not expedient, the proper relief could be payment of



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compensation. Such exceptional cases were those where there had been strained relations between the employer and the employee, where the post held by the aggrieved employee had been one of trust and confidence or where though discharge or dismissal was unsustainable owing to some infirmity in the impugned order, the employee was found guilty of act subversive of discipline.

12. It is treated that the grant of either of the reliefs was originally held to be in the discretion of the concerned tribunal which should take into consideration while granting such relief the interests of industrial harmony and peace and the question whether the imposition of such service of the employee on the unwilling employer would or would not be conducive to the industrial peace and harmony. Though the second respondent ordered compensation of Rs.1,00,000/-, it was meagre since no charge was framed as against the petitioner and no complaint was received from any women employee against the petitioner on the alleged allegations that the petitioner along with another workman subjected the women employee to verbal and sexual harassment. At the time of termination, the deceased petitioner was



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aged about 37 years. The second respondent Management was wound up in the year 2019. Though the deceased petitioner was not reinstated into service, he is entitled to get his back wages till wounding up of the second respondent Company.

13. Considering the above facts and circumstances of the case, this Court is inclined to modify the compensation to the tune of Rs.4,00,000/-. The second respondent is directed to pay the remaining compensation within a period of four weeks from the date of receipt of a copy of this order to the legal heirs of the deceased petitioner. It is also made clear that the petitioners are not entitled for any interest for the enhanced compensation.

14. In the result, this Writ Petition stands allowed. There shall be no order as to costs.

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Index:Yes/No
Internet:Yes/No
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G.K.ILANTHIRAIYAN,J.



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To
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II Additional Labour Court,
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