



W.P.No.19572 of 2018
and W.M.P.No.23002 of 2018

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

W.P.No.19572 of 2018
and W.M.P.No.23002 of 2018

V.Palanisamy

... Petitioner

Vs.

The Management of
M/s.Tube Knits Fashion Limited,
Unit-I, Kanjivaram,
Nallur, Tiruppur,
Coimbatore District.
(Formerly Tiruppur District)

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the Award dated 24.02.2016 in I.D.No.97/2008 on the file of the Labour Court, Coimbatore (presently the Principal Labour Court, Coimbatore), quash the same and consequently direct the respondent to reinstate the petitioner with continuity of service, backwages and all other attendant benefits, after adjusting a sum of Rs.25,000/- which is ordered to be paid to the petitioner as compensation.

For Petitioner : Mr.V.Ajoy Khose

For Respondent : No appearance



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ORDER

Challenging the Award dated 24.02.2016 in I.D.No.97/2008,
the present petition is filed.

2. The writ petitioner filed a petition under Section 2-A (2) of the Industrial Disputes Act before the Presiding Officer, Labour Court, Coimbatore, to set aside the order of oral termination dated 07.08.2007 passed by the respondent and to direct the respondent to reinstate the petitioner into service with continuity of service, backwages, bonus, increments and other attendant benefits. The Presiding Officer, Labour Court, Coimbatore, vide his orders dated 24.02.2016, partly allowed the petition and passed the following Award :

"10. In the result, Award is passed as follows :

- (1) That the respondent is directed to pay a sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) as compensation to the petitioner in lieu of reinstatement with continuity of service, backwages, bonus, increments and other attendant benefits ; and*
- (2) that the parties are directed to bear their own costs."*



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The main grounds on which the above Award was passed is that the writ petitioner did not adduce any evidence to show that he was gainfully employed during the relevant period.

3. Mr.V.Ajoy Khose, learned counsel for the writ petitioner contended that though the Labour Court had observed that the Management did not adduce any evidence to show that the present writ petitioner was not continuously employed for more than 480 days in two years and that he is not a permanent employee, the Presiding Officer, Labour Court, Coimbatore, did not direct the Management to reinstate the petitioner with continuity of service, backwages, bonus, increments and other attendant benefits.

4. Though notice was served on the respondent and the name is also printed in the cause list, there is no representation on behalf of the respondent.



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be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure.

7. The factors which are relevant for determining the same, inter alia, are:

(i) whether in making the appointment, the statutory rules, if any, had been complied with;

(ii) the period he had worked;

(iii) whether there existed any vacancy; and

(iv) whether he obtained some other employment on the date of termination or passing of the award.

8. The respondent is a local authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a local authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

9. Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute



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or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularised.

10. Applying the legal principles, as noticed hereinbefore, the relief granted in favour of the appellant by the Labour Court is wholly unsustainable. The same also appears to be somewhat unintelligible.

11. The High Court, on the other hand, did not consider the effect of non-compliance with the provisions of [Section 6-N](#) of the U.P. Industrial Disputes Act, 1947. The appellant was entitled to compensation, notice and notice pay.

12. It is now well settled by a catena of decisions of this Court that in a situation of this nature instead and in place of directing reinstatement with full back wages, the workmen should be granted adequate monetary compensation. (See *M.P. Admn. v. Tribhuban* [(2007) 9 SCC 748].)

13. In this view of the matter, we are of the opinion that as the appellant had worked only for a short period, the interest of justice will be subserved if the High Court's judgment is modified by directing payment of a sum of Rs 50,000 (Rupees fifty thousand only) by way of damages to the appellant by the respondent. Such



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payment should be made within eight weeks from this date, failing which the same will carry interest at the rate of 9% per annum."

6. In the instant case, admittedly, the writ petitioner did not adduce any evidence to show that he was gainfully employed during the period of non-employment and this court is of the opinion that the orders passed by the Labour Court is not perverse. This writ petition therefore stands dismissed by confirming the order of the Labour Court, Coimbatore. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.
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