



WMP.No.32981 of 2023

WMP.No.32981 of 2023

in

W.P.No.37280 of 2016

M.DHANDAPANI, J.

The present Miscellaneous petition has been filed seeking to modify the order of this Court dated 13.07.2023 made in W.P.No.37280 of 2016 in view of the 2nd respondent reached the age of superannuation.

2. Learned Senior Counsel appearing for the petitioner submitted that, this Court, vide order dated 13.07.2023 dismissed the main Writ petition with a direction to the petitioner management to reinstate the 2nd respondent back into service on the existing pay on the date of reinstatement with continuity of service and all other attendant benefits. However, it is pertinent to note that, the 2nd respondent reached the age of superannuation as early as on 20.08.2022 and in view of the above backdrop, it is not possible on the part of the management to comply with the order of this Court by reinstating the 2nd respondent. Further, in the similar case, in lieu of reinstatement, this Court ordered for payment of 50% back wages from the date of dismissal till the date of superannuation. Hence, it would suffice, if this Court grants similar relief to the workman herein as well.

3. Per contra, the learned counsel appearing for the 2nd respondent/



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workman submitted that, though there is a dispute with regard to the age of the 2nd respondent and it is the claim of the petitioner management that, the 2nd respondent attained the age of superannuation as early as on 20.08.2022, however, it would suffice, if this Court issues direction to the petitioner management to pay the 2nd respondent/workman with full back wages from the date of dismissal till the date of alleged superannuation.

4. In view of the above factual situation, this Court is inclined to modify the direction issued by this Court, vide order dated 13.07.2023 and paragraphs 6 and 7 of the order shall read as follows:

“6. Even at the very outset it could be stated without any contradiction that this is one case in which the punishment imposed on the workman shocks the conscience of the Court even without this Court going through the material. For not adhering to the directions of the Management with regard to being deputed to another place to discharge some work, the punishment of dismissal from service had come to be imposed. Though it is the case of the Management that the workman has not obeyed the directions, which had resulted in reputation loss to the concern, however, the same cannot be the basis to impose the



punishment of dismissal on the workman. True it is that the workman had disobeyed the orders, but it is the first instance and he is not a chronic defaulter. However, for the said act, dismissal from service is too harsh and the Labour Court had rightly appreciated the issue and modified the punishment punishment of dismissal imposed by the management into stoppage of annual increment for 3 years with cumulative effect is just and reasonable. Insofar as the reinstatement is concerned, as the 2nd respondent attained the age of superannuation as early as 20.08.2022, reinstatement is not possible and only to that extent this Court is inclined to interfere with the order passed by the Labour Court.

7. Hence, the final award dated 30.12.2015 made in I.D.No.286 of 2005 is modified as hereunder:

(i) The petitioner management is directed to pay 50% back wages to the 2nd respondent/workman from the date of dismissal till the date of superannuation, within a period of two weeks from the date of receipt of a copy of this order with interest at the rate of 7.5% per annum as a full quit.

(ii) The petitioner management, shall not recover the amount, if any paid to the 2nd respondent by way of 17B wages.”



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5. All the other observations and conditions made in the earlier order dated 13.07.2023 shall remain intact except for the above said corrections.

6. Registry is directed to carry out the necessary correction as aforesaid in the order dated 13.07.2023 and issue fresh copy of the order to the learned counsel for the parties.

7. Accordingly, this Writ Miscellaneous petition stands ordered.

21.12.2023

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in

W.P.No.37280 of 2016

THE HIGH COURT OF JUDICATURE AT MADRAS



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DATED : 13.07.2023

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.37280 of 2016

The Management of Tenneco Automotive India Pvt. Ltd.,
(Formerly known as Renowned Auto Products Mfts. Ltd.)
Rep. by its Head HR-South, Louis Ambrose,
No.122, SIPCOT Industrial Complex,
Hosur – 635 126.

...Petitioner

Vs.

1. The Presiding Officer,
Labour Court, Salem.
2. G.Ramakrishnan
...Respondents

Petition filed under Article 226 of the Constitution of India to
issue a Writ of Certiorari calling for the records of the 1st respondent in
I.D.No.286 of 2005 and quash its Award dated 30.12.2015.

For Petitioner : Mr.S.Ravindran, Sr.C
for Mr.S.Bazeer Ahamed

For Respondents : Mr.R.Bharath Kumar, for R2



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ORDER

This Writ petition has been filed seeking quashment of the award dated 30.12.2015 made in I.D.No.286 of 2005.

2. The case of the petitioner is that the petitioner management is engaged in the manufacture of shock absorbers for two wheeler and four wheeler automobiles and is having its factories at Hosur and Oragadam, Puducherry and Delhi. The 2nd respondent/workmen joined the service of the petitioner in the year 1997 as Probationary Operator and was subsequently, promoted to staff category. While so, on 06.01.2004, the 2nd respondent was deputed to New Delhi to attend maintenance and quality issue concerning shock absorbers supplied by the petitioner, however, the workmen refused to go on deputation. Therefore, a charge sheet dated 06.01.2004 was issued to the 2nd respondent and after conducting enquiry by affording appropriate opportunity, the 2nd respondent was terminated from service, vide order dated 22.05.2004, challenging which, the workmen raised an industrial dispute in I.D.No.286 of 2005, in which an award dated 30.12.2015 came to be passed, modifying the punishment of dismissal imposed by the



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management into stoppage of annual increment for 3 years with cumulative effect and thereby, directed the petitioner management to reinstate the 2nd respondent with continuity of service and 10% back wages. Challenging the above said award, the petitioner has come up with this Writ petition.

3. Learned Senior counsel appearing for the petitioner submitted that, the workmen working in the petitioner factories are liable to be transferred/deputed to other factories and establishments of the petitioner, situated all over India and such transfers and deputations are only due to business exigencies and urgent necessities. While so refusing to obey such transfer or deputation order of the management is a clear act of misconduct and is liable for disciplinary actions which may even result in dismissal, since, any leniency shown in this regard will undermine managerial functions and hamper smooth business of the petitioner and the same will set a bad precedent in the establishment. Accordingly, the 2nd respondent was terminated from service, after conducting appropriate enquiry and being not satisfied with the reasons stated by the workmen for refusing the deputation. However, the 1st respondent, without considering any of the above said facts, passed the present impugned award, directing the petitioner



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management to reinstate the 2nd respondent with continuity of service and 10% back wages, which is not sustainable. Hence, he prayed for appropriate orders.

4. Learned counsel appearing for the 2nd respondent/workmen submitted that, though the allegation made against the 2nd respondent is that he refused to go on deputation to Delhi, however, for such a small misconduct, imposing a punishment of dismissal is highly disproportionate and further, the 2nd respondent clearly explained that, his mother was unwell and he is the one who need to take care of her and thereby he refused to go on deputation. Therefore, the 1st respondent, after taking into consideration all the above said facts passed the present impugned award, which cannot be interfered with and accordingly, prayed for dismissal of this Writ petition.

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

6. Even at the very outset it could be stated without any contradiction that this is one case in which the punishment imposed on the workman shocks the conscience of the Court even without this Court going through the material. For not adhering to the directions of the Management with



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regard to being deputed to another place to discharge some work, the punishment of dismissal from service had come to be imposed. Though it is the case of the Management that the workman has not obeyed the directions, which had resulted in reputation loss to the concern, however, the same cannot be the basis to impose the punishment of dismissal on the workman. True it is that the workman had disobeyed the orders, but it is the first instance and he is not a chronic defaulter. However, for the said act, dismissal from service is too harsh and the Labour Court had rightly appreciated the issue and modified the punishment punishment of dismissal imposed by the management into stoppage of annual increment for 3 years with cumulative effect is just and reasonable. However, insofar as, the back wages are concerned, this Court is of the opinion that to instill more caution in the mind of the workman and to be more sincere towards his job and prevent him from committing such recurring acts, this Court is not inclined to order for back wages and to that extent the order passed by the Labour Court is set aside.

7. Hence, the final award dated 30.12.2015 made in I.D.No.286 of



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2005 is modified as hereunder:

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(i) The petitioner management is directed to reinstate the 2nd respondent back into service on the existing pay on the date of reinstatement with continuity of service and all other attendant benefits, within a period of two weeks from the date of receipt of a copy of this order. However, the 2nd respondent is not entitled for any back wages as awarded by the labour court.

(ii) The petitioner management, shall not recover the amount, if any paid to the 2nd respondent by way of 17B wages.

8. With the above observations and directions, this Writ Petition stands dismissed. No costs.

13.07.2023
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NCC : Yes / No
Speaking Order : Yes / No
Index : Yes / No

To

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The Presiding Officer,
Labour Court,
Salem.



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13.07.2023