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WP.No.10321 of 2017

In the High Court of Judicature at Madras

Dated : 21.7.2023

Coram :

The Honourable Mr.Justice M.DHANDAPANI

Writ Petition No.10321 of 2017

S.Palanivel

...Petitioner

Vs

1.The Presiding Officer,
Labour Court, Salem.

2.The Management of Salem
Cooperative Spinning Mills,
Kamaraj Nagar Colony,
Salem-636014.

3.The Liquidation Officer/
Special Officer, S.1224
Handloom Silk Wear Cooperative
Society, Salem.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the award made in I.D.No.441 of 2004 dated 08.9.2014 passed by the 1st respondent, quash the same and consequently direct the



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respondents 2 and 3 to reinstate the petitioner in service with continuity of service and backwages.

For Petitioner : Mr.G.Pugazhenth
For Respondents 2 & 3 : Mr.L.P.Shanmugasundaram

ORDER

This is a petition filed by the petitioner seeking to quash the award dated 08.9.2014 in I.D.No.441 of 2004 on the file of the 1st respondent and to direct respondents 2 and 3 to reinstate the petitioner in service with continuity of service and backwages.

2. The facts leading to filing of this case are as follows :

(i) The petitioner joined the services in the second respondent mill on 10.10.1986. Further, his services were regularized. On 23.7.1995, during the course of employment, when the petitioner was working in the drawing machines, he met with an accident thereby his right hand index finger got crushed. Immediately the petitioner was taken to the hospital nearby and subsequently to various hospitals. Ultimately, his right hand index finger was amputated sustaining permanent disability.



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(ii) When the petitioner was referred to the Regional Medical Board, it was declared that he was unfit for the job and a medical invalidation certificate dated 04.2.2002 was issued. Pursuant to that, the second respondent mill discharged the petitioner from the services. Challenging the same, the petitioner raised an industrial dispute, which ended in vain.

(iii) Thereafter, the petitioner filed a claim statement before the first respondent seeking reinstatement with continuity of service and backwages, in which, the second respondent mill filed a counter. After contest, the first respondent passed the impugned award dismissing the claim statement filed by the petitioner holding that he was not entitled to get reinstatement with continuity of service and backwages. Aggrieved by that, the petitioner is before this Court.

3. The learned counsel for the petitioner submits that though the Regional Medical Board issued a medical invalidation certificate dated 04.2.2022, the second respondent management has to provide an alternative employment in terms of Section 20(4) of the Rights of persons with Disabilities Act, 2016. However, the said benefit was not extended to the



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petitioner and the first respondent without considering the same, mechanically passed the impugned award holding that the petitioner is not entitled for reinstatement and continuity of service and back wages which is wholly unsustainable.

4. He further submits that the petitioner was issued with a medical invalidation certificate only in the year 2002, however, the petitioner is entitled to receive the other benefits for the service rendered by him from the year 1986 till 2002 apart from the insurance covered under Employees' State Insurance Corporation (for brevity 'ESIC'). Hence, the denial of other benefits which was accrued to the petitioner, with regard to earlier employment cannot be sustained.

5. The learned counsel appearing for the second and third respondents submit that after discharge, since the dispute regarding wage revision was pending before the Special Industrial Tribunal, an approval petition was filed by the second respondent mill before the Special Industrial Tribunal enclosing one month salary as notice pay to the petitioner. The petitioner



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also filed a claim for payment of compensation of Rs.10 lakhs. As he was covered under the employees' state insurance and was getting Rs.3,240/- per month from the ESIC, he was not entitled to claim any further compensation. This factual position was also intimated to the petitioner vide letter dated 09.3.2002 and the petitioner agreed to receive the amount from the ESIC vide letter dated 19.3.2002.

6. He further submits that the petitioner himself admitted his unfitness to do any work. Only thereafter, the petitioner raised the present industrial dispute before the first respondent against discharge. He further submits that since the second respondent mill became defunct from 01.4.2004 and thereafter, it was liquidated on 07.11.2012, it was rightly held by the first respondent that the petitioner was not entitled to any compensation, backwages nor reinstatement, which cannot be interfered with. Ultimately, the second and third respondents sought to dismiss this writ petition.

7. Heard the learned counsel appearing on either side and perused the materials placed on record.



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8. Admittedly the petitioner has joined the services in the second respondent Mill during the year 1986 and thereafter he was regularized by the respondent Mill. During the course of the employment, the petitioner met with an accident and thereupon the petitioner was referred to Regional Medical Board, after examination, the Board declared that the petitioner is unfit for employment and issued a Medical Invalidation Certificate during the year 2002, due to which the petitioner was discharged from service. Challenging the order of dismissal, the petitioner raised the Industrial Dispute before the first respondent and the same was rejected vide Award dated 08.09.2014 holding that the petitioner is not entitled for reinstatement with continuity of service and backwages, which prompted the petitioner to file the present writ petition.

9. Though the Award came to be passed by the Labour Court based on the Medical Invalidation Certificate issued by the Regional Medical Board and on the ground that the petitioner is receiving monthly pension from ESIC, however, the petitioner is entitled for other accrued benefits for the service rendered by him from the date of employment till the date of



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issuance of the Medical Invalidation Certificate.

10. Section 20(4) of the Rights of persons with Disabilities Act, 2016 provides for non-discrimination in employment and the relevant portion of the said Act is extracted hereunder:

20. Non-discrimination in employment.-(1) *No Government establishment shall dispense with or reduce in rank, an employee who acquired a disability during his or her service:*

Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

11. On a perusal of the aforesaid provision reveals that if an employee who acquired a disability during his or her service and who is not suitable



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for the post he was holding, shall be shifted to some other post with the same scale of pay and service benefits. Merely on the ground that the petitioner is covered under the Employees' State Insurance and was getting Rs.3,240/- per month from the Employees' State Insurance Corporation (ESIC), shall not be a bar to obtain other benefits from the second respondent Mill.

12. In view of the aforesaid provision, the Award dated 08.9.2014 made in I.D.No.441 of 2004 passed by the first respondent is set aside and the writ petition filed by the petitioner is allowed. The second respondent management is directed to accommodate the petitioner in any one of the suitable post apart from the monthly pension from ESIC, within a period of eight (8) weeks from the date of receipt of a copy of this order. However, he is not entitled for any back wages except continuity of service. No costs.

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Index : Yes (or) No

Neutral Citation : Yes (or) No

Speaking Order : Yes (or) No

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To

The Presiding Officer,
Labour Court, Salem.



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M.DHANDAPANI,J

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