



WP.No.9547 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2023

Coram :

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

W.P.No.9547 of 2017 &
WMP.Nos.10483, 22404 & 22405 of 2017

M/s.Meridian Apparels
Ltd., rep.by its Manager-
HR & Administration,
Meridian House, No.8/626,
AVP Layout, Angeripalayam
Road, Tirupur-641603.

...Petitioner

Vs

1.The Presiding Officer,
Labour Court, Coimbatore.

2.Mr.A.R.Raguraj

...Respondents

PRAYER : Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records pertaining to the award in I.D.No.184/2011 dated 19.7.2016 of the first respondent and quash the same and pass a reasoned order on merits and in accordance with law.



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For Petitioner : Mr.Srinath Sridevan, SC for
M/s.PMN.Bhagavath Krishnan
For Respondent-2: Mrs.V.Porkodi

ORDER

This is a petition filed by the petitioner seeking to quash the order dated 19.7.2016 made in I.D.No.184 of 2011 on the file of the first respondent.

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

(i) The second respondent joined the petitioner company during the year 1996 as an electrician and was provided with quarters so as to attend to urgent electrical works during night time on account of power failure. Though there were adverse reports against the second respondent, the petitioner company took a lenient view by warning him and permitted him to work.

(ii) When the second respondent was supposed to attend to an electrical work in the computer room on 30.8.2009, he was found sleeping inside the computer room in a drunken state and could not attend to the electrical work. Since he was caught red-handed, he flew away from the



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scene and had not turned up for work for about two to three days. Further on 03.9.2009, he handed over a letter voluntarily confessing that on 30.8.2009, he was in a drunken state and that he would not behave like that in future and therefore, prayed to forgive his lapses. Thereafter, he did not attend office.

(iii) Hence, the petitioner company was forced to issue a letter dated 26.11.2009 to the second respondent stating that his absence for duty without due intimation from 01.9.2009 was highly irregular. He was also asked to show cause as to why action should not be initiated against him. However, it was returned with an endorsement 'no such person'.

(iv) Since the second respondent did not attend office till 08.12.2009, the petitioner company issued another letter dated 09.12.2009 stating that he had not replied in writing nor appeared in person so as to explain his absence from duty without due intimation and that therefore, the petitioner company had no option except to terminate his services. The second respondent was also called upon to hand over all the tools and records, collect his full and final settlement and vacate the premises, which was allotted to him by the petitioner.



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(v) Vide letter dated 26.3.2010, the petitioner company also intimated the Assistant Commissioner of Labour, Coimbatore that they terminated the services of the second respondent with effect from 09.12.2009, that it was intimated to him so as to collect his full and final settlement and that the second respondent had not vacated the company premises. Further, as the second respondent did not come personally to collect the settlement, the petitioner company thought it fit to deposit Rs.49,006/- into the bank account of the second respondent towards full and final settlement. Accordingly, the said sum was so deposited on 26.3.2010.

(vi) On 30.6.2010, the second respondent sent a letter to the petitioner company admitting his termination and further sought permission to take away the entire provident fund. He further enclosed the PF application and PF receipts and also furnished the details of the bank account. Even thereafter, the second respondent had not vacated the premises. Hence, the petitioner company was constrained to file a criminal complaint, which ended in lodging of a first information report on 30.8.2010. Despite that, the second respondent had not vacated the



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premises. Further, at the instance of the petitioner company, even pursuant to the orders of the learned Judicial Magistrate No.1, Tiruppur dated 14.12.2016 in C.C.No.1 of 2016, the second respondent did not hand over the premises. The second respondent has to pay fair rent for the premises in his occupation from December 2009 onwards.

(vii) The termination letter dated 09.12.2009 sent by the petitioner company to the second respondent was returned undelivered for the reason 'door locked, continued for 7 days - returned to sender'. The address given in the letter dated 09.12.2009 and the letter of the second respondent dated 30.6.2010 is one and the same.

(viii) Even after acceptance of the full and final settlement and intentional cessation of service, the second respondent raised an industrial dispute for reinstatement and backwages. However, the first respondent allowed the industrial dispute by the impugned award directing the petitioner company to reinstate the second respondent with continuity of service, 50% backwages and other benefits. Challenging the same, the petitioner company is before this Court.



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3. The matter came up for admission on 19.4.2017 and on that day, this Court ordered notice of motion returnable by eight weeks and also granted an order of interim stay till then.

4. Pursuant to that, the second respondent filed two miscellaneous petitions in WMP.Nos.22404 and 22405 of 2017 seeking (i) to vacate the interim stay granted on 19.4.2017; and (ii) to direct the petitioner company to pay him the last drawn wages every month from the date of the award till the disposal of this writ petition.

5. Further, at the instance of the petitioner company, the matter was referred to mediation. However, due to the non co-operation of the second respondent, the matter has been listed before this Court again.

6. Learned Senior Counsel for the petitioner management in the Counter Affidavit has stated that the second respondent is technically qualified, that the burden was on him to prove that he was not gainfully employed somewhere else, that he had not proved the same in a manner

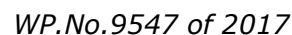


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known to law and that therefore, he was not entitled to get any wages. It is further stated that as the second respondent had not vacated the premises nor paid the rent for the premises under his unauthorized occupation, the second respondent was not entitled to any wages, as the electrical bill for the premises under the unauthorized occupation of the second respondent was paid by the petitioner company. However, the impugned award passed by the Labour Court cannot be sustained on the ground that pursuant to the undertaking given by the management during the final hearing of the miscellaneous petitions, a letter was issued by the management to the 2nd respondent directing him to report for duty on 02.01.2020, however, on that day, 2nd respondent refused to join the duty. The workman having refused to join the duty and alleging denial of employment is not sustainable. Accordingly, he prays for allowing this Writ Petition.

7. Per Contra, learned counsel appearing for the 2nd respondent would submit that the management has neither conducted the departmental enquiry nor initiated any disciplinary proceedings against the 2nd



9. Admittedly, the 2nd respondent entered into service in the petitioner management as an electrician during the year 1996. He was terminated from service in the year 2009 due to his unauthorized absence to



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work. However, it is seen from the records that there were several litigations between the petitioner management and the 2nd respondent. Finally, the award in I.D.No.184 of 2011 came to be passed ordering reinstatement with 50% backwages and other benefits.

10. A careful perusal of the records reveal that inspite of the best efforts, the workman neither joined the company nor vacated the quarters. Inspite of the fact that the workman had by his own volition submitted papers for receiving the terminal benefits, the workman had raised the industrial dispute. The entire episode clearly reveal that all is not well between the workman and the Management and any further continuance of the workman in the employ of the Management would not be conducive to either party.

11. In such a backdrop of the facts and circumstances as is prevailing in the present case, it has been the consistent view of the Courts that when there is no possibility of a conducive settlement between the parties, in lieu of reinstatement, a fair compensation could be fixed to be paid to the



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workman. In the present case, in view of the continuous litigations between the parties and the act of the workman in not availing the opportunity of continuance of service, it would be evident that the possibility to reinstatement of the 2nd respondent into service would not be in the interest of either party. Hence, the award passed in I.D.No.184 of 2011 deserves to be set aside.

12. Accordingly, while the order of reinstatement requires interference, however, in order to strike the balance between the warring parties and to render substantial justice, in lieu of reinstatement, this Court modifies the award by directing the petitioner management to pay a one time compensation of Rs.5,00,000/- to the workman towards full quit. Accordingly, the petitioner management is directed to deposit the compensation amount of Rs.5,00,000/- to the credit of the I.D.No.184 of 2011 within a period of six weeks from the date of receipt of a copy of this order. The 2nd respondent is at liberty to withdraw the said amount.



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13. This Writ Petition is allowed in the above terms. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

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Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No

NHS

To
The Presiding Officer,
Labour Court, Coimbatore.



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