



WEB COPY



WP.No.4776 of 2017

In the High Court of Judicature at Madras

Dated : 30.8.2023

Coram :

The Honourable Mr.Justice M.DHANDAPANI

Writ Petition No.4776 of 2017

The Management, M/s.Asian
Paints (P) Ltd., rep.by its
Senior Manager Mr.B.Jagannath

...Petitioner

Vs

1.The Presiding Officer, Second
Additional Labour Court,
Chennai-104.

2.T.Balaji

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records relating to the first respondent dated 18.1.2017 in I.D.No.231/2014 and to quash the same.

For Petitioner : Mr.K.Rangesh for
M/s.Jayaraman & Associates

For Respondent-2 : Mr.K.Bharathi



WP.No.4776 of 2017

WEB COPY

ORDER

This is a petition filed by the petitioner seeking to quash the award dated 18.1.2017 in I.D.No.231 of 2014 on the file of the first respondent.

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

(i) The petitioner engaged the services of the second respondent as a trainee in the year 2012 for a period of one year. On completion of the training, he was appointed as a probationer on 03.02.2013 with the probation period of six months. As the performance of the second respondent was not found satisfactory, his probation was extended for a period of three months and this was also communicated to him vide letter dated 02.08.2013. Even after extending his probation, as the second respondent's performance was not upto the mark, the petitioner terminated his services vide letter dated 30.10.2013.

(ii) Pursuant to that, the second respondent initiated conciliation proceedings, which ended in failure. Subsequently, the second respondent raised an industrial dispute before the first respondent seeking to reinstate



WP.No.4776 of 2017

WEB COPY

him into the services of the petitioner with back wages, continuity of service and other benefits. In that, the petitioner filed their counter. After contest, the industrial dispute was allowed by the impugned award and the petitioner was directed to reinstate the second respondent with back wages, continuity of service and other benefits. Challenging the same, the petitioner is before this Court.

3. When the matter came up for admission on 24.2.2017, while ordering notice of motion, this Court granted an order of interim stay subject to condition that the petitioner should deposit a sum of Rs.2 lakhs to the credit of the industrial dispute within a period of four weeks.

4. Thereafter, two miscellaneous petitions in WMP.Nos.7916 and 7917 of 2017 were filed by the second respondent seeking (i) to vacate the interim say granted on 24.2.2017 in WMP.No.4992 of 2017; and (ii) to direct the petitioner to pay the second respondent his last drawn wages to the tune of Rs.5,500/- every month commencing from January 2017 till the disposal of the writ petition. At that time, it was stated that the conditional



WP.No.4776 of 2017

WEB COPY

interim order granted on 24.2.2017 was complied with by the petitioner.

5. Therefore, by order dated 09.6.2017, this Court, while disposing of WMP.No.7917 of 2017, directed the second respondent to withdraw a sum of Rs.1 lakh by making it further clear (i) that the back wages payable, which being a part of the wages under Section 17B of the Industrial Disputes Act, 1947, would have to be quantified and paid from the date of filing the writ petition till May 2017 within eight weeks and (ii) that the last drawn wages would have to be paid on or before 15th of every month from June 2017. Further, the order of interim stay granted on 24.2.2017 in WMP.No.4992 of 2017 was made absolute and WMP.No.7916 of 2017 was dismissed.

6. In the year 2022, the matter was referred to Lok Adalat. However, no settlement was arrived at. Therefore, the matter was again posted before this Court.



WP.No.4776 of 2017

WEB COPY

7. The learned counsel for the petitioner submits that though there is no provision available for the probationer to undergo the written examination conducted by the management as per the certified standing order, even in the absence of any standing order, all the employees should have to necessarily undergo the written examination conducted by the management. Since the second respondent has not obtained eligible mark in the said examination, the probation was not declared to the second respondent. Hence, the Award passed by the Labour Court, reinstating the second respondent in service is perverse. Accordingly, he prayed to allow this writ petition.

8. The learned counsel for the petitioner further averred that though there is not averment either in the claim petition as to whether the second respondent is not gainfully employed during his non employment period or adduced any evidence before the Tribunal, the the Labour Court has mechanically passed the award granting full back wages which is *per se* unsustainable. He further submitted that during the non-confirmation of the



WP.No.4776 of 2017

WEB COPY

probation, the second respondent has no right to compare himself with other permanent workmen, unless the petitioner management has appointed the second respondent as permanent workman by invoking Clause 7 of the certified Standing Orders of the petitioner.

9. Per contra the learned counsel for the second respondent submits that admittedly the second respondent was appointed as a probationer on 03.02.2013 after successful completion of training period. He further submits that even as per Clause 3.2 of the certified Standing Orders, when the management decides to extend the period of probation of any workman upto a further period equivalent to the period of probation prescribed, if they are not satisfied with the work or conduct of any workman during the period of probation, the concerned workman should be informed in writing at least one week before the normal date of the completion of probation and in the absence of any such intimation, the workman shall be deemed to have satisfactorily completed his probation on the normal date. However, in the present case on hand, the petitioner management failed to intimate the successful completion of probation and in the absence of such intimation, it



WP.No.4776 of 2017

WEB COPY

is deemed that the second respondent is entitled to secure permanent job in the petitioner management as per Clause 3.2 of the Standing Orders and the said facts were properly adjudicated by the Labour Court, which cannot be interfered with.

10. The second respondent further contended that though the second respondent has not made any averment with regard to his gainful employment in the claim petition, however it is clear from the averment made in paragraph 9 of the claim petition filed by the second respondent that pursuant to the termination of the second respondent from the petitioner management, the second respondent has faced severe hardship without any employment, which itself is sufficient to hold that the second respondent was not gainfully employed during his non-employment period. Hence, he prayed to dismiss this writ petition.

11. Heard the learned counsel appearing on behalf of the petitioner and the learned counsel appearing for the second respondent.



WP.No.4776 of 2017

WEB COPY

12. Though there is no provision in the Standing Orders of the management for appointment of trainee, in the absence of such clause the second respondent was initially appointed as a trainee in the petitioner management, upon completion of the said training period he was appointed as a probationer with effect from 03.02.2013, which is for a period of six months, later the period of probation was further extended to a further period of three months on the ground of unsatisfactory performance of the second respondent which is *per se* unsustainable.

13. On a perusal of clause 3.2 of the certified Standing Orders of the petitioner management which specifically mentions that a “probationer” means workman who is provisionally employed to fill a permanent vacancy and who has not completed six months of satisfactory service in the aggregate in the post. More so, it is clear from the said clause that the management may extend the period of probation of any workman up to a further period of probation prescribed, if they are not satisfied with the work and conduct of any workman during the period of probation and in any case



WP.No.4776 of 2017

WEB COPY

where the period of probation is extended, the concerned workman shall be informed in writing at least one week before the normal date of completion of probation and in the absence of any such intimation the workman shall be deemed to have satisfactorily completed his probation on the normal date. However, in the present case on hand the petitioner management failed to intimate the successful completion of the probation and in the absence of such intimation it is deemed that the second respondent is entitled to secure permanent job in the petitioner management as per Clause 3.2 of the Standing Orders, which was properly adjudicated by the Labour Court. Hence, the termination order passed by the petitioner management is wholly unsustainable and the said facts have been elaborately considered by the Labour Court and arrived at a conclusion to reinstate the second respondent in service which cannot be interfered with.

14. The major contention of the petitioner management is that since the second respondent has not obtained eligible mark in the written examination, probation was not declared to the second respondent. However, as per the Standing Orders of the management, there is no such



WP.No.4776 of 2017

WEB COPY

clause available with regard to written examination, in the absence of such clause, the claim made by the petitioner to conduct the written examination in order to deprive the rights of the second respondent has to necessarily fail.

15. In respect of back wages, though the second respondent has made a specific plea in paragraph No.9 of the claim petition that pursuant to the termination order passed by the petitioner management, the second respondent faced hardship without any employment, however, with regard to gainful employment, there is no specific averment in the claim petition as to whether the second respondent is gainfully employed during his non employment period or not. However, without any such averment, the Labour Court has awarded full back wages, which is wholly unsustainable. Therefore, the Award dated 18.01.2017 passed by the Labour Court in I.D.No.231 of 2014 on the file of first respondent is modified as hereunder:

(i) The petitioner management is directed to reinstate the second respondent as permanent workman along with



WEB COPY



WP.No.4776 of 2017

continuity of service and other benefits within a period of two weeks from the date of receipt of a copy of this order.

It is made clear that the second respondent is not entitled for any back wages from the date of termination till date.

16. With the above directions and observation, this writ petition stands disposed of. There shall be no order as to costs.

30.08.2023

rap

Index : Yes (or) No

Neutral Citation : Yes (or) No

Speaking Order : Yes (or) No

To

The Presiding Officer, Second
Additional Labour Court,
Chennai-104.



WEB COPY



WP.No.4776 of 2017

M.DHANDAPANI,J

rap

WP.No.4776 of 2017

30.8.2023