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WP.No.7722 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.7722 of 2017

A.Murugan

...Petitioner

Vs

1.The Presiding Officer,
Labour Court,
Salem.

2.The Management,
M/s.GNB Technologies (India) Pvt Ltd,
S.N.o. 150/1A & 1B, Gundukurki Road,
Nalagankothapalli Shoolagiri,
Chennai-600 002.

...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of any writ, order or direction and in particular, a Writ of certiorarified Mandamus, calling records from 1st Respondent relating to the impugned award in C.P.No.131 of 2013 dated 07.03.2016 and quash the same and direct the 2nd respondent to pay ex-gratia amount as claimed in the above claim petition with interest and award cost.

For Petitioner

: M/s.S.Ravi

ORDER



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This Writ Petition has been filed challenging the impugned award of the 1st Respondent/Labour Court in C.P.No.131 of 2013 and also for a direction to the 2nd respondent to pay the ex-gratia amount to the petitioner along with interest and cost.

2. Though notice was served on the 2nd respondent and their name printed in the causelist, none appeared on behalf of the them. However, considering the pendency of the Writ Petition which is of the year 2017, this Court is inclined to dispose of the same based on the materials available on record.

3. It is the case of the petitioner that he was working as an employee of the 2nd respondent management on 01.01.2001 and later he was promoted as a Supervisor in the year 2011. Though he was designated as supervisor, there was no opportunity for him to act as a supervisor. During the first week of October 2011, the management called upon the petitioner and few others and given a pre-written resignation letter dated 19.10.2011 by assuring them that the management will pay the ex-gratia amount to



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them. Though, the petitioner made several representations seeking payment of ex-gratia amount, however, the same was not paid to the petitioner while the other employees were paid the ex-gratia amount depending on the length of their experiences. Hence, the petitioner filed a claim petition before the 1st respondent/Labour Court in C.P.No.131/2013 claiming the ex-gratia amount of Rs.15 Lakhs with interest and costs which was dismissed by the Labour Court vide order dated 07.03.2016 holding that the petition filed under section 33C-(2) is not maintainable as the petitioner has no pre-existing right to file the computation petition. Challenging the same, the petitioner has filed this Writ Petition.

4. Learned counsel for the petitioner would submit that he was illegally terminated from service by forcibly obtaining signature in the pre-written resignation letter and petitioner had accepted the said resignation only based on the false assurance given by the management that they would pay him the ex-gratia amount. Since the management has failed to pay the ex-gratia amount, the petitioner had filed a computation petition under Section 33-C(2) of the ID Act before the 1st respondent Labour Court.



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However, the Labour Court without properly adjudicating the issue had erroneously rejected the application made by the petitioner which is not sustainable. Accordingly, he prayed for allowing this Writ Petition.

5. Heard the learned counsel for the petitioner and perused the materials available on record.

6. Admittedly, the petitioner was working in the respondent management from 2001. It is alleged that the petitioner was illegally terminated from services of the management by forcibly obtaining signature in the pre-written resignation letter and that the same was accepted by the petitioner only based on the alleged assurance given by the management that they would pay him the ex-gratia amount. However, it is seen from the records that the respondent company was closed in the year 2012. Subsequent to the closure of the company, the petitioner has filed the computation petition under Section 33C-(2) of the Act before the 1st respondent Labour Court claiming the ex-gratia amount which was dismissed on the ground that the petitioner has no pre-existing right to make



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such a claim.

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7. As per Section 33-C(2) of the Industrial Disputes Act, 1947, there should be a pre-existing right in favour of the workman, which alone would be the basis on which the workman could file a petition u/s 33-C(2). The workman has to establish such right so as to claim entitlement for receiving the said amount. If at all the workman is aggrieved over non-payment of any allowance, the proper course open for him would be to file appropriate application before the appropriate Government seeking reference of the dispute for adjudication and subject to the outcome of the dispute, the workmen can thereafter, file computation petition claiming monetary relief, if the dispute ends in his favour, which alone can be computed in terms of money, however, without there being any award, which confers certain benefit on the workman, it is not open to the workman to file a petition u/s 33-C(2) claiming any benefit which could be computed in terms of money. However, in the present case, the workman did not raise any industrial dispute with regard to his illegal termination and without there being any being any award in his favour, has directly filed a computation petition



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under 33-C(2). Therefore, this Court is of the view that the Labour Court has rightly rejected the application made by the workman and, hence, the impugned award of the Labour Court cannot be interfered with and this Writ Petition deserves to be dismissed.

8. For the reasons aforesaid, this Writ Petition is dismissed. There shall be no order as to costs.

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Index : Yes (or) No

Neutral Citation : Yes (or) No

NHS

To

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M.DHANDAPANI, J

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