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WP.No.5883 of 2017

In the High Court of Judicature at Madras

Dated : 16.8.2023

Coram :

The Honourable Mr.Justice M.DHANDAPANI

Writ Petition No.5883 of 2017
& WMP.No.6305 of 2017

The Management of M/s.Butterfly
Gandhimathi Appliances Ltd.,
Kanchipuram District.

...Petitioner

Vs

1.The Presiding Officer, First
Additional Labour Court,
High Court Buildings,
Chennai-104.

2.H.Karimullah Sheriff

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records in I.D.No. 576 of 2010 and quash the award dated 30.8.2016 of the first respondent - the Presiding Officer, First Additional Labour Court, Chennai.

For Petitioner : Mr.S.Ravi for
M/s.Gupta & Ravi
For Respondent-2: No appearance



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ORDER

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This is a petition filed by the petitioner seeking to quash the award dated 30.8.2016 in I.D.No.576 of 2010 on the file of the first respondent.

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

(i) The Board for Industrial and Financial Reconstruction declared One M/s.Gangadharam Appliances Limited and one M/s.Gandhimathi Appliances Limited as sick industries under the Sick Industrial Companies (Special Provisions) Act in Case Nos.279 of 1998 and 393 of 2003. Thereafter, the said M/s.Gangadharam Appliances Limited got merged with the said M/s.Gandhimathi Appliances Limited and the name of the merged entity was changed to M/s.Butterfly Gandhimathi Appliances Limited with effect from 25.10.2011.

(ii) The second respondent, after getting voluntary retirement, rejoined the erstwhile M/s.Gangadharam Appliances Limited on 01.3.2005 and left the employment from 10.10.2008. Thereafter, he sent a legal notice dated 01.6.2009 to the Managing Director of the erstwhile M/s.Gangadharam Appliances Limited alleging illegal termination. To the said legal notice, a



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reply dated 12.6.2009 was given through a counsel advising him to explain his absence.

(iii) Instead of reporting to the company and explaining his long absence from 10.10.2008, the second respondent initiated conciliation proceedings, which ended in failure. Subsequently, he raised an industrial dispute before the first respondent seeking to direct the said M/s.Gangadharam Appliances Limited to reinstate him with full back wages, continuity of service and other benefits. In that, the said M/s.Gandharam Appliances Limited filed a counter refuting the claim made by the second respondent. However, after contest, by the impugned award, the first respondent set aside the termination of the second respondent and directed the petitioner to reinstate him with continuity of service, 60% back wages and all other attendant benefits from the date of termination namely 10.10.2008 till the date of reinstatement. Challenging the same, the petitioner is before this Court.

3. When the matter came up for admission on 10.3.2017, in WMP.No.6305 of 2017, this Court granted an order of interim stay.



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4. The learned Senior counsel appearing for the petitioner submits that the petitioner management absorbed the second respondent in the year 2005, however, during the course of his employment, he met with an accident and lost his middle finger, thereby the second respondent absented himself from the service of the petitioner from the year 2008. He further submits that during the pendency of this writ petition, the second respondent attained superannuation in the year 2015 and hence reinstating the second respondent does not arise.

5. He further submits that the petitioner management specifically took a plea in their counter statement filed before the Labour Court that the second respondent was gainfully employed during his non employment period in I.T.C. India Limited. In order to establish the said fact, the petitioner management deputed an investigating officer to find out as to whether the second respondent is gainfully employed anywhere during his non employment period or not, who in turn filed a report stating that the second respondent was gainfully employed in I.T.C. Limited. Though all



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those facts were clearly established before the Labour Court, the Labour Court mechanically came to a conclusion to reinstate the second respondent with continuity of service along with 60% back wages, which is wholly unsustainable.

6. Though the paper publication was effected on the second respondent and his name printed in the cause list, none appears for him nor he is present before this Court today. Considering the pendency of this writ petition, this Court is inclined to dispose of this writ petition based on the available records.

7. Heard the learned Senior Counsel appearing on behalf of the petitioner and perused the materials placed before this Court.

8. Admittedly, the second respondent joined the services of the management as trainee on 02.04.1991, subsequently, his service was confirmed on 02.04.1994 and due to financial hardship faced by the petitioner management during the year 2002, the management registered



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itself as sick company and therefore all the workers came forward to relieve from service. When the management revived its activities in the year 2005, the second respondent was absorbed in the services of the petitioner management, however, during the course of his employment, he sustained injury and lost his middle finger. Thereafter the second respondent failed to report duty from 10.10.2008. Seeking to set aside the alleged dismissal of the second respondent, he raised an industrial dispute before the Labour Court, wherein the same was ordered in his favour, which prompted the petitioner to file the present writ petition.

9. Though the facts stand as such, however, the learned senior counsel appearing for the petitioner specifically took a plea in the counter affidavit filed before the Labour Court, stating that the second respondent was gainfully employed during his non employment. More so, it is clear from the report filed by the investigating officer appointed by the petitioner management that the second respondent was gainfully employed in I.T.C. Limited. Hence, it is made clear that the second respondent is not entitled for any back wages.



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10. It is also evident from the claim statement filed by the second respondent that he has not made any averment that he was not gainfully employed during his non employment period. In the absence of any such discussion with regard to the gainful employment of the second respondent, the Labour Court has mechanically passed the award directing the petitioner management to reinstate the second respondent with continuity of service along with 60% back wages, which is unsustainable.

11. Since the second respondent attained superannuation in the year 2015, reinstating him at this point of time would not be appropriate. The fact remains that the second respondent rendered three years of continuous service from the year 2005 till 2008, in order to strike the balance between the petitioner management and the second respondent, this Court is inclined to fix a reasonable compensation to be payable by the petitioner management in favour of the second respondent.

12. Accordingly, the petitioner management is directed to deposit a sum of Rs.50,000/- to the credit of I.D.No.576 of 2010 on the file of the first



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respondent within a period of six (6) weeks from the date of receipt of a copy of this order without any interest. On such deposit being made, the second respondent is permitted to withdraw the above said amount.

13. With the above observation and directions, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes (or) No

Neutral Citation : Yes (or) No

Speaking Order : Yes (or) No

To

The Presiding Officer, First
Additional Labour Court,
High Court Buildings,
Chennai-104.



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M.DHANDAPANI,J

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