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W.P.Nos.14207 of 2017 etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**W.P.Nos.14207 to 14212, 32552, 32663, 32667, 32684, 32685 and 32727
of 2017 and**

**W.M.P.Nos.15397 to 15407, 35883, 35996, 36002, 36003, 36004 and
36050 of 2017 and W.M.P.Nos.92, 94, 96, 98, 100 of 2018**

W.P.No.14207 of 2017:

The Management,
T.P.S.Plantation,
Green Garden 'B',
Represented by Mr.S.Selvaraj,
K.Puthur Post, Yercaud Taluk,
Salem District.

... Petitioner

Vs.

1. The Presiding Officer,
The Labour Judge,
Labour Court,
District Court Campus,
Salem - 636 007.

2. Shantha

... Respondents



W.P.Nos.14207 of 2017 etc., batch

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for entire records relating to the impugned order dated 28.06.2016 in I.D.No.142 of 2008 passed by the first respondent / Labour Court, Salem herein and to quash the same.

For Petitioners : Mr.V.Sekar
in W.P.Nos.14207 to 14212 of 2017

: Mr.K.M.Ramesh, Senior Counsel
for Mr.Apunu in
W.P.Nos.32552,32663,32667,
32684, 32685 & 32727 of 2017

For Respondents : R1 - Labour Court in all W.Ps

Mr.K.M.Ramesh, Senior Counsel
for Mr.Apunu for R2
in W.P.Nos.14207 to 14212 of 2017

Mr.V.Sekar for R2
in W.P.Nos.32552,32663,32667,
32684, 32685 & 32727 of 2017

COMMON ORDER

Since the issue arising out of the common award in I.D.Nos.142, 144, 145, 146 of 2008 and I.D.Nos.09 and 10 of 2009 dated 28.06.2016, the Management has filed the Writ Petitions, i.e., W.P.Nos.14207 to 14212 of



W.P.Nos.14207 of 2017 etc., batch

2017 and the respective workmen have filed Writ Petitions, i.e., W.P.Nos.32552, 32663, 32667, 32684, 32685 and 32727 of 2017, all these Writ Petitions were heard together and disposed of by this common order.

2. For the sake of convenience, the parties are referred to as the Management and the Workmen.

3. The brief facts of the case is that the workmen were dismissed from service on the charges of continuous insubordination, non-cooperation and misconduct. Challenging the same, the workmen filed the above Industrial Disputes before the Labour Court. The Labour Court after considering the documents submitted by the workmen as well as the Management had set aside the orders of dismissal and directed the Management to reinstate the workmen with 75% backwages within a period of three months. Challenging the same, the Management has filed the above stated Writ Petitions. The workmen have challenged the award challenging denial of 25% backwages and seeking full backwages.



W.P.Nos.14207 of 2017 etc., batch

WEB COPY

4. The learned counsel for the Management submits that the workmen were engaged only as a temporary workmen and not permanent employees of the estate and that they did not work more than 240 days in a year. The workmen also were indulged in continuous insubordination and non-cooperation attitude towards the Management, they even attempt to attack the Management of the estate. On conducting disciplinary enquiry, the charges against the erred workmen were found to be proved. The explanation given by the workmen was not satisfactory and based on the enquiry report, the workmen were dismissed from service. Even before the Labour Court, the Management has produced 58 documents as exhibits and examined one witness on their side. The Labour Court failed to consider the documents submitted and without properly appreciating the materials evidence on record had set aside the dismissal orders and directed for 75% backwages with reinstatement. The learned counsel further submits that the Labour Court had erred in holding that the workmen were not gainfully employed for past eight years and assessed their entitlement for 75% backwages, whereas the workmen did not admitted in the claim petitions or



W.P.Nos.14207 of 2017 etc., batch

in the oral evidence that they were not gainfully employed for the past eight years. Hence, the common award passed by the Labour Court in all I.Ds is without proper appreciation of oral and documentary evidence produced by the Management and it is liable to be quashed.

5. During the pendency of the Writ Petitions, the operation of the Management itself has been defuncted and therefore, the question of reinstatement of the workmen does not arise and this Court, may consider awarding any suitable compensation to be paid to the terminated workmen without backwages.

6. The learned Senior Counsel for the workmen submitted that the Labour Court was not justified in ordering 75% backwages whereas due to their non-employment, the workmen were denied proper standard living. The workmen were unable to make the ends meet and therefore, this Court may consider the cases of the workmen sympathetically and award additional compensation *in lieu* of reinstatement as it is now reported that the Management has become defuncted.



W.P.Nos.14207 of 2017 etc., batch

WEB COPY

7. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

8. It is true that the workmen were dismissed from service on the charges of indiscipline and insubordination which facts were gone into by the Labour Court on perusal of the documentary and oral evidence on the side of the Management and the workmen. This Court sitting under Article 226 of the Constitution of India cannot go into the disputed facts in question and can only review the award passed by the Labour Court and consider whether it is justified or not. Though the order of dismissal were passed in the year 2007 and the respective I.Ds were filed in the year 2008 and 2009 immediately after the order of dismissal, the Labour Court award was passed on 28.06.2016 and the Management as well as the workmen are before this Court from the year 2017 by filing the present Writ Petitions. Therefore, it is seen that almost sixteen years have passed by after the order



W.P.Nos.14207 of 2017 etc., batch

WEB COPY

of dismissal and it is highly unimaginable for this Court to infer that the dismissed workmen would have been unemployed for all these years and they might have been gainfully employed elsewhere. It is also seen that by order dated 23.12.2020, this Court had ordered the Management to pay 17b wages to all the workmen from the Month of January 2021 and also directed to pay arrears of 17b wages from the date of award till December 2020 to be paid in one lumpsum within a period of two months from the date of receipt of a copy of that order. However, it is now reported by the Management that the plantation itself has become defuncted and no agricultural activities are being carried out now. It is also seen that as per the orders of this Court, the Management had paid the 17b wages and arrears of 17b wages to the workmen and considering the present financial status of the Management, this Court is of the view that instead of reinstatement, which will serve no purpose, one time compensation of Rs.3,00,000/- (Rupees Three Lakhs only) shall be paid by the Management to each of the workman.



W.P.Nos.14207 of 2017 etc., batch

WEB COPY

9. Accordingly, these Writ Petitions are disposed of and the common award passed by the Labour Court in I.D.Nos.142, 144, 145, 146 of 2008 and I.D.Nos.09 and 10 of 2009 dated 28.06.2016 is set aside. The Management is directed to pay a compensation of Rs.3,00,000/- (Rupees Three Lakhs only) to each of the workman within a period of four weeks from the date of receipt of a copy of this order. It is also made clear that 17b wages and arrears of 17b wages, which had already paid to the workmen could not be recovered. No costs. Consequently, connected Miscellaneous Petitions are closed.

27.07.2023

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

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W.P.Nos.14207 of 2017 etc., batch

To

The Labour Court,
District Court Campus,
Salem - 636 007.



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M.DHANDAPANI, J.

vji

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