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WP.No.24927 of 2017

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 29.08.2023**

**CORAM:**

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

W.P.No.24927 of 2017  
& WMP.Nos.26309 & 31213 of 2017

The Managing Director,  
M/s.Hindustan Unilever  
Ltd., Personal Products  
Factory, Vadamangalam,  
Pondicherry.

...Petitioner

Vs

1.The Presiding Officer,  
Industrial Tribunal-cum-  
Labour Court, Puducherry.

2.Mr.R.Devakumar

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records connected with I.D.(L) No.30/2013 and quash the award dated 28.6.2017 passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court, Puducherry.

|                  |   |                                                                     |
|------------------|---|---------------------------------------------------------------------|
| For Petitioner   | : | Mr.S.Shiva Thanu Mohan for<br>M/s.S.Ramasubramaniam &<br>Associates |
| For Respondent-2 | : | Mr.P.R.Thiruneelakandan                                             |



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### **ORDER**

This petition has been filed seeking to quash the award dated 28.6.2017 made in I.D.(L) No.30 of 2013 on the file of the first respondent.

2. It is the case of the petitioner that the petitioner is having three manufacturing units at Puducherry. One of the units namely Vadamangalam is engaged in the business of manufacturing personal care products and they are being distributed to the entire southern region. According to the petitioner, they used to engage temporary workers for a particular period depending upon the escalating production demands. The petitioner engaged the services of the second respondent purely on contractual basis. The second respondent was appointed as a trainee in the petitioner company with effect from 07.03.2012 for a period of one year. He also served the training period fully. While reviewing his performance, the petitioner came to understand that his performance was not satisfactory. Hence, the petitioner issued a letter dated 05.3.2013, relieving the second respondent from the training. Aggrieved by that, the second respondent filed the industrial dispute before the first respondent. However, by the impugned



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award, the first respondent directed the petitioner to reinstate the second respondent into service with continuity of service and 25% back wages from the date of non-employment till the date of reinstatement with other attendant benefits. Challenging the same, the petitioner is before this Court.

3. The learned counsel for the petitioner management submits that initially the second respondent / workman was employed as temporary workman in the petitioner management during the year 2008 and upon satisfaction for the post of trainee, the second respondent was appointed as a trainee vide appointment order dated 28.02.2012, pursuant to the interview being conducted. More so, it is clear from the appointment order issued by the petitioner management that the period of training is only for a period of one year with effect from 07.03.2012 and upon completion of the such training, the successful trainees will be regularised in the service of the petitioner management. However, in the present case, though the second respondent has completed his training period after a period of one year, his performance was found to be below par. Hence, the petitioner has right to release the second respondent from service as per clause 7 and 8 of the



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training letter dated 28.02.2012 issued by the petitioner to the second respondent, which is marked as Ex.P7 before the first respondent.

4. He further relied upon the standing order of the petitioner management, marked as Ex.R2 before the first respondent wherein it was stated that the temporary workers are appointed for a limited period of work which is of essentially temporary nature, or who is employed temporary as an additional workman in connection with temporary increases in work of a permanent nature or probationer. However, without appreciating the exhibits P7 and R2, the first respondent mechanically passed the impugned award, as if the petitioner is a regular employee and ordered to reinstate the second respondent with continuity of service along with 25% backwages to the second respondent which is *per se* unsustainable.

5. He further submitted that the first respondent failed to discuss the fact that the second respondent was not gainfully employed anywhere during his non-employment period. In the absence of any such averment with regard to the non-employment of the second respondent in the claim



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petition, the Labour Court has awarded 25% backwages to the second respondent which is *per se* unsustainable.

6. The learned counsel appearing for the second respondent submits that though the second respondent was appointed as machine operator during the year 2008 in the production department of the petitioner management and had done the work on par with permanent workmen, he has been designated as a trainee and was issued with the training order only in the year 2012 which wholly unsustainable.

7. He further submits that though the second respondent entered the services of the petitioner management in the year 2008, taking advantage of the illiteracy of the second respondent, the petitioner management obtained the signature of the second respondent in the letter of offer for temporary employment which was marked as Ex.R4 before the Labour Court, as if he was appointed as a trainee. Hence, the impugned award is liable to be set aside. He further relied upon the decision rendered by the Hon'ble Apex Court reported in **CDJ 2014 SC 388** in the case of **Bhuvnesh Kumar**



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**Dwivedi Vs. M/s.Hindalco Industries Ltd.** The relevant portion of the order reads as under:

*“18. A careful reading of the judgments reveals that the High Court can interfere with an Order of the Tribunal only on the procedural level and in cases, where the decision of the lower courts has been arrived at in gross violation of the legal principles. The High Court shall interfere with factual aspect placed before the Labour Courts only when it is convinced that the Labour Court has made patent mistakes in admitting evidence illegally or have made grave errors in law in coming to the conclusion on facts. The High Court granting contrary relief under Articles 226 and 227 of the Constitution amounts to exceeding its jurisdiction conferred upon it. Therefore, we accordingly answer the point No.1 in favour of the appellant.”*

8. Though it is clear from the above decision relied upon by the learned counsel for the second respondent that unless and until the order passed by the Labour Court is in gross violation of the legal principles, this Court cannot interfere with the same and in the present case on hand, the



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Labour Court has elaborately considered the issue and arrived at a conclusion that the second respondent entered into the services of the petitioner in the year 2008 and upon successful completion of 365 days continuously from 07.03.2012 to 08.03.2013 for more than 240 days in the year, the second respondent has to be treated as permanent workman. Hence, this Court cannot interfere the impugned award with regard to reinstatement. Insofar as, backwages is concerned, the second respondent has not made any averment in the claim petition with regard to his gainful employment during his non employment period. In the absence of any such proof adduced before the labour Court, awarding 25% backwages to the second respondent is *per se* unsustainable.

9. Hence, the impugned award dated 28.06.2017 passed by the first respondent is modified directing the petitioner management to reinstate the second respondent in service with continuity of service within a period of four (4) 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 backwages.



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10. With the above direction and observation, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes (or) No

Neutral Citation : Yes (or) No

Speaking Order : Yes (or) No

To

The Presiding Officer,  
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