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W.P.Nos.15850 to 15855 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2023

CORAM :

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

W.P.Nos.15850 to 15855 of 2017
and
WMP.Nos.17161 to 17166 of 2017

W.P.No.15850 of 2017:

The Management,
Sri Venkaachalam Engineering Works Pvt. Ltd.,
14, Kalarampatti Main Road,
Salem – 636 015.

...Petitioner

Vs.

1. The Presiding Officer,
Labour Court, Salem.

2. R.Sukumar

...Respondents

Petition filed 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.41 of 2011 on the file of the Principal Labour Court, Salem - the 1st respondent herein, to quash the order dated 23.06.2015 (published on 17.02.2016) passed therein.

In all W.P's.:

For Petitioner : Mr.M.R.Raghavan

For Respondents : Mr.K.M.Ramesh, Sr.C for
Mr.S.Apunu, for R2



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COMMON ORDER

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2. These petitions are filed by the petitioner seeking to quash the orders of the 1st respondent all dated 23.06.2015 made in I.D.Nos.41, 45, 49, 44, 48 and 46 of 2011 respectively.

3. For brevity, the petitioner in all these Writ petitions are hereinafter referred to as management and the respective 2nd respondents in all these Writ petitions are referred to as workmen.

4. The facts leading to filing of these cases are as follows:

The workmen were employed as operators in the management between 2005 and 2006. Their last drawn salary ranges from Rs.4,500/- to Rs.6,500/-. From 29.05.2010, the respective workmen did not report for duty, for which, show cause memo came to be issued on 05.07.2010. Thereafter, the workmen were permitted to work from 06.7.2010 till



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29.7.2010, however, the workmen did not report to duty. Thereby, the petitioner issued a charge memo dated 16.08.2010, to which, the workmen sent letters stating that they were terminated illegally. Immediately, the petitioner sent a reply denying the same. Even thereafter, the workmen did not report for duty. Whiles, the workmen initiated conciliation proceedings and failure of which resulted in raising separate industrial disputes by the respective workmen. After contest, by impugned awards, all dated 23.06.2015, the 1st respondent ordered for reinstatement of workmen with 75% back wages to be paid from 29.05.2010 and along with other attendant benefits. Challenging the same, the management is before this Court.

5. Though very many grounds have been raised, the major contention of the learned counsel for the management is that, even at the relevant point of time and even today the management is ready to reinstate the workmen with continuity of service, however, the workmen are the ones who did not report to duty and the same cannot be held as against the management. Further, though the workmen have pleaded that they were not gainfully employed during the non-employment period, the same was strongly denied



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by the management in the counter affidavit filed by them. However, without considering any of the said facts, the 1st respondent had mechanically ordered for reinstatement of the workmen that too with 75% back wages without any valid grounds by holding that the workmen could not report for duty as the petitioner management denied employment to them, which is erroneous. Accordingly, he prayed for appropriate orders.

6. Learned counsel appearing for the respondents submitted that, since the workmen herein along with other employees have initiated steps to form an union, the management with an ill motive, orally terminated the services of the workmen as if they have allegedly involved in illegal strike, which was disproved by the respondents before the Labour Court itself by adducing necessary evidences and by cross examination. Further, the workmen in their respective petitions have specifically averred that they were not gainfully employed during the non-employment period. Hence, the Labour Court, after carefully considering all the above said facts, arrived a conclusion that the workmen were orally terminated by the petitioner management which is illegal and thereby, vide impugned awards ordered for



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reinstatement with 75% back wages, which is perfectly in order and the same does not warrants interference of this Court. Accordingly, he prayed for dismissal of these Writ petitions.

7. Heard learned counsel on either side and perused the material documents placed on record.

8. Admittedly, the workmen herein were employed as operators in the management and the employer-employee relationship between the petitioner and the respective workman is not in dispute. For alleged involvement in the illegal strike, the petitioner management initiated disciplinary proceedings as against the workmen and the same ended in dismissal, which was challenged by the respective workmen before the Labour Court, in which the present impugned awards came to be passed, directing the petitioner management to reinstate the workmen with 75% back wages. However, it appears that even today, the petitioner management is ready to reinstate the workmen. Hence, this Court is not inclined to interfere with the reinstatement with continuity of services and other attendant benefits ordered by the labour Court.



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9. Insofar as the 75% back wages awarded by the Labour Court is concerned, the labour court has not properly adjudicated the issue and also neither the management nor the workmen have placed any materials to the effect in support of their specific plea. While so, though the petitioner management claim that they were always ready to reinstate the workmen back to work, however, the workmen are the one who have failed to report to duty, however, it is the claim of the workmen that, they were ready to report to duty, however, the management have not allowed them to join duty.

10. In view of the above, in the absence of proper materials placed to substantiate that the workmen were gainfully employed or to the contrary by the workmen that they were not gainfully employed, in the interest of justice, to strike balance, this Court deems it fit that payment of 35% back wages instead of 75% would meet the ends of justice.

11. Accordingly, these Writ petitions are disposed of by modifying the



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awards impugned herein as under :-

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(i) The petitioner management is directed to reinstate the workmen back into service with 35% back wages to be paid from 29.05.2010 along with continuity of service and all other attendant benefits, within a period of two weeks from the date of receipt of a copy of this order.

(ii) No costs. Consequently, the connected Miscellaneous petitions are closed.

28.07.2023

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Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No

To

The Presiding Officer,
Labour Court,
Salem.

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M.DHANDAPANI, J.

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