



WP.No.25277 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.25277 of 2017 &
WMP.Nos.26730 of 2017 & 26728 and 39733 of 2018

Administration, rep.by its
President K.Palanisamy,
Vengamedu Weavers
Cooperative Production &
Sale Society Ltd.,
Chennimalai, Erode-638051.

...Petitioner

Vs

1.The Presiding Officer,
Labour Court, Salem.

2.A.Rangasamy

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records pertaining to the order passed by the first respondent in I.D.No.49 of 2014 on 23.3.2017 and quash the same.



WP.No.25277 of 2017

For Petitioner : Mr.C.Prakasam
For Respondent-2 : Mr.K.V.Shanmuganathan

ORDER

This is a petition filed by the petitioner seeking to quash the award dated 23.3.2017 in I.D.No.49 of 2014 on the file of the first respondent.

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

(i) The second respondent was working as a Manager in the petitioner society from 1986. He was on leave for 18 days during December 2013. He had sent his resignation letter dated 31.12.2013 with a request to settle his financial benefits soon. The resignation of the second respondent was accepted and a decision was taken in the meeting of the Board of Directors held on 03.1.2014 to settle the dues during the end of financial year 2013-14. This was also intimated to both the second respondent and the Assistant Director of Hand loom and Textiles Department, Erode.

(ii) While that being so, the second respondent sent another letter dated 28.1.2014 stating that the resignation letter dated 31.12.2013 was obtained under coercion and threatening made by the president and the



WP.No.25277 of 2017

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administrative members of the society and with a request to reinstate him into the services of the society. Further, the petitioner society gave a reply dated 31.1.2014 to the second respondent. After receipt of the resignation letter dated 31.12.2013, the petitioner society temporarily appointed one Mr.Vasudevan on 01.1.2014 in the place of the second respondent and with regard to that, a resolution was passed by the Board of Directors in the meeting held on 03.1.2014.

(iii) On receipt of the reply dated 31.1.2014 from the petitioner society, the second respondent raised conciliation proceedings, which ended in failure. That is how the matter landed up before the first respondent. However, after contest, by the impugned award, the first respondent directed the petitioner society to reinstate the second respondent with all other attendant benefits, 75% back wages and continuity of service. Aggrieved by that, the petitioner society is before this Court.

3. At the time of admission on 21.9.2017, in WMP.No.26730 of 2017, this Court granted an order of interim stay on condition that the petitioner should deposit 25% of the award amount in any of the



WP.No.25277 of 2017

nationalized banks within four weeks. Thereafter, the second respondent filed WMP.Nos.26728 and 26729 of 2018 seeking (i) to vacate the stay granted on 21.9.2017 in WMP.No.26730 of 2017; and (ii) to direct the petitioner to pay his last drawn wages and other attendant benefits as contemplated under Section 17B of the Industrial Disputes Act, 1947.

4. Further, by order dated 09.10.2018, WMP.No.26729 of 2018 was ordered and the petitioner was directed to pay the wages to the second respondent under Section 17B of the Act from the date of this writ petition within two weeks and for the subsequent period on 10th of every succeeding month. Thereafter, the petitioner filed WMP.No. 39733 of 2018 seeking to extend the time granted on 09.10.2018 for a further period of six months.

5. Learned counsel for the petitioner management would submit that the 2nd respondent has voluntarily resigned himself from service which was accepted by the petitioner management. However, after a lapse of one month from the date of resignation, he raised a dispute under Section 2A-(2)



WP.No.25277 of 2017

of the ID Act before the Labour Court alleging denial of employment.

However, the Labour Court, without properly adjudicating the issue has mechanically passed the present impugned Award ordering reinstatement with 75% of backwages and continuity of service and all other benefits which is not sustainable. Further, the 1st respondent has not made any averment in the claim petition with regard to his gainful employment. In the absence of any material to show that he was not gainfully employed during the non-employment period, the 1st respondent is not entitled for the relief sought for in the claim petition. Accordingly, he prays for allowing this Writ Petition.

6. Per Contra, learned counsel for the 2nd respondent/workman would submit that admittedly, the workman entered into the services of the petitioner management in the year 1986. In the year 2013, workman was forced to submit his resignation letter, accordingly he submitted his resignation letter on 31.12.2013 which shows that he was not legally terminated. Pursuant to the said resignation letter, the workman was denied employment. However, subsequently, in order to deprive the right of the



WP.No.25277 of 2017

WEB COPY

workman, one Vasudevan was temporarily appointed in the place of the workman. The above facts have been elaborately considered by the Labour Court and hence, findings rendered by the Labour Court requires no interference. Accordingly, he prayed for dismissal of this Writ Petition.

7. Heard the learned counsel appearing for the petitioner and the second respondent and perused the materials available on record.

8. Admittedly, the 2nd respondent was appointed as a manager in the petitioner management in the year 1986. In the year 2014, he resigned the job by submitting his resignation letter on 31.12.2013. After a lapse of one month from the date of resignation, the workman raised a dispute under Section 2A-(2) of the Industrial Disputes Act resultantly, the present impugned order has come to be passed in favour of the workman.

9. A perusal of the impugned award reveals that no averments have been made by the 2nd respondent/workman with regard to him not being in



WP.No.25277 of 2017

gainful employment during the period of dismissal. In the absence of any pleading in the claim petition relating to gainful employment during the non-employment period, the Labour Court was not justified in ordering payment of 75% backwages. It is the duty of the workman to prove that during the period of non-employment he was not under gainful employment. However, as aforesaid, the workman having not pleaded and not placed any substantive materials to prove that he was not in gainful employment, the order of grant of full backwages, ordered by the Labour Court is perverse and shows the non-application of mind in which the said order has come to be passed, which cannot be sustained.

10. Insofar as reinstatement is concerned, it is to be pointed out that the resignation was withdrawn by the workman within the period of notice and legally, within the notice period, the workman is entitled to withdraw his resignation. That being the case, without the notice period coming to an end, the act of the petitioner in appointing another person in the said place is impermissible and, therefore, the order directing reinstatement cannot be found fault with.



WP.No.25277 of 2017

WEB COPY

11. At the time of arguments, it was brought to the notice of this Court that the workman attained the age of superannuation and, hence, the question for reinstatement does not arise at this point of time. However, the workman would be entitled for 50% backwages and continuity of service for the purpose of computation of terminal benefits. To that extent, the order of the labour court stands modified. The 2nd respondent is permitted to withdraw the back wages to the tune of 50% deposited by the petitioner management.

12. Accordingly, the award passed by the labour court stands modified as follows :-

(i) the petitioner management is directed to compute and pay all the terminal benefits as if the workman had continued in service and superannuated on attaining the age of superannuation to the workman within a period of six weeks from the date of receipt of a copy of this order.

(ii) however, in view of the retirement of the workman in the meantime, reinstatement does not arise.

(iii) the workman is entitled for 50% back wages from the date of dismissal till the date of attaining superannuation.



WP.No.25277 of 2017

WEB COPY

13. Accordingly, the Writ Petition is partly allowed with the above modifications. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

30.08.2023

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

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To
The Presiding Officer,
Labour Court, Salem.



WEB COPY



WP.No.25277 of 2017

M.DHANDAPANI, J

NHS

WP.No.25277 of 2017 &
WMP.Nos.26730 of 2017 &
26728 and 39733 of 2018

30.08.2023