



WEB COPY



WP.Nos.17233 of 2017
& 27322 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.17233 of 2017 & 27322 of 2018
& WMP.Nos.18735 of 2017, 4912, 4913 & 31813 of 2018

The Management, Sri
Akilaa Spinning Mills Ltd.,
Kapparathampatti,
Jalakandapuram, Salem-1.

...Petitioner in
WP.No.17233/
2017 & Sole
respondent in
WP.No.27322/
2018

Vs

1.The Presiding Officer,
Labour Court, Salem.

...R1 in WP.No.
17233/2017

2.Mr.Rajannan

...R2 in WP.No.
17233/2017 &
Petitioner in WP.
No.27322/2018



*WP.Nos.17233 of 2017
& 27322 of 2018*

WEB COPY

PETITIONS under Article 226 of The Constitution of India praying
for the issuance of

(i) a Writ of Certiorari to call for the records in I.D. No.84 of 2010 on the file of the Labour Court, Salem - the first respondent herein and quash the award dated 10.11.2016 (published on 09.5.2017) (WP.No.17233 of 2017); and

(ii) a Writ of Certiorari to call for the records of the first respondent in connection with I.D.No.84 of 2010 pronounced on 10.11.2016 and quash the same in so far as the relief of back wages was confined to 25% of back wages and full back wages have not been granted and to hold that the petitioner is entitled to full back wages (WP.No.27322 of 2018).

For Management : Mr.M.R.Raghavan
For Workman : Mr.K.Sudalaikannu



WP.Nos.17233 of 2017
& 27322 of 2018

COMMON ORDER

WEB COPY

These petitions are filed by both the management and the workman challenging the award dated 10.11.2016 in I.D.No.84 of 2010 on the file of the Labour Court, Salem.

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

(i) The management appointed the workman as an electrician from 01.10.1983. His last drawn salary was Rs.7,106/-. The Electricity Department imposed 40% electricity cut on the management from November 2008. The officials of the Electricity Department used to visit the factory premises of the management and monitor as to whether the restrictions imposed by the Government were implemented or not. On 30.4.2009, it was found that electricity drawn by the factory on 28th and 29th of April 2009 was more than what was permitted and the officials of the Electricity Department directed that power should not be drawn on 1st and 2nd of May 2009. On account of the restrictions imposed, the management suffered a loss and the Electricity Department imposed on the management a sum of Rs.2,08,800/- towards penalty resulting in loss in



*WP.Nos.17233 of 2017
& 27322 of 2018*

production to the tune of nearly Rs.7 lakhs. The management also was directed to pay damages. According to the management, only due to the careless and negligent act on the part of the workman, they suffered loss.

(ii) Pursuant to that, the management issued a show cause notice dated 18.5.2009 to the petitioner, for which, he submitted reply. As the management found the reply not satisfactory, an enquiry was conducted resulting in finding the workman guilty of the charges and he was dismissed from service dated 16.9.2009. Aggrieved by the said order of dismissal, the workman raised an industrial dispute before the Labour Court, Salem, which ultimately, by impugned award, directed reinstatement of the workman with 25% backwages and other benefits.

(iii) Challenging the award, the management is before this Court. Not satisfied with the award of only 25% of the back wages, the workman is also before this Court.

3. When WP.No.17233 of 2017 came up for admission, on 07.7.2017 in WMP.No.18735 of 2017, this Court granted an order of interim stay on condition that the management should deposit 50% of the awarded amount



*WP.Nos.17233 of 2017
& 27322 of 2018*

within a period of four weeks.

WEB COPY

4. Thereafter, the management filed WMP.No.38025 of 2017 seeking to extend the time granted by this Court in the order dated 07.7.2017. Further, by order dated 27.8.2018, the time already granted was extended by two weeks.

5. Subsequently, the workman filed two miscellaneous petitions in WMP.Nos.4912 and 4913 of 2018 seeking respectively (i) to vacate the interim stay granted on 07.7.2017 in WMP.No.18735 of 2017; and (ii) to direct the management to pay the last drawn wages to the workman every month from the date of filing W.P.No.17233 of 2018 till his retirement i.e 22.1.2018.

6. Further, this Court, by order dated 25.10.2018 in WP.No. 17233 of 2017, directed the management to pay wages under Section 17(b) of the Industrial Disputes Act from the date of filing W.P.No. 17233 of 2017 till the date of superannuation of the workman.



*WP.Nos.17233 of 2017
& 27322 of 2018*

WEB COPY

7. Learned counsel for the management would submit that the management suffered a huge loss merely because of the negligence on the part of the workmen. He further submitted that the said loss could have been averted if the workman had discharged his duty properly for which, disciplinary proceedings were initiated against the workmen, however, after conducting the enquiry, he was dismissed from service. The Labour Court without advertng to the aforesaid facts as also the materials evidences placed by the management, had mechanically set aside the dismissal order holding that the punishment of dismissal imposed by the management for the said misconduct is highly disproportionate which is not sustainable. Hence, the award passed by the Labour Court is liable to be interfered with. Accordingly, he prays for allowing this Writ Petition.

8. Per Contra, learned counsel appearing for the workman would submit that since he is not gainfully employed from the date of dismissal from service, the workman is entitled for 100% backwages, however, the Labour Court has awarded only 25% backwages which is not sustainable.



*WP.Nos.17233 of 2017
& 27322 of 2018*

Accordingly, he prays for dismissal of these Petitions.

WEB COPY

9. Heard the learned counsel for the management and the learned counsel appearing for the workman.

10. The facts in the present case are not in dispute. Admittedly, the workman who was serving as an Electrician in the petitioner management, was terminated from service for drawing excess electricity power more than the quantum which was allotted by the Electricity Board thereby causing huge loss to the management in production.

11. It is the claim of the management that the loss could have been averted if the workman who was in-charge of monitoring the total usage of power, had been more careful in discharging his duty and hence, the workman is not entitled for the relief granted by the Labour Court. The said issue has not been properly adjudicated by the Labour Court. On the other hand, the workman claims that he is entitled for full backwages on the ground that he was not gainfully employed from the date of termination.



*WP.Nos.17233 of 2017
& 27322 of 2018*

WEB COPY

12. The workman had raised a dispute before the Labour Court with regard to said dismissal resultantly, the Labour Court has set aside the punishment imposed by the management on the ground that the punishment of dismissal is highly disproportionate for the said misconduct.

13. The Labour Court has considered all the materials placed before it and has come to the conclusion that no sufficient materials have been placed by the management to show that the workman has committed the said misconduct with a malafide intention. However, taking into consideration the delinquency committed, the Labour Court, finding the order of dismissal disproportionate to the proved charges, has set aside the punishment of dismissal with further direction to reinstate the workman with continuity of service and 25% of backwages. In view of the loss incurred by the management due to the negligence on the part of the workman and the charges being proved with regard to the negligence on the part of the workman, there is no perversity in the findings rendered by the Labour Court and as a result the modification of the punishment by the



WP.Nos.17233 of 2017
& 27322 of 2018

Labour Court does not warrant any interference as it is based on cogent and clear reasoning.

14. For the reasons aforesaid, this Writ Petition is dismissed. The petitioner management is directed to deposit the benefits if any payable to the workman within a period of six (6) weeks from the date of receipt of a copy of this award. The workman is at liberty to withdraw the benefits deposited by the management. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

28.07.2023

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

To
The Presiding Officer,
Labour Court, Salem.

NHS



WEB COPY



*WP.Nos.17233 of 2017
& 27322 of 2018*

M.DHANDAPANI,J

NHS

WP.Nos.17233 of 2017 &
27322 of 2018 & WMP.Nos.
18735 of 2017, 4912, 4913
& 31813 of 2018

28.07.2023