



W.P.No.28013 of 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

W.P.No.28013 of 2018

V.Thirugnanasampantham

... Petitioner

Vs.

The Management,
Mahee Engineering (P) Ltd., Unit-2
Coimbatore - 641 035.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records in I.D.No.554/2008 on the file of the Labour Court, Coimbatore and quash the Preliminary Award dated 25.04.2017 and Final Award dated 22.09.2017 and also direct the respondent to reinstate the petitioner with continuity of service and full back wages and all other attendant benefits from the date of dismissal i.e. 09.07.207 till the date of reinstatement.

For Petitioner : Mr.V.Sivakumar

For Respondent : Mr.P.Raghunathan for
M/s.T.S.Gopalan & Co



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ORDER

The petitioner was permanently employed for M/s.Mahee Engineering (P) Limited Unit-2, Coimbatore since 15.11.1996 on a monthly salary of Rs.4,980/-. The workers of the factory were demanding several benefits from the Management. As there was no response from the Management, the workers formed a union in the name 'Bharathiya Kovai Mavatta Podhu Thozhilalar Sangam'. The petitioner was one of the fore-runners to start the activities of the above union, but he did not occupy any post in the union. The petitioner was active in finalizing many programmes to attract the knowledge of the management. There was a rift between the Management and the workers and consequently, the workers were not allotted any work since June 2006. Accordingly, five workers including the petitioner had to wait in the factory. But the petitioner alone was issued with an order of suspension. In the Show Cause Notice dated 16.08.2006, it was alleged that the petitioner stayed back in the unit and restrained the other four workers from leaving the factory premises. Though the petitioner sent a suitable reply to the



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Management the same was not considered. The Management conducted an enquiry and the Enquiry Officer also submitted his report dated 04.06.2007 wherein it was stated that the charges against the petitioner stood proved. The enquiry officer also directed the petitioner to submit his explanation to the second Show Cause Notice. The petitioner submitted his reply dated 28.06.2007. However, the Management issued an order of dismissal dated 09.07.2007, which forced the petitioner to file a petition under Section 2(A)(2) of the Industrial Disputes Act before the Labour Court, Coimbatore. The Presiding Officer, Additional Labour Court, Coimbatore vide his orders dated 22.09.2017 had held that the imposing capital punishment from dismissal of service is disproportionate to the charges framed against the writ petitioner and therefore, the same is liable to be set aside. The Court went on to observe in Paragraph No. 13 to 15 as follows :

"13.Next, as far as the question of reinstatement is concerned, this court is of the view that the relief of reinstatement would not be conducive, as rightly pointed out by the learned counsel for the respondent, because the relationship between the petitioner and the respondent had



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been strained and already more than 10 years expired from the date of dismissal of the petitioner and much water has flown under the bridge and it has also been stated by the respondent that the machines and equipments, manufacturing methods, work process and nature of products have all changed completely and it would not be suitable to employ the petitioner after such a long period of time. These aspects has not been seriously disputed on the side of the petitioner. So it appears that relief of reinstatement would not be conducive.

14.The power of this court u/s.11(A) is alternative. The first is to direct reinstatement of the workman on such terms and conditions and second is to give some other relief including award of any lesser punishment. Under the second alternative, the court may, instead of directing reinstatement, give the relief of compensation (or) award any lesser punishment in lieu of discharge or dismissal. While considering the quantum of compensation, the length of service and the availability of jobs etc., are the relevant factors. This aspect has been clearly dealt with by the Hon'ble Apex Court in the decision reported in 2008-LLR-Page 549 in which it has been observed as follows:-



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"Compensation in lieu of reinstatement will be appropriate when the operation of the farming was stopped and no jobs could be provided to the reinstated workmen.

While considering the quantum of compensation in lieu of reinstatement, the length of service and the availability of jobs etc., are the relevant factors".

15.The petitioner is presently aged about 41 years. He had put in service of 11 years in the respondent management. He is a skilled worker. His job opportunities are wide. His last drawn salary was Rs.4,980/- at the time of termination i.e., on 09.07.2007. Petitioner has not adduced any evidence to show that he was not gainfully employed elsewhere during the period of non-employment. Considering these aspects and having regard to the facts and circumstances of this case, this court is of the opinion that payment of compensation of a sum of Rs.4,75,000/- (Rupees Four Lakhs Seventy Five Thousand Only) to the petitioner towards full and final settlement, in lieu of the reliefs claimed in the petition, would meet the ends of justice. Accordingly, this points are answered partly in favour of the petitioner."

Challenging the orders passed in I.D.No.554/2008, the present writ



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3.The respondent filed a detailed counter affidavit wherein it is averred that the petitioner is presently running an electrical shop at Veerampalayam Main Road, Kallapatti, Coimbatore and that the factory premises of the Management was sold to some other person. It is further averred that the purchaser had pulled down the entire structure and therefore, nothing survives for adjudication in the present writ petition.

4.Learned counsel for the writ petitioner relied on a decision of the Division Bench of this Court in ***Management of Indian Oil Corporation Ltd., Madras Vs Presiding Officer, II Additional Labour Court, Madras & Another*** reported in ***1993 (1) CLR 1024*** and contended that the employer cannot single out a particular workman and award harsh punishment more than those who were similarly situated. He therefore prayed for reinstatement with full back wages.

5.Per contra, Mr.P.Raghunathan, learned counsel for the respondent contended that the Labour Court's observation that the punishment of the dismissal of service is disproportionate to the charges



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framed against the writ petitioner is totally incorrect. In the charge memo, it is clearly stated that the writ petitioner though was suspended from service stayed back in the factory premises. That apart, he also did not allow four other workmen from leaving the factory premises and thus disturbed public peace and harmony. He, therefore, prayed to set aside the Award of compensation of Rs.4,75,000/- by the learned Additional Labour Court, Coimbatore.

6.At the outset, it may be observed that the respondent had not challenged the Award passed by the Additional Labour Court, Coimbatore. Even according to the counsel for the respondent, the factory premises was sold to some other person who in turn had pulled down the entire structure. The specific contention of the learned counsel for the respondent is that nothing survives for further adjudication in this writ petition. In the decision of the Hon'ble Supreme Court in ***Jagbir Singh vs Haryana State Agriculture Marketing Board and Another reported in (2009) 15 SCC 327***, it has been held thus :

"It is true that earlier view of the Supreme Court articulated in many decisions reflected the legal position that if the termination



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of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in long line of cases, the Supreme Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure.

7. The factors which are relevant for determining the same, inter alia, are:

- (i) whether in making the appointment, the statutory rules, if any, had been complied with;*
- (ii) the period he had worked;*
- (iii) whether there existed any vacancy; and*
- (iv) whether he obtained some other employment on the date of termination or passing of the award.*

8. The respondent is a local authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a local authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the



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constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.

9. Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularised.

10. Applying the legal principles, as noticed hereinbefore, the relief granted in favour of the appellant by the Labour Court is wholly unsustainable. The same also appears to be somewhat unintelligible.

11. The High Court, on the other hand, did not consider the effect of non-compliance with the provisions of [Section 6-N](#) of the U.P. Industrial Disputes Act, 1947. The appellant was entitled to compensation, notice and notice pay.

12. It is now well settled by a catena of decisions of this Court that in a situation of this nature instead and in place of directing reinstatement with full back wages, the workmen should be



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granted adequate monetary compensation. (See M.P. Admn. v. Tribhuban [(2007) 9 SCC 748].)

13. In this view of the matter, we are of the opinion that as the appellant had worked only for a short period, the interest of justice will be subserved if the High Court's judgment is modified by directing payment of a sum of Rs 50,000 (Rupees fifty thousand only) by way of damages to the appellant by the respondent. Such payment should be made within eight weeks from this date, failing which the same will carry interest at the rate of 9% per annum."

7. In the instant case, admittedly, the writ petitioner did not adduce any evidence to show that he was gainfully employed during the period of non-employment and this court is of the opinion that the compensation of a sum of Rs.4,75,000/- awarded by the Labour Court cannot be said to be perverse. Moreover, the writ petition has also become infructuous in view of the fact that the factory premises was sold to some other person and that the purchaser had pulled down the entire structure. This writ petition therefore stands dismissed by confirming the order of the Additional Labour Court, Coimbatore.



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Index: Yes/No
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Speaking/Non-Speaking order
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The Management,
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