



W.P.No.31619 of 2018
and W.M.P.No.36862 of 2018

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2023

CORAM

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

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and W.M.P.No.36862 of 2018

The Chairman - Cum- Managing Director,
Hindustan Photo Films Manufacturing Co. Ltd.,
Indu Nagar Post,
Udhagamandalam,
The Nilgiris - 643 005.

... Petitioner

Vs.

R.Rajan

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the Award dated 20.07.2017, passed by the Labour Court, Coimbatore in I.D.No.60/2010.

For Petitioner : Mr.T.R.Sathiyamohan

For Respondent : No appearance



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ORDER

Challenge in this writ petition is made to the Award passed in I.D.No.60/2010 by the learned Presiding Officer, Labour Court, Coimbatore dated 20.07.2017.

2.The respondent filed a petition in I.D.No.60/2010 under Section 2-A(2) of the Industrial Disputes Act, 1947 to set aside the oral termination order passed by the Management on 03.08.2009 and to direct the Management to reinstate him with continuity of service, back wages and other attendant benefits.

3.The respondent was employed for the petitioner management as a helper-trainee for 1½ years from 1992 and during the said period he was paid a lumpsum of Rs.800/- per month as stipend. Thereafter, he was deputed to the factory canteen run by the petitioner management against permanent vacancies. Subsequently, he was transferred to conversion department of production division and was working for two years. On



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03.08.2009, he was terminated from service and at the time of his termination his last drawn pay was Rs.146/- per day. The petitioner fell sick on 18.02.2008 and informed his inability to attend the duty as the medical officers who treated the petitioner advised him to take complete rest. However, the Management did not consider the same and ultimately he was terminated from service. When the respondent approached the Management they refused to take him back and his representation to the Management also did not evoke any response. In this regard, the respondent filed an application in I.D.No.60/2010 before the Labour Court, Coimbatore. The petitioner filed a detailed counter in which *inter alia* it is stated that the present respondent is only a casual worker and that he did not work in any permanent vacancy. It is further contended that the respondent absented himself for duty from 20.02.2008 onwards and therefore, he cannot seek for any continuity of service. Moreover, the respondent was appointed as a helper trainee since his father opted for voluntary retirement.



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4.The learned Presiding Officer, Labour Court vide her orders dated 20.07.2017 had held that since the petitioner Management is no longer in existence, reinstatement does not arise and that the respondent was also gainfully employed elsewhere. Therefore, the Labour Court awarded a lumpsum compensation of Rs.4,00,000/- to the respondent together with interest @ 9% per annum.

5.Mr.T.R.Sathiyamohan, learned counsel for the writ petitioner would contend that the respondent is only a casual worker and that he voluntarily abandoned his employment. His further contention is that the respondent had not also proved that he was not gainfully employed elsewhere. In the circumstances, a lumpsum compensation of Rs.4,00,000/- awarded by the Labour Court is totally contrary to law.

6.Though notice was served on the respondent and his name is printed in the cause list, there is no representation on behalf of the respondent, either in person or through a counsel.



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7. A perusal of the orders shows that the Management had in their counter had stated that the respondent was a casual labour. However, no acceptable evidence was adduced on their side. It is also seen that the respondent was working for more than ten years with the petitioner Management, but his services were terminated without complying with the mandatory provisions of Section 25-F of the Act, which reads thus :

"25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service] or any part thereof in excess of six months; and



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(c)notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."

The contention of the petitioner Management is that the respondent was appointed on compassionate grounds as a casual labourer. It is also their contention that the respondent absented himself for duty. These contentions were not substantiated. On the contrary, it is seen from the records that the petitioner Management had terminated services of the respondent on 03.08.2009 without following the mandatory provisions of the Industrial Disputes Act. In the circumstances, I do not see any infirmity in the orders passed by the Labour Court.

8.Accordingly, the Writ Petition is dismissed. No costs.

Consequently, connected Writ Miscellaneous Petition is closed.

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Index: Yes/No
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