



W.P.(MD).Nos.1898 and 22567 of 2019

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED : 02.06.2023**

**CORAM**

**THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**W.P.(MD).Nos.1898 and 22567 of 2019**

W.P.(MD).No.1898 of 2019:

K.Jothibai

... Petitioner

**Vs.**

The Management,  
M/s. Sundaram Industries (Rubber) Limited,  
Rubber Factory,  
Kochadai,  
Madurai – 625 016.

... Respondent

**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the Presiding Officer, Labour Court, Madurai relating to its order in I.D.No.121 of 1997 dated 23.08.2014 and quash the same in dismissing the award in other aspects and consequently direct the respondent Management to grant full back-wages with continuity of service and other consequential benefits accrued to the petitioner's husband to the petitioner.



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For Petitioner : M/s.K.R.Shivasankari

For Respondent : Mr.T.Ravichandran

W.P.(MD).No.22567 of 2019:

The Management of  
Sundaram Industries Private Limited,  
Rubber Factory,  
Kochadai,  
Madurai – 625 016,  
Represented by its,  
President, Sri P.Sundararajan

... Petitioner

**Vs.**

K.Jothibai

... Respondent

**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of Hon'ble Labour Court, Madurai in I.D.No.121 of 1997 and its award dated 23.08.2014 and quash portion of the award in which granting of 25% of back wages and taking of intervening period as notional years of service for calculating the terminal benefits.

For Petitioner : Mr.T.Ravichandran

For Respondent : M/s.K.R.Shivasankari



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**COMMON ORDER**

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The Writ Petition in W.P.(MD)No.1898 of 2019 is filed by the wife of deceased employee namely, Kalaiselvan to quash the Labour Court award dated 23.08.2014 and consequently direct the respondent Management to grant full backwages with continuity of service and other consequential benefits accrued to the petitioner's husband.

2. The Writ Petition in W.P.(MD)No.22567 of 2019 is filed by the Management to quash the Labour Court award dated 23.08.2014 in particular that portion of the award in which granting of 25% of backwages and by taking intervening period as notional years of service for calculating the terminal benefits.

3. The brief facts as stated in the affidavit are that the employee namely, V.Kalaiselvan was posted to work in various number of presses for producing cures for various mould in the presses on 15.09.1993, 18.09.1993, 20.09.1993, 21.09.1993, 22.09.1993 and 23.09.1993. But he refused to attend the work in respect of one mould for the Part No.29662539 and he deliberately disobeyed



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the instructions given by the Superior Officers. The Management considered it as a misconduct for causing deficiency in number of cures and taking more time for loading and unloading and for doing the work with negligence, which ultimately resulted in the lesser production of the coworker. Therefore, the Management issued a charge memo and initiated Domestic Enquiry. The contention of the Management is that the Domestic Enquiry was conducted by giving full opportunity to the delinquent. However, the delinquent had chosen to keep himself away from attending to the enquiries by giving one reason or the other. Hence, the Enquiry Officers were constrained to proceed with the Ex-parte enquiries and gave findings that the charges were duly proved in all the above charge memos. The findings of the Enquiry Officer were sent to the delinquent for his perusal and the Management considering the gravity of the offence issued an order of dismissal dated 06.06.1994 for the proven charges. Against which the delinquent raised an Industrial Dispute before the Conciliation Officer which has ended in failure. Thereafter, the I.D.No.121 of 1997 was filed challenging the dismissal order on various grounds. The contention of the delinquent is that the defective enquiries were conducted without complying the principles of natural justice, enquiry was conducted without affording opportunities, victimization for Union activities, biased



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towards him and biased enquiries were conducted by the Enquiry Officer, non-supply of copies of enquiry proceedings and the charges are not established in the given Ex-parte enquiry and the Enquiry Officer finding is totally non application of mind. However, after considering the rival submissions, the Labour Court has passed an award quashing the order of punishment and directed the Management to pay the terminal and other benefits along with 25% of backwages within a period of 3 months from the date of receipt of a copy of the order. The Management was further directed that the intervening period for which the petitioner remained out of job shall be counted for the purpose of terminal benefits. As far as other prayer in Industrial Dispute is concerned, the same was dismissed. Challenging the said award, both the Management as well as the wife of the delinquent had filed the present Writ Petitions.

4. The contention of the Management is that the delinquent was given several opportunities, he would appear before the Enquiry Officer, but he will not participate in the enquiry proceedings and will leave the enquiry premises by citing one reason or other. Hence, the enquiry authority was forced to conduct an ex-parte enquiry. The same has been recorded by the Labour Court in the award.



5. The delinquent has alleged against the Management that at the instigation of the Management, a group of persons attacked the delinquent and caused severe bad injuries on 11.08.1993. The Labour Court has categorically rendered a finding that the allegation against the Management is not proved. The finding of the Labour Court is extracted hereunder:

*“Since there is absolutely no evidence to show that such an attack was made against the petitioner, according to the respondent, the contents of the posters to the effect that the goondas at the instigation of the respondent Management had attempted to murder him are nothing but false, frivolous and defamatory in nature. I find much merit on the said contentions. On considering the entire evidence available before the enquiry officer and also the fact that the petitioner had purposely and wantonly allowed the enquiry to be proceeded ex-parte, the findings of the Enquiry Officer that the charges levelled against the petitioner stood proved cannot be found fault with”.*

The Labour Court has categorically stated that there is no evidence produced by the delinquent to prove that the Management has caused injury to the delinquent.

6. As far as other charges are concerned the Labour Court has held that the delinquent has not proved the same. The Labour Court has further held by remaining ex-parte, the delinquent has not adduced any evidence. Therefore, it



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has come to the conclusion that the charges levelled against the delinquent is proved.

7. The other findings rendered by the Labour Court is that the standing orders do not contemplate for issuance of second show cause notice, after the proposal of punishment, hence, there is no violation of principles of natural justice.

8. After hearing the rival submissions and on perusing the finding of the Labour Court, it is seen that the Labour Court has considered the grounds raised by the delinquent and decided against the delinquent. But the Labour Court has held that the punishment is disproportionate and has granted the relief of reinstatement with continuity of service with 25% backwages. This Court is of the considered opinion that when the Labour Court has not accepted any of the grounds raised by delinquent, then granting 25% of backwages is not appropriate and the same is liable to be interfered with.



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9. However, it is seen pending writ petition the employee died on 13.03.2015 and now the delinquent's wife is before this Court. Hence reinstatement is not possible. It is seen that the delinquent had worked as daily wages employee from 05.06.1979. Then he was working as trainee from 16.10.1979. Then engaged as probationer for a period of 6 months from 02.05.1984 and confirmed on 31.10.1985. The petitioner was dismissed from service on 06.06.1994. The conciliation failed report was filed on 29.09.1995 and the petitioner filed the ID in the year 1997. It is seen that the management has filed this writ petition to quash that portion of the order where it has granted 25% of back wages and to take the non-employment as notional years of service for calculating the terminal benefits. Having challenged only this portion of the order, the management ought to have reinstated the employee. Since the management had not reinstated the employee then the legal heir of the employee is entitled to some compensation. Therefore, this Court is passing the following orders:

- i. The petitioner was confirmed in the service on 31.10.1985 and dismissed on 06.06.1994 and for this service the delinquent is entitled to all statutory benefits. As far as the gratuity the same shall be paid with applicable statutory interest. For other payments, the management is directed to pay the same with 7.5% interest.



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- ii. The period from 07.06.1994 to 23.08.2014 (the date of the order passed in ID) the management shall pay all statutory benefits with 6% interest.
- iii. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.

10. With the above direction, the Writ Petitions are disposed of. There shall be no order as to costs.

**02.06.2023**

NCC : Yes/No  
Index : Yes / No  
Internet : Yes/ No  
Nsr

To

The Management,  
M/s. Sundaram Industries (Rubber) Limited,  
Rubber Factory,  
Kochadai,  
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**S.SRIMATHY, J.**

Nsr

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