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W.P.No.10344 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.12.2023

Pronounced on : 28.06.2024

C O R A M

The Hon'ble Dr.Justice D.NAGARJUN

W.P.No.10344 of 2015

M.Murugan

...Petitioner

Vs

1. The Presiding Officer,
Labour Court,
Coimbatore.
 2. The Management of M/S. Auto Wings,
39-A, V.K.Ranganatha Naidu Street,
Venkittapuram, Coimbatore – 641 013.
- ...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus after calling for the records pertaining to the award dated 30.08.2013 passed by the first respondent in I.D.No.678 of 2008, quash the same in so far as declining the petitioner reinstatement with continuity of service, backwages and other attendant benefits and consequently direct the second respondent to reinstate the petitioner with continuity of service, backwages and other attendant benefits, after adjusting the amount of compensation of



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Rs.45,000/-.

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For petitioner : Ms.Porkodi
for R.Krishnaswamy

For R1 : Court

For R2 : Mr.G.B.Saravanabhavan

ORDER

This writ petition is filed by the workman aggrieved by the order dated 30.08.2013 passed by the first respondent in I.D.No.678 of 2008 and quashing of the same with a direction to provide reinstatement and other attendant benefits to the petitioner.

2. The facts in brief as per the affidavit enclosed in this writ petition are as follows:

2.1. The second respondent is involved in manufacturing of spare parts required for tillers. There were about 30 workers however, they were provided with the benefits under the ESI Act, PF Act, Minimum Wages Act etc. The petitioner along with other employees joined the Coimbatore District General Workers Union affiliated to AITUC and the



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said union raised an Industrial Dispute including wage revision etc., and thereby, the management was forced to execute settlement with the union under Section 18 (1) of the Act. The second respondent management has created all sorts of troubles to the petitioner and other workmen and made the workmen themselves to leave the services. Once the issue was over, the petitioner and other workmen were employed as contract laborers with less wages. The petitioner has reported for work on 21.11.2008 and the second respondent management orally denied employment to the petitioner and did not allow him to work.

2.2. The petitioner has sent a letter through registered post to the second respondent requesting to re instate him. As there was no reply he has filed I.D. against his termination orders before the Assistant Commissioner of Labour. During the course of conciliation proceedings, the second respondent has informed that they were ready to provide employment to the petitioner and thereby, without prejudice to his rights, the petitioner has reported for work on 12.05.2008 and 13.05.2008.

However, the second respondent has not provided any employment thereafter. The petitioner again reported for work on 15.05.2008 and



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16.05.2008 but no work was assigned to him. He sent telegram on 16.05.2008 and reported to second respondent for denial of work. He once again reported for work on 17.05.2008 but again he was not assigned any work hence, he sent another objection letter to the second respondent on 19.05.2008 and on receipt of the same the second respondent has sent a letter ante date to him to show that he was continuously absent. The petitioner has again addressed a letter dated 17.06.2008 and requested to inform as to which shift he has to report for work.

2.3. The petitioner has requested the conciliation officer to initiate conciliation proceedings. The second respondent management filed a reply with false allegations. The conciliation officer submitted his failure report on 18.08.2008.

2.4. The petitioner has raised I.D.No.678 of 2008 and the second respondent has filed counter affidavit on 16.09.2009. On hearing both sides the first respondent passed award on 30.08.2013, aggrieved by the part of finding of the Labour Court this writ petition is filed.

2.5. It is submitted by the learned counsel of the petitioner



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that the petitioner has completed 240 days of service and in case if he is terminated then procedures contemplated under Section 25 (F) of the I.D.Act should have been followed. It is further submitted that the petitioner cannot be terminated without assigning any reasons and without giving him any compensation under Section 25, *ibid* and the termination of the petitioner was illegal and that the contention of the second respondent that manufacturing activity was stopped is incorrect and that they have started manufacturing activity at different places.

2.6. It is further submitted by the learned counsel for the petitioner that the petitioner during the course of enquiry, petitioner has never stated that he does not want backwages. Even if re instatement was not possible, backwages should have been ordered from the date of termination and grant of lumpsum compensation is also not proper.

3. Counter affidavit has been filed and it is stated that the second respondent unit commenced its operation on 25.11.1998 and it undertakes the business of supplying machined metal components on job order basis and an unorganized industry and the petitioner was a casual



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labourer and worked as and when required. There was no continuous or consistent work and as on date if work was available, with the help of the manufacturing labourers works are being executed.

4. It is further stated that the petitioner was employed as a casual worker on daily basis as a Turner, employed as and when turning work was available. He used to get maximum 15 days of work in the manufacturing unit. The petitioner was engaged in the business of bed mattress making and he used to make beds and sell them through his shop. The second respondent has not employed more than 10 employees and hence, the second respondent unit was not covered under the Factories Act, ESI Act or EPF & MP Act etc. The petitioner himself stopped reporting for work on 21.01.2008 and on 22.01.2008 and sent a letter alleging that he was orally terminated. He has approached the second respondent and demanded compensation as settlement. He has raised I.D before the conciliation officer.

5. It is further mentioned in the counter affidavit that the findings of the Labour Court that the petitioner was orally terminated is perverse and that the petitioner was retrenched is erroneous, the



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compensation awarded was unjust as the petitioner deliberately refused to work.

6. Heard both sides and perused the materials available on record.

7. The second respondent though has raised many issues in the counter affidavit, the second respondent has not preferred any writ petition aggrieved by the orders in I.D.No.678 of 2008, thereby all the said questions raised by the second respondent in the counter affidavit cannot be considered.

8. The submissions of the petitioner is that the petitioner was terminated by the second respondent for challenging the District General Workers Union and during the course of conciliation since the second respondent has offered to take back the petitioner for work, the petitioner has not attended for duty from 12 to 14th of May and he was also not provided with work. The petitioner has sent letters and telegrams for providing him employment even then the second respondent has not



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responded. Therefore, according to the petitioner, his termination is illegal. The Labour Court while appreciating the evidences placed before it has given a findings by taking into consideration of various decisions that the petitioner has worked for more than 240 days in a year prior to the alleged date of termination. Once the petitioner has worked for more than 240 days continuously in a year preceding the date of termination, the procedures contemplated under Section 25 of the I.D.Act shall follow.

9. Considering the above, the petitioner should have given one month in writing indicating the reasons for retrenchment and that the retrenchment compensation should have been paid. In respect of not following the procedure under Section 25 (F) of the I.D.Act is concerned, the Labour Court has also discussed various provisions including the retrenchment. Finally, the Labour Court held that the retrenchment is illegal. Having gone through the above details in respect of Section 25 (F) of the I.D.Act and termination of the petitioner without following the procedures. This Court is in agreement with the findings of the Labour Court as there is no perversity in the discussion of the findings of the Labour Court. The other aspect is once the retrenchment is found to be illegal then the petitioner should have been re instated. It is the



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contention of the petitioner that though the second respondent is not working in the place where it was working the second respondent unit is working in a different place, in a different name. However, these details are not given.

10. Once retrenchment of the petitioner is illegal and once the unit is not working thereby, reinstatement is not possible and the only option left with this Court is to award retrenchment compensation. According to the petitioner, he has been awarded with a compensation which is very meager and the Labour Court has awarded only Rs.45,000/-. It is the contention of the learned counsel for the petitioner that he used to earn Rs.4,160/- per month. The backwages from the date of termination to the date of award comes around Rs.2,28,362/- and 40 months lumpsum compensation in lieu of re instatement comes around Rs.1,66,400/- thereby, the total amount required to be paid is Rs.3,94,762/-. The Labour Court while awarding compensation does not specifically mention as to why Rs.45,000/- was awarded. Since the backwages as on today is stated to be Rs.2,28,362/- from the date of termination till the date of award, this Court is of the opinion that the compensation awarded is not commensurate to the facts of the case. However, it is to be noted that the



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second respondent unit is not working and therefore, perhaps the Labour Court has taken a lenient view in awarding Rs.45,000/- as lumpsum.

11. In view of the above discussions and taking into consideration of all the facts the award of the Labour Court can be enhanced from Rd.45,000/- to Rs.1,00,000/-.

12. Accordingly, this writ petition is partly allowed confirming the award passed by the Labour Court enhancing the amount of compensation from Rs.45,000/- to Rs.1,00,000/- which is to be paid within a period of three months from the date of receipt of a copy of this order along with interest at the rate of 6%. No costs.

28.06.2024

vca/mvs.

Index : Yes/No

Citation : Yes/No

To,
The Presiding Officer,
Labour Court,



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Dr.D.NAGARJUN,J.

Vca/mvs.

Pre-Delivery order made in



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