



W.P.No.20747 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.20747 of 2004

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.. Petitioner

Versus

1. The Presiding Officer,
Principal Labour Court,
Chennai.

2. M/s.Coral Holdings India Pvt. Ltd.,
(Formerly known as M/s.Oriental Appliances Pvt. Ltd.)
Rep. by Managing Director .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorarified Mandamus calling for records from the 1st respondent relating to the impugned award, dated 11.12.2003 in I.D.No.344 of 1997 and quash the same and direct the 2nd respondent management to reinstate the petitioner in service with full back wages, continuity of service and other attended benefits.

For Petitioner : Mr.R.Rajaram

For Respondents : R1 - Court

: No Appearance for R2



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ORDER

This Writ Petition is filed challenging the award passed by the Principal Labour Court, Chennai, dated 11.12.2003 in I.D.No.344 of 1997.

2. The brief facts leading to the filing of the Writ Petition are that the petitioner claims to be a workman in the second respondent management. He was promoted as an Assistant Engineer on 29.03.1991. While so, the workman was transferred from the Vellore factory to Vellappanchavadi at Chennai on 10.04.1992. After his transfer, when the petitioner was working in Vellappanchavadi, on 22.03.1996, he was called by the General Manager, who demanded his resignation. The petitioner did not submit any resignation even though he was informed that the unit would be closed down. Even on 23.03.1996, the Security did not allow him inside the office. Therefore, aggrieved by the non-employment, the petitioner raised a dispute. Upon failure of conciliation, the petitioner filed the Claim Petition which was taken on file as I.D.No.344 of 1997.

3. The Claim Petition was resisted by the management by filing a counter statement. The workman examined himself as *W.W.1* and *Exs.W-1*



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to **W-8** were marked. On behalf of the management, *Sundaramurthy* was examined as *M.W.1* and **Exs.M-1** to **M-4** were marked. Thereafter, the Labour Court considered the question that whether the person involved is a workman within the definition of Section 2(s)(iv) of the *Industrial Disputes Act, 2004* or not. After extracting Section 2(s)(iv) of the Act, the Labour Court found that the petitioner is not a workman and non-suited the workman and dismissed the Claim Petition. Aggrieved by the same, the present Writ Petition is filed.

4. Heard *Mr.R.Rajaram*, learned Counsel for the petitioner. In spite of the notice being sent to the respondent management, the notice was not served and therefore, by an earlier order, this Court ordered substituted service and the publication is also filed. Today, the name of the second respondent is printed in the cause list. In spite of which, there is no representation on behalf of the second respondent management.

5. I have considered the submissions made by the learned Counsel for the petitioner and perused the material records of the case.



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6. On a perusal of the impugned award of the Labour Court, dated 11.12.2003, it can be seen that in paragraph No.9, the Labour Court extracted Section 2(s)(iv) of the *Industrial Disputes Act, 2004*. In paragraph No.10, it merely found that the petitioner was getting a sum of Rs.2,500/- as pay and therefore, he is not a workman. There is not even a finding that the petitioner is working in a supervisory or a managerial capacity. Merely because the petitioner is working as an Assistant Engineer, the Labour Court cannot come to an automatic conclusion.

7. On a perusal of the counter statement filed before the Labour Court, it is not even the plea of the management. Therefore, when it is neither pleaded and there is no evidence on record and when there is no finding that the person involved is in a supervisory or managerial function, merely on the quantum of wages, the petitioner cannot be non-suited. The learned Counsel for the petitioner would submit that the petitioner was working in a technical post as he was only an Assistant Engineer. Therefore, I am of the view that the award of the Labour Court is unsustainable.



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8. In the normal course, this Court would have remanded the matter back to the Labour Court to give further findings concerning the termination. Now, the industrial dispute itself was raised in the year 1997 and in view thereof, this Court itself is proceeding to take up the issue. Admittedly, when the Writ Petition is not being defended by the management and as per the evidence on record, when the workman was not allowed by the security from a particular date, it can also be seen that no other compensation whatsoever is being paid to the workman, the non-employment is erroneous in law. Therefore, in the normal course, the petitioner would be entitled for reinstatement with all back-wages. However, since the non-employment happened in the year 1997 and we are in the year 2024 and it is also stated that the workman is nearing the age of superannuation, I am of the view that instead of reinstatement with back-wages, this Court can order compensation in lieu of reinstatement with back-wages.

9. As per the judgment of the Hon'ble Supreme Court of India in ***O.P.Bhandari Vs. Indian Tourism Development Corporation Ltd. and Ors.***¹, normally, wages for 3.3 years, could be the compensation. In the

¹ AIR 1987 SC 111



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subsequent judgments, it was also held that some compensation has to be added for loss of future employment. On a calculation, the wages come to Rs.87,500/- being the 3.3 years of salary. Since the petitioner is also losing future employment, adding a further sum, I am of the view that instead of reinstatement with back-wages, if the second respondent management can be ordered to pay a total sum of Rs.1,50,000/- as compensation, the same would serve the ends of justice.

10. Accordingly, this Writ Petition is allowed on the following terms:-

(i) The award of the Principal Labour Court, Chennai, dated 11.12.2003 in I.D.No.344 of 199 shall stand set aside;

(ii) The petitioner's non-employment is termed as illegal, however, in lieu of reinstatement with back-wages, the second respondent management is directed to pay a compensation of Rs.1,50,000/-;

(iii) The said sum of Rs.1,50,000/- shall be paid within three months from the date of receipt of a copy of this order, failing which, thereafter, the same will be payable with further interest at the rate of 9% per annum from today till the date of realisation;

(iv) There shall be no order as to costs.



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Neutral Citation : no
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To

The Presiding Officer,
Principal Labour Court,
Chennai.

D.BHARATHA CHAKRAVARTHY, J.

grs

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