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W.P.No.2734 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 16.02.2024

ORDER PRONOUNCED ON : 19.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.No.2734 of 2020

N.Krishnan

... Petitioner

/Vs./

The Management,
Scintan Industries,
Ranipet,
Vellore District.

... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, after calling the records relating to the Award dated 17.09.2016 passed in I.D.No.48 of 2015, quash the same and consequently direct the respondent to reinstate the petitioner in service with continuity and with backwages and other attendant benefits.

For Petitioner : Mr.S.T.Varadarajalu

For Respondent : Mr.C.Manohar Gupta for
M/s.Gupta & Ravi

* * * * *



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ORDER

This writ petition is filed to call for the records relating to the Award dated 17.09.2016 passed in I.D.No.48 of 2015, quash the same and consequently direct the respondent to reinstate the petitioner with continuity of service alongwith backwages and other attendant benefits and to award costs.

2.The petitioner joined the services of the respondent as Helper on 10.03.2010. The petitioner put in more than three years of service and his last drawn salary was Rs.8,750/-. The petitioner was terminated from service on 30.09.2013 and as the termination order was passed without following the provision of Section 25F of the I.D. Act, the petitioner challenged the termination order as illegal before the Labour Court by raising a dispute in I.D.No.48 of 2015.

3.The respondent in its counter stated that the dispute was not maintainable as the petitioner was not a workman under Section 2(s) of the I.D. Act, as the petitioner in his own letter demanding settlement of his dues admitted that he was



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a Supervisor. It was stated that the petitioner as a Supervisor was in the habit of using abusive language against the workers and the petitioner was warned several times for his inappropriate behaviour. It was stated that it was preposterous to allege that the petitioner was denied employment on 19.01.2013, when the petitioner had worked and obtained wages till September, 2013. It was further stated that the petitioner was prevaricating states regarding his termination. The respondent further stated that due to some pollution control issues the respondent establishment was closed with effect from 01.02.2015 by Operation of Law and hence prayed for the dismissal of the dispute.

4.Before the trial Court, the petitioner examined himself as W.W.1 and filed three documents and the respondent examined one witness and marked six documents. The Labour Court dismissed the Claim Petition and hence the petitioner has filed the above writ petition.

5.The learned counsel for the petitioner submitted that the Labour Court failed to appreciate that the petitioner was dismissed illegally without notice and enquiry and in violation of Section 25 F of the I.D. Act. According to the learned



counsel, the findings of the Labour Court were perverse as they were not based on the evidence on record. The learned counsel further submitted that even without discussing the materials on record, the Labour Court concluded that the attitude of the petitioner resulted in termination. The learned counsel therefore submitted that the award of the Labour Court deserved to be set aside.

6.The learned counsel for the respondent on the other hand submitted that the Labour Court had appreciated the evidence in proper prospective and there was absolutely no perversity in the findings of the Labour Court. The learned counsel therefore submitted that the Award did not call for any interference.

7.I have heard bot the learned counsels and I have perused the materials placed on record.

8.At the outset, I place on record my anguish for the manner in which the Labour Court has dealt with the matter. The award of the Labour Court is perverse and there is total lack of understanding of the issues involved in the case. This Court though inclined to remand the matter for fresh consideration has not opted



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for the same, because of the age of the litigation.

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9.It is seen that the petitioner was employed in the respondent Management as Helper in Leather Assortment Section on 10.03.2010 and was drawing a salary of Rs.8,750/-. The petitioner's case was that he had worked continuously for three years and as he was terminated on 19.01.2013, without following the procedure contemplated under Section 25 F of the I.D. Act the termination was illegal and unlawful. The respondent's case on the other hand was that the petitioner worked as a Supervisor and therefore he was not a workman within the meaning of 2(s) of the I.D. Act and therefore the dispute was not maintainable.

10.Therefore, the first issue to be decided is whether the petitioner is a workman or not. Though the respondent in the counter stated that the petitioner was a Supervisor and the said fact was also admitted by the petitioner in his letter demanding settlement of dues, the said letter was not filed before the Labour Court. It is also pertinent to note here that M.W.1 in his cross-examination admitted that in Ex.M6, the petitioner was referred to as a workman. M.W.1 in his cross-examination also admits that no documentary evidence was filed to establish



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that the petitioner was employed as a Supervisor and that he discharged the work of Supervisor. In the light of the evidence of the respondent's witness, it is clear that the petitioner was only a workman and not a Supervisor and therefore, the petitioner was entitled to raise the dispute.

11.The petitioner initially claimed that he was terminated from service on 19.01.2013 and thereafter filed an amendment application in I.A.No.243 of 2015 for amendment of the date of termination as 30.09.2013 and the same was allowed by the Labour Court vide order dated 02.09.2015. Therefore the second issue to be decided is whether there was a violation of Section 25 F of the I.D. Act, while terminating the services of the petitioner. According to the petitioner, he had worked continuously for more than three years and therefore, his termination without prior notice and without following the procedure under Section 25 F of the I.D. Act was illegal.

12.It is the case of the respondent that the petitioner had voluntarily abandoned the services and hence there was no termination by the respondent. It is to be first seen if the petitioner put in 240 days of service in a calendar year to



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claim the benefit of Section 25 F. In this regard, it is pertinent to note that there was no dispute that the petitioner joined the services of the respondent on 10.03.2010. The dispute was only as regards whether he joined as a workman or a Supervisor. In view of the findings on the status of the petitioner, it is clear that the petitioner joined as a workman only. It is also admitted by the respondent that the petitioner abandoned the services from September, 2013. Therefore, it is clear that the petitioner worked continuously from March, 2010 to September, 2013, while so, it was incumbent on the respondent to follow the procedure contemplated under Section 25 F of the I.D. Act. The learned counsel for the respondent submitted that the petitioner abandoned the services and therefore, there was no question of the respondent terminating the services of the petitioner. It is seen from the counter filed in the claim petition that there is absolutely no plea for abandonment of services. Therefore, in my view in the absence of any plea the said contention cannot be sustained.

13.It is further pertinent to note that M.W.1 in his cross-examination categorically stated that the respondent had not sent any notice to the petitioner asking him to report for duty. Therefore the respondent has not established its plea



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of abandonment of services by the petitioner.

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14.The learned counsel for the petitioner relied on the following Judgments in support of his contentions.

“1.G.T. Lad and Others Vs. Chemical and Fibres of India Ltd., reported in 1979 (1) LLJ 257;

2.Santhosh Gupta Vs. State Bank of India reported in 1980 (2) LLJ 72;

3.Union of India Limited Vs. Shammi Bhan and Another reported in 1988 (1) CLR 1043 SC.”

15.The learned counsel for the respondent relied on the following Judgments in support of his contentions.

“1.Vijay S. Sathaye Vs. Indian Airlines Ltd., and Others reported in Manu/SC/0923/2013;

2.Chief Engineer (Construction) Vs. Keshava Rao reported in Manu/SC/0215/2005.”



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16.I have gone through the Judgments produced by the learned counsels for the petitioner as well as the respondent and the legal principles stated therein are not disputed. The petitioner having admittedly worked for more than three years gained the status of permanent employee and therefore, his services could not be terminated abruptly or arbitrarily without following the procedure under Section 25 F of the I.D Act. In the light of the above discussions, I find that the award passed by the Labour Court cannot be sustained.

17.The petitioner at the time of filing the Writ Petition was aged 38 years, therefore the petitioner was aged 29 years at the time of termination of his services. It cannot be said that the petitioner was sitting idle all these years. Hence on a conspectus of the entire facts, I am of the view that instead of directing the respondent to reinstate the petitioner with other consequential reliefs it would be appropriate to award compensation instead of reinstatement. In my view, a consolidated compensation of Rs.3,00,000/- can be awarded to meet the ends of justice.



18.I am fortified in my view by the Judgment of the Hon'ble Supreme Court in the case of ***Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another*** reported in **2009 (15) SCC 327**, wherein the Hon'ble Supreme Court held as follows:

“It is true that earlier view of this Court articulated in many decisions reflected the legal position that if the termination 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, this 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. Compensation instead of reinstatement has been held to meet the ends of justice.”

19.Though, this Court has found that the termination of the petitioner's services was illegal and certain facts are to be noted for the purpose of determining



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the relief to which the petitioner would be entitled to. The petitioner joined the services of the respondent on 10.03.2010 and was terminated on 30.09.2013.

Hence the petitioner worked only for 3 ½ years. The respondent in it's counter to the claim petition stated that due to unavoidable circumstances by operation of Law the respondent establishment was closed from 01.02.2015. The respondent even in the counter statement contended that the relief of reinstatement claimed by the petitioner became infructuous.

19.The respondent is therefore directed to pay a sum of Rs.3,00,000/- as consolidated compensation to the petitioner within a period of four weeks from the date of receipt of a copy of this order.

20.Accordingly, this writ petition stands disposed of with the above directions. However, there shall be no order as to costs.

19.03.2024

Index : Yes / No

Internet : Yes / No

Speaking Order/Non-speaking order

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To
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- 1.The Principal Labour Court,
Vellore,
Vellore District.
- 2.The Management,
Scintan Industries,
Ranipet,
Vellore District.



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N.MALA, J.

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**PRE-DELIVERY ORDER IN
W.P.No.2734 of 2020**

19.03.2024