



W.P.No.25902 of ----

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.01.2024

PRONOUNCED ON : 24.06.2024

CORAM:

THE HON'BLE Dr. JUSTICE D.NAGARJUN

W.P.No.25902 of 2015

M/s.TSV and Co.,
No.30/31, Alapakkam Main Road,
Kandar Nagar, Alapakkam,
Chennai-600 116.

...Petitioner

versus

1.K.Kathiravan

2.II Additional Labour Court,
Chennai.

... Respondents

Prayer: This Writ petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the second respondent dated 03.12.2014 in I.D.No.525 of 2010 and quash the same.

For Petitioner: M/s.Dakshayani Reddy

Senior Advocate for

M/s.S.Suneetha

For R1 : Mr.S.Ravi

O R D E R

This Writ Petition is filed seeking to issue writ of certiorari for quashing the award dated 25.03.2018 of I.D.525 of 2010 on the file Second Additional Labour Court, Chennai.



2. The facts in brief as per the affidavit are as under:

First respondent was working with the petitioner TSV & Co. He was terminated from service on some misconduct. The first respondent has raised false dispute as if he was terminated with effect from 15.02.2008. The petitioner company has contended before the Conciliation Officer that first respondent was not terminated from service and submitted that petitioner company is willing to provide him work as and when the first respondent report for the duty. A failure report was submitted by the Conciliation Officer. First respondent raised Industrial Dispute in I.D.No.30 of 2009. Before the Labour Court also the petitioner company has filed counter statement stating that the petitioner has not terminated the first respondent and always willing to take him for work. After filing of counter statement, the first respondent has accepted the offer and reported to the duty on 26.10.2009, thereby, a joint memo was filed in I.D.No.30 of 2009 and memo was accepted by the Labour Court and order was passed on 18.09.2009.

3. The first respondent who has reported to the duty on 26.10.2009, has worked for four days and during those days the first respondent was not punctual to the work. From 30.10.2009 onwards, the first respondent remained absent without obtaining leave or prior permission. The petitioner has sent letters to the first respondent on 04.11.2009, 17.11.2009, 30.11.2009 asking him to report for the duty, however, without reporting to the duty, the first respondent has raised the Industrial Dispute before the second respondent as if he was illegally terminated from service and that the petitioner has reinstated him only as Final



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Checker which was lesser post than the one which the first respondent was holding as Quality Controller. The second respondent Labour Court has held that the petitioner had never offered employment in true letter and spirit, the termination of first respondent was bad in law and ordered for backwages of Rs.3.00 lakhs, along with closure compensation and finally directed the petitioner to pay a sum of Rs.5.00 lakhs as compensation in lieu of employment. Aggrieved by the same, the present Writ Petition is filed.

4. It is submitted by the learned counsel for the petitioner that the second respondent has failed to appreciate the letters addressed by the petitioner calling upon the first respondent to report for the duty. The second respondent also failed to consider that first respondent has raised similar dispute earlier in I.D.No.30 of 2009 and also took similar plea in this I.D.No.525 of 2010 and that he is a habitual absentee. The second respondent/Labour Court has failed to consider that the first respondent has failed to file any document to show that he was asked to work as a Final Checker, instead of Quality Controller. The second respondent. It is also finally submitted that the second respondent ought not to have ordered compensation of 5.00 lakhs, as petitioner company was closed in the year 2010 which is evident from the letters issued by the petitioner to the Assistant Commissioner, Employees Provident Fund, which is marked as M.15 and letter sent to the Deputy Chief Inspector of Factories, which is marked as M.17 before the Tribunal.



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5. No counter affidavit is filed by the learned counsel for the respondent.

6. Heard the learned counsel for the first respondent who has submitted that the petitioner was working as a Quality Controller in the petitioner company and all of a sudden, he was terminated by the petitioner, thereby, he has raised Industrial Dispute in I.D.No.30 of 2009, which was ended in compromise and as per the terms of compromise, he has joined the duty on 26.10.2009, at that time instead of giving his earlier position as Quality Controller, he was asked to work as a Final Checker and that to he was not interest with any work, instead asked to sit in a chair in front of the chambers of General Manager and humiliated him from 26.10.2009 to 30.10.2009. He has further submitted that he wanted to meet the General Manager on 30.10.2009, to inform him about the insult and indignity suffered by him, on making such complaint, the General Manager asked the first respondent to leave the company premises and on the following day i.e on 31.10.2009, when he went to report for his duty, he was not allowed to enter inside the premises of the company, thereby, he was terminated from service with effect from 31.10.2009 without conducting enquiry which is violation of Section 25(F) of the Industrial Dispute Act.

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

8. On going through the impugned award passed by the second respondent, it is clear that the Labour Court has not properly appreciated the evidence. The contention of the first respondent is that he has raised



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the Industrial Dispute earlier in I.D.No.30 of 2009 and the same was ended in compromise. In response to the said compromise, the first respondent reported for the duty on 26.10.2009 and continued to work till 30.10.2009, but he was not given the job of Quality Controller, instead he was given a job of Final Checker and was terminated from 31.10.2009 without any reason. The oral evidence of the first respondent was believed by the second respondent/Labour Court and gave a finding that the first respondent was terminated from service, but it is the case of the petitioner that he was never terminated, even on earlier occasion also the first respondent has made a similar complaint and raised Industrial Dispute in I.D.No.30 of 2009 and in the said I.D also the petitioner company has submitted the first respondent was not terminated and expressed their willingness to take back the first respondent in service as and when he comes and filed a memo to that extent and thereby the first respondent reported for duty on 26.10.2009. It is also the case of the petitioner that subsequently the first respondent himself stopped coming for duty from 31.10.2009.

9. For the reasons known to the second respondent/Labour Court, this part of evidence is not believed. The petitioner has not filed any document before the Labour Court to substantiate any of his contentions including the fact that he was asked to work as Final Checker instead of Quality Controller. If really the first respondent was offered the post of Final Checker and not as Quality Controller there should have been some proceedings. He should have produced some witness in support of his contention. In the contrary, the petitioner company has not only examined their representatives but also filed copies of documents to show that the



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petitioner management has issued letters to the first respondent subsequent to his absence on three different dates ie on 04.11.2009, 17.11.2009 and 30.11.2009 and these letters were not disputed by the first respondent. If really the petitioner has terminated the first respondent orally without any reason, there was no necessity for the petitioner to issue the letters dated 04.11.2009, 17.11.2009 and 30.11.2009. Even if the petitioner has terminated the first respondent, still basing on the letters issued the first respondent should have come back and reported to the duty. It is not the case of the first respondent that eventhough he wanted to report for duty basing on the letters the petitioner has not permitted him to report for the duty. On comparing the evidence of both side, the evidence of first respondent is only oral. The second respondent/ Labour Court should have considered the evidence of the petitioner, there is no reason explained by the Labour Court for rejection of the documentary evidence filed by the petitioner by way of letters addressed to the first respondent. Therefore, the finding of the Labour Court that the first respondent was terminated from service cannot be accepted.

10. Further, admittedly, the petitioner company was closed with effect from 31.05.2010 and the letters addressed by the petitioner to the first respondent which was marked as Exs.M.15 and M.17 would substantiate the contention of the petitioner. The Labour Court has awarded a compensation of Rs.5.00 lakhs. The observation of Labour Court that the first respondent was terminated in the year 2009 and his monthly salary was Rs.4,500/-. So the backwages were calculated as Rs.3.00 lakhs. In addition to that Rs.2.00 lakhs toward as closure



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compensation, thereby total compensation directed to pay is Rs.5.00 lakhs.

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11. According to the Labour Court, the first respondent was terminated in the year 2009. It is the contention of the first respondent that he attended the office till 30.10.2009 and on 31.10.2009 he was terminated from service. If that date is taken into consideration, the other dated required to be taken is the date of closure of the petitioner company which is 31.05.2010. This is not a case for seeking closure compensation, it is the specific case of the first respondent that the petitioner has terminated him illegally without following the procedure as contemplated under the Industrial Dispute Act. Therefore, this case has to be considered only to that extent. Thereby, even if, the backwages are required to be ordered, it should be ordered only from 31.10.2009 to 31.05.2010 i.e, only for a period of seven months, the first respondent is entitled for backwages at the rate of Rs.4,500/- and in all the first respondent can be awarded only Rs.31,500/- towards backwages. However, as already observed this Court is not in agreement with the finding of the Labour Court that the first respondent was terminated from service by the petitioner. In view of the above, the impugned orders of the Labour Court dated 03.12.2014 in I.D.No.525 of 2010 are perverse and the same is required to be interfered with.

Dr.D.NAGARJUN, J.

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12. In the result, the Writ Petition is allowed. The orders in

I.D.No.525 of 2010 dated 03.12.2014 are hereby set aside. No costs.

24.06.2024

Index : Yes / No
Speaking/Non-speaking Order
Neutral Citation: Yes/No
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To

II Additional Labour Court,
Chennai.

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