



WEB COPY



W.P.No.2182 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	6/3/2024
Delivered on	4/6/2024

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Writ Petition No.2182 of 2014

a n d

M.P.No.1 of 2014

1. The Management

Arkema Peroxides India Private Limited
Head Office, I Floor
Balmer Lawrie House
628 Anna Salai
Teynampet
Chennai 600 016.

2. The Vice President

Arkema Peroxides India Private Limited
Semmankupam
Cuddalore.

...

Petitioners

Vs

1. The Presiding Officer

Labour Court
Cuddalore.

2. B. Kaliamoorthy (Deceased)

3. K. Ramkumar



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4. K. Chithra

5. K. Mohan

6. K. Suganya

7. B. Sagunthala

...

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorari to call for the records of the first respondent in I.D.No.36 of 2011 and quash the Award dated 9/10/2013.

For petitioner

...

Mr.P.Raghunathan
for Mr.T.S.Gopalan

For respondents

...

Labour Court – R.1

Mr.D.Ravichandran
for R.2

Mr.P.Dinesh Kumar
for R.R.3 and 6.

Mr.S.Saravana Kumar
for R.7.

ORDER

The petitioner Management has filed the writ petition seeking to set aside the orders passed in I.D.No.36 of 2011. During the pendency of



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WEB COM this writ petition, the second respondent died and his family members are brought on record as respondent Nos.3 to 7.

2. The facts of the case in brief are as follows:-

The petitioner Company is having a factory in Cuddalore where it manufactures various grades of organic per oxide for different applications. The second respondent was appointed as a Transport Safety Officer (TSO), in the Supervisory/Managerial cadre since he has worked as Air Craftsman in Indian Air Force.

3. On 29/12/2008, Srinivasan and Antony, the crew of a Truck drove a vehicle bearing Registration No.TN-37-C-8376, carrying a load of the petitioner's Company products to Delhi. Second respondent has accompanied the said vehicle as Transport Safety Officer. After delivering the product on 5/1/2009, when they were returning on 6/1/2009, at 5.30 p.m., second respondent requested the Driver to stop the vehicle in the highway to attend his nature call. No sooner the vehicle was stopped, second respondent drank alcohol and further the second



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respondent has committed irregularity in purchase of fuel to the transport vehicle.

4. When drinking of alcohol by the second respondent came to the knowledge of the petitioner Management, in the last week of April 2009, second respondent was asked to submit his resignation. Since the second respondent has not submitted his resignation, the petitioner put an end to the employment of the second respondent and he was terminated. After the termination on 18/5/2009, the second respondent had applied for settlement of PF dues and he received gratuity on 10/6/2009 and PF dues on 8/4/2010.

5. Challenging his termination dated 18/5/2009, the second respondent had filed a petition on 3/9/2009, before the Conciliation Officer, invoking Section 2 A (2) of the Industrial Disputes Act. On failure of conciliation, he has taken the dispute to the first respondent for adjudication and the same was numbered as I.D.No.36 of 2011. I.D.No.36 of 2011 was allowed on 9/10/2013, directing the petitioner Company to reinstate the second respondent in service and with continuity of service and backwages and other benefits. Being aggrieved,



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the petitioner Management has come forward with the instant writ petition.

6. Heard Mr.P.Raghunathan, learned counsel for the petitioner, Mr.D.Ravichandran, learned counsel for R.2, Mr.P.Dinesh Kumar, learned counsel for the respondents 3 and 6 and Mr.S.Saravana Kumar for R.7.

7. Learned counsel appearing for the petitioner submitted that it is open to the employer to pass a punitive order of termination without holding the enquiry and justify the same before the Adjudicating Authority. The second respondent was not a workman and the dispute raised by him was not maintainable. Therefore, the petitioner is not in a position to pay the backwages in terms of the award.

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

9. The second respondent has challenged the termination order and the same was set aside by the labour Court on two grounds, viz.,



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(i). The second respondent is a workman, thereby, Industrial

Disputes Act applies.

(ii). Enquiry was not conducted in the manner it was required to be conducted.

10. During the course of pendency of writ petition, the petitioner Management deposited 50% of the backwages about Rs.5 lakhs which are still pending. The petitioner Company contends that by virtue of nature of duties of the second respondent, he was not a workman and that has retired from Indian Army and he was working in the petitioner Management in the supervisory cadre. Therefore, order of the first respondent is erroneous.

11. Learned counsel appearing for the petitioner has further submitted that in case 50% of the backwages which are already deposited in the Court are given in favour of the second respondent's family members, petitioner Company has no objection.

12. The labour Court has framed the following issues:-



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(i). Whether the petitioner is a workman according to the definition of the term “workman” in the Industrial Disputes act.

(ii). Whether the petitioner went on medical leave after proper intimation to the management or he just left the service on his own without any intimation.

(iii). Even if he left the services on his own, whether the dismissal is proper as it was done without inquiry and whether the respondents have proved the alleged misconduct in this Court.

(iv). Whether the dismissal amounts to retrenchment.

(v). If so whether the petitioner would be entitled to the benefits of Chapter V-A of the Industrial Disputes Act.

(vi). Whether the dismissal, the petitioner should be set aside and whether the petitioner is entitled to reinstatement with continuity of service and back wages and other benefits.

13. The Labour Court, Cuddalore has allowed I.D.No.36 of 2011 with a direction to the petitioner Management to reinstate the second respondent in service with backwages and continuity of service with all other attendant benefits.



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14. During the course of argument, learned counsel appearing for the petitioner has submitted that second respondent was designated as Safety Officer and he is not a workman, as defined under Section 2 (s) of the Industrial Disputes Act and thereby, labour Court has no jurisdiction to entertain the Industrial Disputes.

15. I have gone through the impugned order of the labour Court, carefully. There is no material placed before the labour Court in I.D.No.36 of 2011, by the petitioner Management to show that the second respondent was working in the Managerial/supervisory cadre, except the title as Safety Officer. The second respondent was never supervising any of the employees. He was not taking any decisions. He was in fact reporting to the Management on every trip, he has accompanied. Admittedly, as a Safety Officer, second respondent was expected to travel in a truck containing certain chemicals being manufactured by the petitioner and to see that they are safely unloaded at the required destination.

16. The nature of the duty as admitted by the petitioner do not in any way given inference that second respondent was working in



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Supervisory cadre. On the contrary, all the activities dealt with by the second respondent as Safety Officer go to show that he was only working as any other worker. The labour Court having analysed all these aspects and other evidence placed before the Court has rightly concluded that second respondent was not working in a managerial or supervisory cadre and he was only a workman, as required under Section 2 (s) of the Industrial Disputes Act. The other aspects were not keenly and seriously dealt with by the petitioner in this writ petition.

17. On the contrary, learned counsel appearing for the respondents 3 to 7 has submitted that respondents are not pressing for continuity of service and other benefits except 50% of the backwages which were already deposited. As per the interim orders of this Court, dated 27/1/2014, 50% of the backwages to the tune of Rs.5 lakhs was deposited on 5/4/2014.

18. The labour Court, while considering the issues has found that the termination of the second respondent without conducting any enquiry is irregular and it amounts to retrenchment under Section 25 F of the Industrial Disputes Act, thereby retrenchment compensation should have



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been given by the petitioner Management and also further held that on account of non-payment of retrenchment compensation, second respondent is entitled for reinstatement.

19. As already observed, second respondent is no more. Since second respondent is no more, he cannot be reinstated back into service, thereby, this relief sought for by the second respondent becomes infructuous. An amount of Rs.5 lakhs has already been deposited which is equivalent to 50% of the backwages.

20. The other relief sought for by the respondents 3 to 7 which were granted by the labour Court in the impugned award are continuity of service and payment of backwages. In so far as continuity of service, since this Court has come to the conclusion that second respondent is a workman and that labour Court has rightly come to the conclusion that second respondent is entitled for continuity of service from the date of dismissal until his death or superannuation, whichever is earlier.

21. In respect of backwages are concerned, since learned counsel for the petitioner has already submitted that they don't have objection if 50%



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of the backwages are given to the family members of the second respondent, i.e., respondent Nos.3 to 7, the said order is hereby made absolute. Though the labour Court has directed to pay 100% backwages, this Court considering the circumstances, hereby, orders 50% of the backwages, thereby, order of payment of backwages is confined only to 50% of the backwages which were already deposited and respondent Nos.3 to 7 are entitled to withdraw 50% of the backwages along with interest accrued from the labour Court.

22. In view of the above, **writ petition is partly allowed**, modifying the order of the labour Court to that of continuity of service and payment of backwages to the extent of 50%. No costs. Consequently, the connected Miscellaneous Petition is closed.

4/6/2024

mvs.

Index: Yes/No

Neutral Citation: Yes/No



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To

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1. The Presiding Officer
Labour Court
Cuddalore.



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Dr.D.NAGARJUN,J

mvs.

Pre-delivery order made in
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