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W.P.No.2816 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **01.07.2024**

CORAM

THE HONOURABLE Ms. JUSTICE **P.T.ASHA**

W.P.No.2816 of 2014

and

M.P.Nos.1 of 2014 and 1 and 2 of 2015

The Managing Director,
Norton Granites and Spinners Pvt Ltd,
Pappanchatram,
Chennai – 602 107.

... Petitioner

-VS-

1.The Presiding Officer,
I Additional Labour Court,
Chennai – 104.

2.Aranganathan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records in I.A.No.66 of 2013 in I.D.No.584 of 2005 on the file of the I Additional Labour Court, Chennai, quash the order dated 19.07.2013 passed in I.A.No.66 of 2013 in I.D.No.584 of 2005.



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For petitioner : Mr.R.Gowtaman
R1 : Labour Court
For R2 : No appearance

ORDER

The above writ petition has been filed challenging the order passed by the first respondent *viz.*, I Additional Labour Court, Chennai, in and by which, the Presiding Officer had dismissed I.A.No.66 of 2013 in I.D.No.584 of 2005 which was filed to set aside the *ex parte* award dated 04.01.2013.

2. The brief facts of the case as pleaded are set out hereinbelow.

2.1. The second respondent workman was employed under the petitioner herein from 14.04.1994 and he had been diligently working in the said concern. After 10 years of service, all of a sudden, the second respondent was denied employment without any



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reasonable cause on 13.03.2004. A day prior to that, he had been asked to encash a cheque at a local bank where there was a theft of the said cheque amount after encashment. The second respondent had immediately lodged a complaint with the local police and also filed an FIR. However, the petitioner demanded the second respondent to pay the said money and refused to give him work.

2.2. The second respondent had sent a letter to provide him a job which was refused by the petitioner. Considering the non-employment, the second respondent raised a case under Industrial Disputes Act challenging the denial of employment by the management. The second respondent had also filed a claim petition before the first respondent challenging his termination and seeking reinstatement with all backwages and other attendant benefits. The last drawn salary of the second respondent was Rs.1,840/- per month.



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2.3. A counter was filed by the petitioner herein denying the averments and allegations contained in that case. The petitioner subsequently denied the fact that the management had refused to offer employment to the second respondent. It was the contention of the petitioner that it was the second respondent who had absconded out of guilty conscience due to misappropriation of Rs.10,000/-. It was only after the insistence of the petitioner, the second respondent had lodged a complaint. Therefore, the petitioner would submit that the second respondent was not entitled to any relief.

2.4. Except for filing a counter, the petitioner had not let in either oral or documentary evidence. On the other hand, the second respondent had got into the box and marked exhibits viz., Exs.W1 to W4 which included the FIR that had been filed by him about the theft of money.

3. The first respondent had taken into account the fact that



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the petitioner had not taken any steps to hold a domestic enquiry against the second respondent for the alleged theft of cash and the only defence that has been taken by the petitioner was that due to his guilty conscience of having misappropriated the money, the second respondent had himself stopped attending work. Therefore, the first respondent *viz.*, I Additional Labour Court had held that the petitioner has not terminated the service of the second respondent by following the procedure laid down under Section 25-F of the I.D. Act. Ultimately, by an award dated 04.01.2013, the first respondent had proceeded to direct the petitioner to reinstate the second respondent into service with 50% of backwages, continuity of service and all other benefits.

4. Thereafter, the petitioner had come forward with an application for setting aside the *ex parte* award dated 04.01.2013. In the affidavit filed in support of the application, the petitioner would state that on 20.12.2012, the case was posted for cross-examination



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of W.W.1 and on that day, the petitioner's counsel had attended the marriage of his relative at Salem and the matter was posted for orders on 04.01.2013. On account of non cross-examination of W.W.1, the petitioner was set *ex parte* and an *ex parte* award was passed. The non-appearance of the petitioner was neither wilful nor wanton. Therefore, the petitioner sought to have the *ex parte* order set aside.

5. The second respondent filed a counter *inter alia* denying the allegations contained in the application. The second respondent would submit that several opportunities were given to the petitioner to contest the case, however, the petitioner had failed to utilise the opportunities. It is the contention of the second respondent that on 18.07.2011, the matter was posted for cross-examination of workman by the petitioner. Thereafter, the matter was adjourned to 25.07.2011, 03.08.2011, 16.08.2011, 07.09.2011, 09.11.2011 and finally, on 04.01.2013. In fact, even in the year 2009, the matter was



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adjourned several times for cross-examination of W.W.1 viz., on 11.08.2009, 18.08.2009, 01.09.2009, 14.09.2009, 17.09.2009 and 05.10.2009. The petitioner was set *ex parte* and he had, thereafter, filed an application for restoration and the same was also ordered on 16.08.2010. Thereafter, several opportunities were given to the petitioner to cross-examine W.W.1 viz., on 20.10.2010, 26.11.2010, 31.12.2010, 08.02.2011, 15.02.2011, 25.02.2011, 31.03.2011, 12.05.2011, 09.06.2011 and 28.06.2011. Since for over three years, the petitioner had not been cross-examined the workman, by an order dated 19.07.2013, the first respondent had dismissed the application stating that no satisfactory reason had been given by the petitioner for not considering the second respondent.

6. Challenging this order dated 19.07.2013, the petitioner had moved this Court.



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7. Meanwhile, the workman had also filed a claim petition under Section 33-C of the Industrial Disputes Act.

8. Heard the learned counsel on either side and perused the materials available on record.

9. A reading of the impugned order would clearly show how the petitioner has failed to cross-examine the witness, despite the fact that several opportunities spanning a period of nearly three years had been given. No satisfactory reason had been given for the non-appearance of the petitioner. In fact, in the affidavit filed in support of the petitioner, reason has been given only for one date of adjournment and with reference to the other dates, there is silence on the part of the petitioner. Therefore, the first respondent has rightly gone through the evidence and dismissed the application for setting aside the award in I.D.No.584 of 2005.



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In these circumstances, I see no reason to interfere with the impugned order. Accordingly, this writ petition stands dismissed.

Consequently, connected M.Ps. stand closed. No costs.

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Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
ssa

To

The Presiding Officer,
I Additional Labour Court,
Chennai – 104.



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P.T.ASHA, J.,

ssa

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