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W.P.No.33241 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.No.33241 of 2019
and WMP.No.33701 of 2019

1.The Management,

M/s. Hindusthan Hard wares,
356, Patel Road,
Ram Nagar,
Coimbatore.

2.The Management,

M/s. Hindusthan Steel Corporation,
255, R.H.S. Road,
Ram Nagar,
Coimbatore.

... Petitioners

vs.

R.Punithan

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the entire records pertaining to the Award made in I.D.No.95 of 2015 dated 30.11.2018 passed by the Principal Labour Court, Coimbatore and to quash the same.



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For Petitioners : Mr.K.Kulandaivelu
(Change of Vakalat)

For Respondent : Mr.V.Anandhamurthy
Government Advocate

* * * * *

ORDER

This Writ Petition is filed to call for the entire records pertaining to the Award made in I.D.No.95 of 2015 dated 30.11.2018 passed by the Principal Labour Court, Coimbatore and to quash the same.

2.The Management has filed the writ petition. The respondent was appointed as a workman under the petitioner in the year 1990. On 31.08.2014, the first petitioner directed the respondent to work with the petitioner's sister concern, i.e. the second petitioner herein and the respondent joined the second petitioner concern on 01.09.2014. While so, the respondent without any information or intimation remained absent from 28.02.2015 to 03.03.2015. The respondent reported for duty on 04.03.2015 and thereafter did not report for duty. On



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20.03.2015, the petitioner sent a show cause notice to the respondent asking him to

report for duty and the respondent though sent a reply on 28.03.2015, did not report

for duty. On 09.04.2015, the petitioner again sent a letter to the respondent asking

him to join duty but the respondent without any valid reason abstained from duty.

Thereafter the respondent raised a dispute before the Labour Officer and on failure

of the conciliation proceedings, the respondent raised a dispute before the Labour

Court, which was registered as I.D.No.95 of 2015. The Labour Court on

consideration of the entire materials on record passed an award directing the

petitioner to pay the respondent a lump sum compensation of Rs.4,00,000/- in lieu

of reinstatement and backwages within a period of one month from the date of

publication of the award, failing which the said amount was to be paid with interest

at the rate of 6% per annum till the date of payment. Aggrieved by the award, the

petitioners/Management filed the above writ petition.

3.The respondent's case was that he went on leave from 28.02.2015 to 03.03.2015 on permission of the respondent and thereafter when he reported for



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duty on 04.03.2015, he was prevented from entering the petitioner's concern. The

respondent further stated that the petitioner forced him to sign a settlement but he refused. The respondent therefore stated that the contention of the petitioner that he went on unauthorised leave was untenable.

4.The learned counsel for the petitioners submitted that the award of the Labour Court was perverse and therefore, the same deserved to be set aside.

5.The learned counsel for the respondent on the other hand submitted that the Labour Court on proper appreciation of the evidence passed the award and therefore, there was absolutely no infirmity in the same.

6.I have heard both the learned counsels and I have perused the materials placed on record.



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7. The undisputed fact is that the respondent was employed as a workman in the petitioner's concern. It is the case of the petitioners that the respondent remained on unauthorised absence from 28.02.2015 to 03.03.2015 and from 04.03.2015 onwards, he did not report for duty.

8. The respondent's case on the other hand was that he obtained permission for leave from 28.02.2015 to 03.03.2015, from the petitioners over phone and thereafter, when he reported for duty on 04.03.2015 he was informed by the petitioners that he was terminated from service. According to the respondent, it was the petitioners, who prevented him from reporting for duty on 04.03.2015.

9. The only point to be decided is whether the respondent's absence was unauthorised or not?

10. The respondent's case was that he was prevented from reporting for duty on 04.03.2015 by the petitioner when he went to the petitioners concern on the said



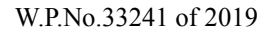
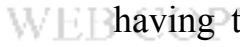
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date. According to the respondent he obtained permission for leave from

28.02.2015 to 03.03.2015 and thereafter, when he reported for duty on 04.03.2015,

he was prevented from joining duty. Therefore according to the respondent his absence was not unauthorised.

11.The petitioners on the other hand stated that the respondent remained absent without permission between 28.02.2015 and 03.03.2015 and thereafter from 04.03.2015 onwards he remained absent. The petitioner further stated that inspite of several notices calling upon the respondent to report for duty, he failed to report for duty and therefore, the respondent's absence was unauthorised. It is seen that on 20.03.2015, a letter was sent by the petitioners' to the respondent stating that he was on unauthorised absence from 28.02.2015 to 03.03.2015. In the said letter the respondent was called upon to report for duty within 10 days. The respondent sent a reply on 28.03.2015 justifying his absence from 28.02.2015 to 03.03.2015 on the ground that he had obtained permission over phone from the petitioners'. The respondent further stated that on 04.03.2015, he was prevented from reporting for



12. At this point it would be relevant to note that contrary to his earlier stand that his absence between 28.02.2015 to 03.03.2015 was with permission, the respondent for the first time before the Labour Court took a stand that due to ill-health he did not report for duty prior to 04.03.2015. Even for this change in stance, no evidence was filed. The Labour Court failed to note that the respondent had not filed any iota of evidence to show that for health reasons he was not able to report for duty. The Labour Court failed to note that the respondent had failed to establish that his absence between 28.02.2015 and 03.03.2015 and from 04.03.2015 was with proper permission.



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13. The evidence on record shows that right from 20.03.2015, the petitioners were constantly requesting the respondent to report for duty stating that his absence between 28.02.2015 and 03.03.2015 was without permission but the respondent without any justification abstained from duty. The Labour Court contrary to the evidence on record held that the petitioners ought to have issued notice to the respondent about his unauthorised absence and in the absence of the same the respondent was entitled to compensation in lieu of reinstatement. The Labour Court in my view failed to note that the petitioners vide letters dated 20.03.2015, 09.04.2015 and before the Labour Commissioner had requested the respondent to join duty, but the respondent for reasons best known to him abstained from joining duty. The fact that the petitioners requested the respondent to join duty coupled with the fact that the respondent had not been able to establish that he had obtained permission for leave between 28.02.2015 and 03.03.2015 and that he was prevented from reporting for duty on 04.03.2015 clearly establishes that the finding of the Labour Court is against the evidence on record and hence perverse.



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14. I am therefore of the view that the award of the Labour Court is unsustainable as it is not based on proper appreciation of the materials placed on record. The Labour Court has on misplaced sympathy erroneously found that the period of unauthorised absence was only three days, over looking that there was absolutely no evidence filed by the respondent to show that his absence from 28.02.2015 to 03.03.2015 and from 04.03.2015 onwards was authorised by the petitioners. I therefore find that the award passed by the Labour Court is unsustainable and the same is set aside.

15. Accordingly, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition stands closed.



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Index : Yes / No

Internet : Yes / No

Speaking Order/Non-speaking order
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To

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N.MALA, J.

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