



W.P.No.3626 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2025

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.3626 of 2015

and

M.P.No.1 of 2015

The Management of Sanco Transport Ltd.,
No.46, Moore Street,
Parrys Corner, Chennai – 600 001.
Represented by its
Managing Director
V.Upendran

... Petitioner

Vs.

1.The Presiding Officer,
First Additional Labour Court,
City Civil Court Building,
Chennai – 106.

2.S.Jayakumar

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the Award dated 05.09.2014 made in I.D.No.9 of 2012 on the file of the first Respondent and quash the same.

For Petitioner : Mr.A.S.Thambuswamy

For Respondents : Labour Court [R1]
: No appearance [R2]



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ORDER

WEB COPY Aggrieved by the award dated 05.09.2014 passed by the 1st respondent/Labour Court in I.D.No.9 of 2012, the management has filed the present writ petition.

2. The case of the petitioner is that it was engaged in the business of loading and unloading the containers that arrived to its clients at Chennai Port belonging to its clients and arrange to transport the same to its yards to Thiruvetriyur. In the year 1994, the 2nd respondent was appointed as a Tally Clerk in Thiruvottiyur Branch of the petitioner management. One container belonging to M/s.Siddartha Enterprises containing valuable metal scraps was kept in the said Yard for delivery. The petitioner, when M/s.Siddartha Enterprises approached them with proper documents on 18.02.2009, could not deliver the container as the same was found to be missing. All efforts were made by the petitioner to trace the Container in the year failed. The petitioner management made a police complaint before the law enforcing agency and on investigation, it was found that the 2nd respondent had colluded with some outsiders and was responsible for the theft of the container from its yard. On that basis, the law enforcing agency registered a criminal case as against the 2nd



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respondent, thereby disciplinary proceedings was initiated against him and the same ended in order of dismissal. Aggrieved by the same, the 2nd respondent had raised an industrial dispute in I.D.No.9 of 2012 u/s 2A(2) of the Industrial Disputes Act, 1947 (in short 'the Act') and the same was partly allowed by the labour court, vide impugned award dated 05.09.2014, setting aside the order of dismissal passed by the petitioner management and directed the petitioner to pay 75% of the backwages. Challenging the same, the present writ petition has been filed.

3. Learned counsel appearing for the petitioner submitted that the 2nd respondent did not participate in the disciplinary enquiry conducted, however on the basis of the police complaint, the enquiry officer drawn a adverse inference as against him and thereafter, the order of dismissal was passed in respect of 1st charge. In respect of 2nd charge, during the course of disciplinary enquiry, he did not attend the duty, thereby initiated departmental enquiry and the same ended in dismissal. If the enquiry is not conducted if the 2nd respondent not participate in the enquiry, it is for the petitioner management to let evidence before the labour court. However, such an opportunity was not given to the petitioner management. Without providing opportunity to the petitioner



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management to let evidence, the labour court draw a adverse inference as against the petitioner management and set aside the order of dismissal passed by the petitioner, which is wholly unsustainable. Further, he submitted that it is for the 2nd respondent to establish before the labour court that he was not gainfully employed anywhere at the relevant point of time, however, in the absence of any averment with regard to gainful employment in the claim petition, the labour court ordered 75% of the backwages, which is also wholly unsustainable. Accordingly, he prays for allowing this writ petition.

4. Though name of the 2nd respondent has been printed in the cause list, none appeared on behalf of the 2nd respondent. Considering the pendency of this writ petition, this Court is inclined to dispose of this writ petition based on the materials available on record.

5. The employee-employer relationship is not in dispute. It is alleged that the 2nd respondent had colluded with some outsiders and committed theft of the container belonging to M/s.Siddartha Enterprises from the petitioner's yard for monetary gains. For the said misconduct, the petitioner management has initiated disciplinary proceedings against



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the 2nd respondent and dismissed him from service. When such a allegation was made against the 2nd respondent, it is for the petitioner management to let evidence before the enquiry officer by either examining M/s.Sidhartha Enterprises or the law enforcing agency. Further, without providing any opportunity to the 2nd respondent, based on the police complaint, the enquiry officer drawn a adverse inference against the 2nd respondent. The petitioner management did not dispute the fact that the criminal case ended in acquittal. When such being the position, on the basis of police report, drawing adverse inference against the 2nd respondent is wholly unsustainable. In respect of the misconduct of unauthorized absence, when a criminal case is pending against a person, naturally he cannot attend the duty regularly, for which, the petitioner management has dismissed the 2nd respondent from service, which is also wholly unsustainable. Therefore, the labour court has set aside the order of dismissal passed by the petitioner management, which cannot be said to be perverse, illegal or arbitrary.

6. Insofar as the 75% of the backwages awarded by the labour court, this Court perused the claim statement filed by the 2nd respondent, which reveals that he has not pleaded anything with regard to his gainful



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employment during his non-employment period. In the absence of any such pleadings, ordering 75% of the backwages in favour of the 2nd respondent is *per se* unsustainable.

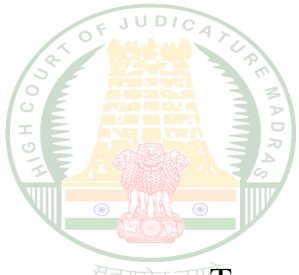
7. In view of the misconduct committed by the 2nd respondent, there was a strain relationship in between the petitioner management and the 2nd respondent-workman and also considering the service rendered by the 2nd respondent, this Court with a view to give quietus to the whole issue, directs the petitioner management to pay lumpsum compensation of Rs.4,00,000/- (Rupees Four Lakhs only) to the 2nd respondent in full quit, within a period of four (4) weeks from the date of receipt of a copy of this order.

8. With the above observations and direction, this Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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To
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The Presiding Officer,
First Additional Labour Court,
City Civil Court Building,
Chennai – 106.



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M.DHANDAPANI, J.

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