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W.P.No.24566 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2025

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.No.24566 of 2024
and
W.M.P.No.26886 of 2024

M/s.S.S.K.Textiles,
Selambarayampalayam,
C. Pudur (Post),
Karumathampatti Via,
Coimbatore – 641 059,
Represented by its Proprietor,
S.K.Subramanian

... Petitioner

Vs.

S.Alexpandian

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the Additional Labour Court, Coimbatore in I.D.No.38 of 2022 and quash its order dated 07.12.2023.

For Petitioner : Mr.Ananda Gopalan
for M/s.Agam Legal

For Respondent : Mr.Ajoy Khose



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ORDER

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This Writ Petition has been filed by the petitioner seeking for a Writ of Certiorari, to call for the records of the Additional Labour Court, Coimbatore in I.D.No.38 of 2022 and quash its order dated 07.12.2023.

2. The case of the petitioner is that, it is a textile mill and has got a spindle capacity of 12,000. The petitioner mill was started in the year 1994 and has got a complement of 100 permanent workmen besides casual workmen engaged on need basis. The respondent was employed as a JCB Operator (Driver). On 03.07.2021, the respondent requested one month leave on account of the demise of his father, however, the petitioner granted him leave for a specified period as the request of the respondent seeking one month leave was unusual and was infeasible. However, even after completion of the funeral he did not report for work and nothing was heard from him. While so, the respondent has sent a letter through RPAD to the management with false allegations and also raised the dispute before the Conciliation Officer alleging that as if he was denied employment by the petitioner with effect from 20.08.2021. On 09.12.2021, the petitioner sent a reply refuting the allegations of the



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respondent and further instructed the respondent is free to report for duty as he was not terminated by the petitioner at any point of time. However, even after the above said advice letter of the petitioner, the respondent did not chose to report for duty. Without considering the same, the Labour Court has passed an order dated 07.12.2023 directing the petitioner to reinstate the respondent with continuity of service and 25% backwages. Challenging the same, the present writ petition has been filed.

3. Learned counsel appearing for the petitioner submitted that there is no order of termination as against the respondent/workman, however, the workman raised an industrial dispute before the Labour Court seeking reinstatement and backwages as if he was orally terminated by the petitioner mill. On that basis, the Labour Court ordered for reinstatement with continuity of service and 25% backwages in favour of the respondent, which is not sustainable. However, he submitted that, the present writ petition is filed solely in respect of 25% backwages awarded in favour of the respondent by the Labour Court. Further, he submitted that, since no order of termination has been passed against the workman, the workman on his own not report for duty and secured employment



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with some other management, hence, awarding 25% backwages is not sustainable. Further, the learned counsel, on instructions, submitted that the petitioner mill is ready to provide canteen facilities to the respondent/workman. Accordingly, he prays for appropriate orders.

4. Per contra, learned counsel appearing for the respondent/workman submitted that, based on the evidence adduced by the respondent/workman, the Labour Court had ordered 25% backwages in favour of the workman, however, the petitioner management has not adduced any evidence with regard to the gainful employment of the workman during his non-employment period. Accordingly, he prays for dismissal of the writ petition.

5. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and also perused the materials available on record.

6. The facts in the present case is not in dispute and the employer-employee relationship between the parties are also not in dispute. Admittedly, the respondent joined duty as a JCB operator under the



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petitioner. Whiles, the respondent requested for one month leave, but was granted only one week leave by the petitioner and he reported duty on 05.08.2021 and continued his service until 19.08.2021. Though the respondent claims that he was orally terminated from service on 20.08.2021, however, the petitioner management claims that there was no discharge, dismissal or retrenchment within the meaning of Section 2(A) of the Industrial Act, 1947 as against the respondent. It is further claimed by the petitioner management that inspite of several letters written by the management to report for duty again, the respondent did not report for duty and employed elsewhere. Since the petitioner management was ready to take the respondent back for duty and the respondent was also specific in claiming reinstatement of service, the Labour Court ordered for reinstatement with continuity of service in favour of the respondent, which is *per se* sustainable and the same does not require any interference.

7. Now, coming to the question of 25% backwages awarded by the Labour Court. It is seen from the records that the respondent reported duty without the sanction of leave by the petitioner management for one



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month and he admitted before the Labour Court that he went as acting driver in a lorry during the non-employment period. Even then, the Labour Court ordered for 25% backwages, which is *per se* unsustainable, since the respondent has not report for duty despite the several notices issued by the petitioner management calling upon the respondent to report for duty after his leave. Hence, this Court is inclined to set aside the backwages ordered by the Labour Court.

8. Accordingly, this Court, while confirming the reinstatement of service with continuity of service ordered by the Labour Court, vide order dated 07.12.2023 in I.D.No.38 of 2022, sets aside the 25% of backwages ordered by the Labour Court to the respondent. The petitioner management is directed to reinstate the respondent/workman with continuity of service, however, without any backwages, by passing appropriate orders, within a period of two (2) weeks from the date of receipt of a copy of this order.

9. With the above observations and directions, this Writ Petition is disposed of. No costs. Consequently, the connected writ miscellaneous



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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

The Additional Labour Court, Coimbatore.



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M.DHANDAPANI, J.

sp

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