



W.P.(MD)Nos.3531 of 2018 and 19112 of 2017

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD)Nos.3531 of 2018 and 19112 of 2017
and W.M.P.(MD)No.15494 of 2017

W.P.(MD)No.3531 of 2018

S.Seenivasan

... Petitioner

Vs.

1.The Management,
Sri Nachammai Cotton Mills Limited,
Chettinad, Sivagangai District.

2.The Presiding Officer,
Labour Court, Madurai.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the award passed in I.D.No. 66 of 2015 dated 16.08.2017 by the Labour Court, Madurai by modifying the compensation amount awarded by the Labour Court, Madurai from Rs. 1,50,000/- to 5,00,000/- in lieu of reinstatement consequently directing

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the Management to pay full backwages to the petitioner and other monetary benefits to the petitioner.

For Petitioner : Mr.S.M.Mohan Gandhi
For Respondents : Mr.V.O.S.Kalaiselvam for R1
R2 Court

W.P.(MD)No.19112 of 2017

The Management,
Sri Nachammai Cotton Mills Limited,
Chettinad, Sivagangai District.

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
District Court Buildings,
Madurai.

2.S.S.Seenivasan

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari call for the records relating to the order dated 16.08.2017 passed by the Labour Court, Madurai in I.D.No. 66 of 2015 and quash the same.



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For Petitioner : Mr.V.O.S.Kalaiselvam
For Respondents : R1 Court
Mr.S.M.Mohan Gandhi for R2

COMMON ORDER

These two writ petitions have been filed aggrieved by the very same award dated 16.08.2017 passed in I.D.No.66 of 2015 on the file of the Court of Presiding Officer, Labour Court, Madurai.

2. For the sake of convenience, the parties are referred to as per their array in W.P.(MD)No.19112 of 2017.

3. The said Industrial Dispute was raised by the respondent No.2 herein aggrieved by the alleged dismissal from service by the petitioner herein. It is the case of the second respondent/workman that on an earlier occasion, he was dismissed from service and accordingly, he raised a dispute in I.D.No.24 of 2010 and the said industrial dispute was allowed setting aside the order of



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dismissal and consequently, the second respondent/workman ordered to be reinstated with continuity of service and accordingly, the petitioner herein sent a letter requiring the second respondent/workman to join duty. Accordingly, the second respondent/workman joined duty and worked from 30.10.2014 to 01.11.2014. It was at that stage, the second respondent/workman claimed to have asked for two days leave on the ground that his wife fell sick. Thereafter, he claimed to have approached the petitioner to give job, but it was refused. Aggrieved by the same, the second respondent/workman claimed to have approached the Conciliation Officer and on failure of the conciliation, the second respondent/workman raised the Industrial Dispute which is subject matter of these Writ Petitions.

4. On the other hand, it is the case of the petitioner that the second respondent/workman was reinstated in terms of the award passed in I.D.No.24 of 2010 and thereafter, the petitioner, having worked for three days, left the petitioner company and has never to come back to work. In view of the same, the petitioner also claims to have issued repeated notices to the second



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respondent/workman to come and join duty. In spite of repeated notices, according to petitioner, the second respondent/workman instead of coming and joining in the petitioner company, approached the Conciliation Officer by falsely claiming that he was not be allowed to work and raised the Industrial Dispute in question.

5. Before the learned Labour Court, on behalf of the second respondent/workman, he himself got examined and marked exhibits WW1 to WW20 and on behalf of the petitioner MW1 to MW18 were marked as exhibits.

6. The facts as pleaded are not in dispute except on the crucial aspect of the allegation of, petitioner not permitting the second respondent/workman to work and the contention of the petitioner that the second respondent/workman himself failed to come forward to work in the petitioner company.



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7. It is not in dispute that the petitioner was reinstated pursuant to the Award passed in I.D.No.24 of 2010. The second respondent/workman worked for three days and thereafter, admittedly, the second respondent/workman has not come for work on the premise of ill health of his wife and his ill health and applied for leave. No material is placed on record before the learned Labour Court in support of the contention that the second respondent/workman has sought for sanction of leave.

8. On the other hand, the petitioner herein admittedly issued repeated notices, which were marked as Ex.MW3 to Ex.MW8 requiring the petitioner to come forward for work. The receipt of those letters is not disputed by the second respondent/workman. None of the letters/notices issued by the petitioner was responded by the second respondent/workman. The learned Labour Court, having accepted about the issuance of such notices by the petitioner, proceeded to conclude that, the petitioner instead of initiating disciplinary proceedings by issuing a charge memo for the un-authorised absence of the second respondent/workman went on issuing the notices requiring



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the second respondent/workman to come forward to work and thereby, concluded that the relationship between the petitioner and the second respondent/workman is not cordial and therefore, reinstatement cannot be granted and it is only compensation that can be awarded in favour of the second respondent/workman. Thus, the learned Labour Court awarded compensation of Rs.1,50,000/- considering the plea of the second respondent/workman that he is not insisting for reinstatement, but made a claim for payment of compensation.

9. The only reason that is assigned by the learned Labour Court to conclude that the relationship between the petitioner and the second respondent/workman is not cordial is that the petitioner instead of initiating disciplinary proceedings by issuing a charge memo, went on issuing notice to the second respondent/ workman to come forward for work. Whether to initiate disciplinary proceeding against a workman or not to initiate is the prerogative of the employer. It is not necessary that in each and every case disciplinary proceedings should be initiated as and when misconduct was noticed on the part of the workman. This court is unable to understand how the learned Labour



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Court found fault with the petitioner for issuing repeated notices to the second respondent/workman to come forward for work.

10. As already noted above, an order of dismissal that was passed against the second respondent/workman was already set aside in an earlier round of litigation in I.D.No.24 of 2010 and ordered for reinstatement of the second respondent workman. Accordingly, the petitioner reinstated the second respondent/workman. Therefore, the petitioner ought to have thought that it is unnecessary to initiate disciplinary proceedings against the second respondent/workman on mere absence from duty and it would be appropriate to require the second respondent/workman to come forward and to join for work. Admittedly, the second respondent/workman though has not placed any material in support of his contention that he was deprived of work in spite of he approaching the petitioner company and in the absence of any such material, the conclusion arrived at by the learned Labour Court concluding that the relationship between the petitioner and the second respondent/workman is not cordial cannot be said to be right conclusion, rather it is perverse.



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11. The learned Labour Court appears to have been carried away by the submissions made on behalf of the workman stating that the relationship between the petitioner and the respondent workman is not cordial and petitioner is not interested in reinstatement and his request for payment of compensation. Unless and until, the second respondent/workman established that he was not allowed for work or dismissed or removed from service, the question of reinstatement does not arise. As seen from the material on record, the petitioner management has made a stand clear before the Conciliation Officer also requiring the second respondent/workman to come forward for work, but the respondent workman appears to have shown no interest to work in the petitioner mill and therefore, having worked only for three days after reinstatement, again chosen to initiate litigation and claiming for compensation instead of reinstatement. That itself shows that the second respondent/workman is not interested to work in the petitioner company. If he is not interested to work in the petitioner company, it is always open for the second respondent/workman to resign or go away but under no circumstances, workman can be permitted to take



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advantage of his own default to make the employer like the petitioner liable for compensation or otherwise.

12. In the circumstances, the impugned award passed by the learned Labour Court awarding compensation in lieu of reinstatement of Rs.1,50,000/- cannot be sustained and accordingly, the impugned award is hereby quashed, and accordingly, W.P.(MD)No.19112 of 2017 is allowed. Consequently, the claim made by the respondent workman in W.P.(MD)No.3531 of 2018 for enhancement of compensation from Rs.1,50,000/- to Rs.5,00,000/- also cannot be entertained and accordingly, the Writ Petition in W.P.(MD)No.3531 of 2018 is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Neutral Citation: Yes / No
Index : Yes / No
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To

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MUMMINENI SUDHEER KUMAR, J.

vsm

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