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Court : Chennai

Decided On : Aug-19-2016

Judge : N. Kirubakaran

Appeal No. : W.P.No. 6034 of 2012

Appellant : E. Pappy

Respondent : The Presiding Officer, Additional Labour Court, Vellore and Another

Judgement :

(Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, to call for the records relating to the Award dated 09.12.2010, made in I.D.No.14 of 2005, on the file of Additional Labour Court, Vellore and quash the same and consequently direct the second respondent to reinstate the petitioner in her job with all back wages and continuity of service and all other monetary and other benefits applicable.)

1. The petitioner joined the second respondent-Company as a helper in B Section and the monthly salary drawn by the petitioner was Rs.4,500/-. On 03.02.1999, the petitioner was removed from service without assigning any reason by the second respondent. Thereafter, the petitioner raised an Industrial Dispute in I.D.No.146 of 1999 before the Labour Court, Vellore. After contest, the Labour Court, by its

Award dated 21.05.2001, directed the second respondent to reinstate the petitioner with backwages and continuity of service.

2. Thereafter, the second respondent did not allow the petitioner to enter into the factory and refused to pay the backwages, as per the order of the Labour Court. At the instance of the Union Leader, Rs.25,000/- was paid to the petitioner. Subsequently, the Management unnecessarily gave harassment to the petitioner and created false documents. Ultimately, the petitioner was denied employment on 14.07.2003 and removed from service on 01.10.2003.

3. Therefore, the petitioner raised an Industrial Dispute in I.D.No.14/2005 before the Labour Court, Vellore. The Labour Court by its Award, dated 09.12.2010, rejected the petitioner's prayer by directing the second respondent-Company to pay a sum of Rs.25,000/- towards compensation. The said order is being challenged before this Court.

4. Heard Mr.S.Murugaian, learned counsel for petitioner. Though the second respondent has been served notice and his name has been printed in the cause list, neither the second respondent nor their Advocate entered appearance in the above matter. Therefore, this Court decides to pass orders on merits.

5. It is an admitted case that the petitioner was appointed in 1989 as Helper in B Section in the second respondent-Company and thereafter the petitioner was removed from service, resulting in raising of an Industrial Dispute in I.D.No.146/1999 before the Labour Court, Vellore. The Labour Court, by its Award, dated 21.05.2001, directed the second respondent to reinstate the petitioner with backwages and continuity of service. Thereafter, no Appeal or Writ Petition has been filed against the said Award by the second respondent. Pursuant to the Award, the petitioner was reinstated and even a sum of Rs.25,000/- has been paid at the intervention of the Union Leader.

6. Stating that the petitioner absented herself many times without justification and had quarrelled with the co-workers, the petitioner was given a charge memo on 14.10.2009 and an inquiry was conducted. Without taking part in the proceedings, the petitioner did not report to the duty. Therefore, the second respondent

removed the petitioner from the work.

7. A perusal of the record would show that earlier the petitioner was victimized as she was removed from service in 1999. She successfully got an Award in I.D.No.146 of 1999 on 25.05.2001. It seems thereafter only the problem started for the petitioner. Though there are documents to show that the petitioner has not been reporting regularly to the work, it is the case of the petitioner as well as evident that eventhough she reported to the duty, she was not allowed to enter the premises and not even allowed to board the Factory Van. The dates on which the petitioner is said to have absented, cannot be accepted as a procedure truth. Since a person who was found fault by the Management and got a favourable order of reinstatement, would not have absented herself from duty, as she knows the consequences of absence. Therefore, the said contention of the second respondent that the petitioner has deliberately absented herself from duty is a falsehood and this Court has got every reason to believe that due to vengeance of getting resinstatement by approaching the Labour Court by the petitioner, documents have been created to prove the misconduct on the part of the petitioner.

8. It is the contention of the second respondent that the petitioner misbehaved with her co-workers viz., Smt.Sumathi on 11.07.2003 and with one Smt.Suganya on 12.07.2003. In this regard, the aforesaid co-workers have given complaint and the said documents have been marked before the Labour Court as Exhibits M5 and M6. The said complainants viz., Smt.Sumathi and Smt.Suganya were not examined and only the Management representative alone examined and through him the documents were marked. He is neither the receipt nor the author of the said documents. If those complainants were examined, the petitioner would have got an opportunity of crossexamining the said persons. Since incompetent person has marked the documents, the said documents cannot be relied upon to show that the petitioner misbehaved with her co-workers. Therefore, the marking of documents through the Management's representative should not have been permitted by the Labour Court and further same should not be relied upon to prove the misconduct of the petitioner.

9. The other communications, documents which have been extracted from the petitioner, taking advantage of her position as a labour. A view from any angle, it is evident that the petitioner has been victimized, as she got a redressal, when she was removed earlier in 1999 through the Labour Court. The Labour Court can only rely upon her oral evidence, as she may not be having any other documents. Exactly in this case, the petitioner did not mark any documents except her oral evidence. On the otherhand, the documents filed Exhibits M1 to M20 are only from the Management side. This is also a circumstantial evidence which will prove that documents have been created only for the purpose of the case. Hence, the Labour Court, contrary to law, relied upon the complaints of Smt.Sumathi and Smt.Suganthi and found that the petitioner has committed misconduct, forgetting the fact that the second respondent took vengeance against the petitioner having approached the Labour Court at the first instance.

10. Therefore, the Award of the Labour Court is perverse, contrary to law and therefore, it is liable to be set-aside and the same is set-aside. Accordingly, the Writ Petition is allowed. The Second respondent is directed to reinstate the petitioner with 30% back wages. There is no order as to costs.

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