

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G. RAMESH
and
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Writ Appeal No.1619 of 2014 and
M.P.No.1 of 2014

M/s Tamilnadu Industrial Explosives
Pvt., Ltd.,
represented by its General Manager
TEL Post, Vellore - 632 059 ...Appellant

Vs.

1. N.Vijayan
2. The Presiding Officer,
Labour Court, Vellore ...Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the Order of this Court dated 10.04.2014 made in W.P.No.6930 of 2005 passed by this Court and allow this Appeal with costs W.P. 6930 of 2005 filed under Article 226 of the constitution of India praying for the issuance of writ of certiorari to call for the records relating to the impugned award of the 2nd respondent in I.D.NO.339/2002 dated 12.10.2004 to quash the same.

For Appellant : Mr.K.V.Subramaniam, Senior Counsel
for M/s K.V.Subramaniam Associates

For respondents: Mr.S.T.Varadarajulu for R1
R2- Court.

J U D G M E N T

(Judgment of the Court was made by HULUVADI G. RAMESH, J.)

Heard Mr.K.V.Subramaniam, learned senior counsel appearing for M/s K.V.Subramaniam Associates for the appellant and Mr.S.T.Varadarajulu, learned counsel appearing for the 1st respondent.

2. This Writ Appeal is filed by the appellant challenging the Order passed by the learned Single Judge of this Court, wherein the 1st respondent/petitioner was ordered to be re-

instated and also ordered for payment of back-wages from the date of service of termination till reinstatement with continuity of service and other benefits, but, without back-wages.

3. Admittedly, the 1st respondent registered his name in the Employment Exchange, Vellore. It appears that the 1st respondent / petitioner was appointed through District Employment Office, Vellore, as per communication PL/EE/RSR-2000/472 dated 17.05.2000, which is enclosed at Page No.1 of the typed set of papers. It is made clear in the said communication that the duration of the employment is for a period of six months. However, the counsel for the 1st respondent contended that the 1st respondent/ petitioner should not have been terminated after he worked nearly for a period of 8 months. Hence the 1st respondent/ petitioner approached the Labour Court, Vellore. In turn, the Labour Court, Vellore, passed an order of re-instatement with back-wages etc., Aggrieved by the order of the award of the Labour Court, the appellant / management has preferred the Writ Petition Nos.6930 of 2005 and 11589 of 2011 before this Court. However the learned Single Judge of this Court while modifying the order of the Labour Court, reinstated the 1st respondent / petitioner with continuity of service and other benefits, but, without back-wages. Challenging the same, the appellant / management is before this Court by way of an appeal.

4. One of the grounds raised by the Management is that case comes under Section 2(oo), (bb) of the Industrial Disputes Act, 1947 and hence, for the casual labour, there is no question of retrenchment and the 1st respondent was appointed only for a period of six months.

5. After considering the grounds raised in the Writ Petition, the learned Single Judge, allowed the Writ Petition No.6930 of 20015 by modifying the award of the Labour Court into one that of reinstatement with continuity of service and other benefits, but without backwages on the principle of "No work No pay".

6. The learned counsel for the appellant has invited the attention of this Court to the order rendered by this Court in W.P.No.27213 of 2007 dated 08.02.2012, wherein in a similar situation, the learned Single Judge held that the workman, has worked for 240 days, taking into account the weekly off and festival holidays. At the same time, even if a worker had proved that he had put in 240 days of service and that the management has infringed the provisions of Section 25-F, by not giving notice in writing or paying in lieu of such notice, Court cannot automatically order reinstatement in such matters. In this regard, it is useful to extract Paragraph Nos.7 and 8 of the said order as under:-

"... 7. These letters were not considered by the Labour Court when it ordered reinstatement. At the same time, this Court does not find any illegality in the Labour Court holding that the workman has worked for 240 days, taking into account the weekly off and festival holidays. At the same time, even if a worker had proved that he had put in 240 days of service that the management has infringed the provisions of Section 25-F, by not giving notice in writing or paying in lieu of such notice, Court cannot automatically order reinstatement in such matters. In this context, it is necessary to refer to the Judgment of the Supreme Court in State of Rajasthan Vs. Sarjeet Singh reported in 2006(8) SCC 508.

8. In the said circumstances, this Court is inclined to set aside that portion of the award ordering reinstatement with 50% back wages, at the same time, considering the fact that there is infraction of legal provision, the workman is entitled to get compensation. Therefore, the writ petition stands allowed. Petitioner is directed to pay Rs.40,000/- (Rupees Forty Thousand only) as compensation in lieu of reinstatement as a final settlement of all dues.

7. It is pertinent to note in the order passed in W.P.27213 of 2007, which was referred to by the appellant herein, the view taken by the learned Single Judge was that there is infraction of legal provision by the Management and in such circumstances, the learned Single Judge held that the workman is entitled to get compensation. Further, in Paragraph No.8, this Court set aside the portion of the award ordering reinstatement with 50% back-wages.

8. Taking into consideration the submissions made by the learned counsel for the appellant and the judgment referred above again referred to in State of Rajasthan Vs. Sarjeet Singh reported in 2006(8) SCC 508, we hereby direct the appellant/Management to pay a lumpsum compensation of Rs.50,000/- (Rupees Fifty Thousand only) to the workman/1st respondent.

9. Accordingly, with the above modification of the order of the learned Single Judge passed in W.P.No.6930 of 2005 dated 10.04.2014, the Writ Appeal is allowed in part. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssd

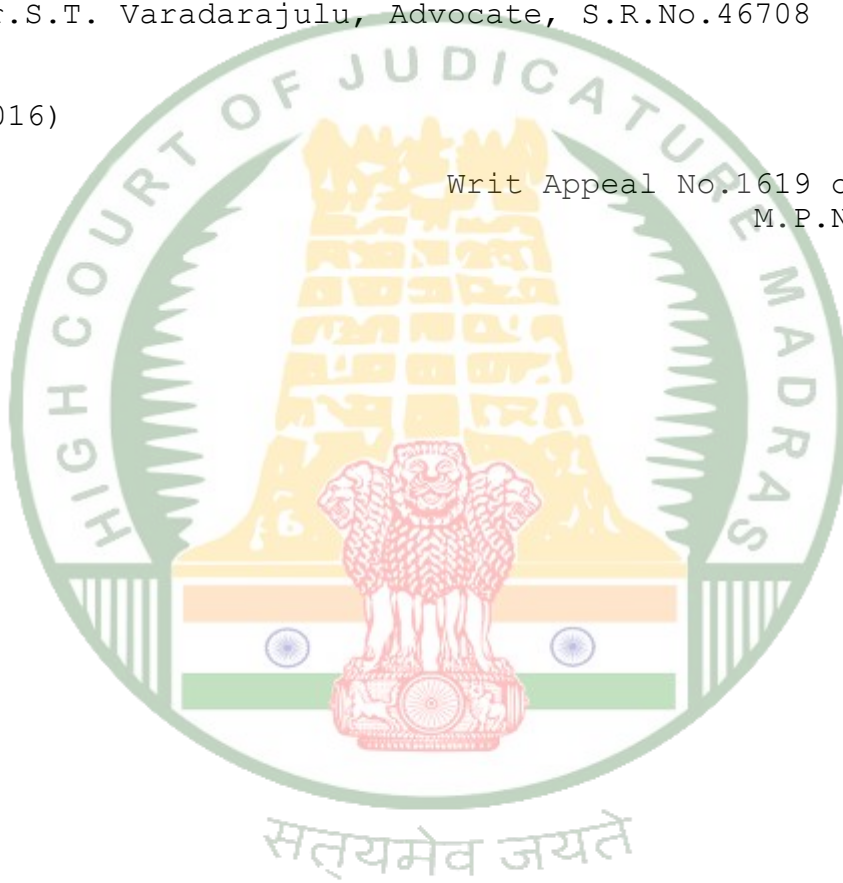
To

The Presiding Officer,
Labour Court, Vellore.

+lcc to Mr.K.V. Subramanian, Advocate, S.R.No.46935
+lcc to Mr.S.T. Varadarajulu, Advocate, S.R.No.46708

EV(CO)
EU(1/09/2016)

Writ Appeal No.1619 of 2014 and
M.P.No.1 of 2014



WEB COPY