

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.A.No.1477 of 2010

Aruvamoola Srinivasan

.. Appellant

versus

1. Deputy Commissioner of Labour (Appeal)
(Appellate Authority under Tamil Nadu
Shops and Establishment Act)
Teynampet,
Chennai - 600 006.

2. The Management of Lloyds Insulations
(India) Ltd.,
Chennai - 600 006.

.. Respondents

Writ Appeal filed against the order dated 17.07.2009 in
W.P.No.66887 of 2001.

Writ petition filed under Article 226 of the constitution
of India praying for the issuance of a writ of certiorari
calling for the records relating to the orders dated 18.6.1999
passed on TSE case No.39/97 on the file of the Deputy
Commissioner of Labour (Appeal) Appellate Authority under the
Tamil Nadu shops and Establishment Act 1947) the first
respondent and quash the same.

For Appellant : Mr.J.James

For Respondents: Mr.K.Kamaraj (for R2)

JUDGMENT

(Order of the Court was made by S.MANIKUMAR, J.)

Limited challenge in this writ appeal is to the order
restricting backwages to 50%, during the period of out of
employment. Facts in nutshell are as follows:

2. The appellant joined the services of the Lloyds
Insulations (India) Limited, Chennai on 31.10.1978, as
Supervisory Trainee, on a monthly salary of Rs.250/-, which
was gradually increased. He gained his promotion as Resident
Engineer, which was later on re-designated as Senior Executive.

After completion of nearly 19 years of service, even without a show cause notice or formulation of a charge memorandum, he was terminated from service with effect from 30.08.1997. According to him, as per Clause 12 of the appointment order, one month notice ought to have been given.

3. Contending inter alia that there was violation of principles of natural justice, the appellant has filed, an appeal under Section 41(2) of the Tamilnadu Shops and Establishment Act, 1947 in T.S.E.Case No.39/97. The Deputy Commissioner of Labour (Appeal), appellate Authority, under Tamilnadu Shops and Establishment Act, the 1st respondent dismissed the appeal, which was challenged in W.P.No.6687 of 2001. The management of Lloyds Insulations (India) Limited, Chennai, the 2nd respondent has not filed any counter affidavit, to the writ petition.

4. After considering the submissions, and taking note of the decisions of this Court in V.L.Lakshmanakumar V. The District Manager, "TASMAC" Limited, Madurai District, Madurai and another), reported in 2006 (1) CTC 660, para 10, the writ court, vide order dated 17.07.2009 in W.P.No.6687 of 2001, held that the order of termination dated 30.08.1997 was illegal.

5. On the issue of backwages, writ Court, by observing that in the appeal filed before the Deputy Commissioner of Labour (Appeal), the appellant had not stated that he was gainfully employed elsewhere, and not substantiated the same, ordered that 50% of the backwages from the date of termination, till date of superannuation would be just and proper, and accordingly, directed the Management of Lloyds Insulations (India) Limited, Chennai, to compute and pay the same, within two months from the date of receipt of a copy of the order made in the writ petition. Being aggrieved by the denial of 50% of backwages, instant appeal has been filed.

6. Assailing the correctness of the order of the writ Court, Mr.J.James, learned counsel for the appellant submitted that when the order of termination dated 30.08.1997, has been categorically held, by the Writ Court, as illegal, consequently, the appellant is entitled to entire backwages and restriction of the same to 50%, has to be interfered with. He further submitted that as against the order of termination dated 30.08.1997, statutory appeal has to be preferred within 30 days and therefore, there was absolutely, no chance for the appellant to make any statement before the appellate authority that he was gainfully employed, immediately after termination. According to him, such a submission is required to be made only when the appellant seeks for last drawn wages as per Section 17(2) of the Industrial Dispute Act, 1947, and not when he challenges an order of termination, from service.

7. Responding to the above, Mr.K.Kamaraj, learned counsel for the management submitted that it is a private limited company, and the order of the writ Court, need not be interfered with. Excepting the above, no other submission has been made.

8. Heard the learned counsel for the parties, and perused the materials available on record.

9. It is not in dispute that the writ Court has declared the termination dated 30.08.1997, as illegal. No appeal has been preferred by the management, against the finding that termination is illegal. As the appellant had attained the age of superannuation, there was no direction for reinstatement. But while restricting backwages to 50%, the only reason assigned by the writ Court was that the appellant had not stated that he was not gainfully employed elsewhere, and not substantiated the same.

10. As rightly submitted by Mr.J.James, learned counsel for the appellant, statutory appeal against the order of termination dated 30.08.1997, has to be filed within 30 days. Therefore, as rightly contended, it could not have been possible, for the appellant to get himself employed, immediately after termination and to make a statement in the appeal filed before the Deputy Commissioner of Labour (Appeal), the appellate authority/1st respondent.

11. The above contentions of the appellant have not been refuted. Reasons assigned by the writ Court, for denying 50% of the backwages, cannot be accepted. Even under Section 17-B of the industrial Dispute Act, 1947, it is for the management to dispute the fact of not gainfully employed, by the workman, by adducing evidence and filing of mere affidavit is not sufficient. In such a view of the matter, order made in W.P.No.6687 of 2001 dated 17.07.2009, in so far as restricting backwages to 50% alone is set aside and the instant writ appeal is allowed. No Costs. Consequently, direction is issued to Management of Lloyds Insulations (India) Limited, Chennai, the 2nd respondent, to pay the remaining 50% of the backwages from the date of termination i.e. 30.08.1997 till the date of superannuation, within a period of two months from the date of receipt of a copy of this order.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

Deputy Commissioner of Labour (Appeal)
(Appellate Authority under Tamil Nadu
Shops and Establishment Act)
Teynampet,
Chennai - 600 006.

1 cc to Mr.J. James, Advocate, Sr. 72926

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KJ (CO)
kk 10/1



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