

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.34588 of 2003

and

W.P.M.P.Nos. 42015/2003 & 10875 of 2004

Management,
Meera Textiles and Industries India Ltd.,
Rep. by its Excise Officer,
Mr.Deenadayalan,
having office at
Formally No.66/6A Spurtank Road,
Chetpet, Chennai - 31.
Now at No.237, Kilpauk Garden Road,
Kilpauk, Chennai 600 010. ...Petitioner

Vs.

1.Sarguru
2.The Presiding Officer,
Labour Court,
Cuddalore, N.T.
3.Management,
Meera Paper Mills,
Vadakkunemili village
Tirukoilur Taluk. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the second respondent relating to the proceedings in I.D.No.65/2000 dated 04.08.2003 on the file of the second respondent the Presiding Officer, Labour Court, Cuddalore and quash the same.

For Petitioner : Mr.Anand Gopalan
for M/s.T.S.Gopalan

For Respondent No.1: Mr.T.Dhanyakumar

O R D E R

The petitioner/Management filed a writ petition challenging the award passed by the second respondent/Labour Court dated 04.08.2003, wherein the Labour Court has ordered for reinstatement of the first respondent with backwages and other benefits.

2. The brief facts of the case that led to filing of this writ petition are as follows:

For the sake of convenience, the petitioner is referred to as 'Management' and the first respondent as 'workman'.

3. The brief facts of the case is that the workman was employed as a wire boy from 05.04.1990 on a monthly salary of Rs.900/-. On his own accord, he stopped from coming to office from July 1998 to October, 1998 continuously. Since the petitioner has not applied for leave, for his long absence, the Management has sent many letters even addressing to the workman to attend the duty. Though these letters were served upon him through the registered posts which were marked as Exs.M2 and M4 dated 22.04.1999 and 14.05.1989 respectively. But he did not report to duty. Since the first respondent was absent from duty continuously, without any intimation, the Management has no other option except to take action against him.

4. Without reporting to the employer/Management, the petitioner himself deserted from duty. However, he raised a Industrial dispute before the second respondent/Labour Court u/s 2 (A) of the Industrial Dispute Act. Subsequently, the petitioner was reinstated and allowed to continue his work under the Management.

5. The learned counsel for the petitioner/Management accepted the award of the Labour Court. However, he filed the writ petition only on the ground that whether the first respondent/workman is entitled to get benefit for non-employment period and he did not question about the labour court award with regard to reinstatement of the first respondent/workman. In support of his claim, he has relied upon the decision in J.K.Synthetics Ltd., Vs. K.P.Agrawal and Another reported in 2007 (2) SCC 433. The relevant portion of the case is extracted as follows:

"18.Coming back to back wages, even if the court finds it necessary to award back wages, the question will be whether back wages should be awarded fully or only partially (and if so the percentage). That depends upon the facts and circumstances of each case. Any income received by the employee during the relevant period on account of alternative employment or business is a relevant factor to be taken note of while awarding back wages, in addition to the several factors mentioned in Rudhan Singh and Uday Narain Pandey. Therefore, it is necessary for the employee to plead that he was not gainfully employed from the date of his termination. While an employee cannot be asked to prove the negative, he has to at least assert on oath that he was neither employed nor engaged in any gainful business of venture and that he did not have any income. Then the burden will shift to the employer. But there is, however, no obligation on the terminated employee to search for or secure alternative employment. Be that as it may.

19. But, the cases referred to above, where back wages were awarded, related to termination/retranchment which were held to illegal and invalid for non-compliance with statutory requirements or related to cases where the Court found that the termination was motivated or amounted to victimisation. The decisions relating to back wages payable on illegal retranchment or termination may have no application to the case like the present one, where the termination (dismissal or removal or compulsory retirement) is by way of punishment for misconduct in a departmental inquiry, and the Court confirms the finding regarding misconduct, but only interferes with the punishment being of the view that it is excessive, and awards a lesser punishment, resulting in the reinstatement of employee. Where the power under Article 226 or Section 11-A of the Industrial Disputes Act (or any other similar provision) is exercised by any court to interfere with the punishment on the ground that it is excessive and the employee deserves a lesser punishment, and a consequential direction is issued for reinstatement, the court is not holding that the employer was in the wrong or that the dismissal was illegal and invalid. The court is merely exercising its discretion to award a lesser punishment. Till such power is exercised, the dismissal is valid and in force. When the punishment is reduced by a court as being excessive, there can be either a direction for reinstatement or a direction for a nominal lump sum compensation. And if reinstatement is directed, it can be effective either prospectively from the date of such substitution of punishment (in which event, there is no continuity of service) or retrospectively, from the date on which the penalty of termination was imposed (in which event, there can be a consequential direction relating to continuity of service). What requires to be noted in cases where finding of misconduct is affirmed and only the punishment is interfered with (as contrasted from cases where termination is held to be illegal or void) is that there is no automatic reinstatement; and if reinstatement is directed, it is not automatically with retrospective effect from the date of termination. Therefore, where reinstatement is a consequence of imposition of a lesser punishment, neither back wages nor continuity of service nor consequential benefits, follow as a natural or necessary consequence of such reinstatement. In cases where the misconduct is held to be proved, and reinstatement is itself a consequential benefit arising from imposition of a lesser punishment, award of back wages for the period when the employee has not worked, may amount to rewarding the delinquent employee and punishing the employer for taking action for the misconduct committed by the employee. That should be avoided. Similarly, in such cases, even where continuity of service is directed, it should only be for purposes of pensionary/retirement benefits, and not for other benefits like increments, promotions, etc."

6. Per contra, the learned counsel for the first respondent would submit that since the petitioner has not called to report duty as well as the petitioner orally instructed the first respondent not to attend the duty, the first respondent has raised the industrial dispute. While the industrial dispute is pending, the petitioner/Management sent letters to the first respondent with mala fide intention to remove the petitioner from the Management. Since no fault lies on the part of the first respondent, he is entitled to backwages from the date of removal till the date of reinstatement. However, on perusal of the above judgment cited supra, I am inclined to modify the award without interfering with the order of reinstatement and accordingly, the petitioner is directed to pay 50% of backwages for non-employment period.

With the above observations, the writ petition is disposed of. Consequently, connected miscellaneous petitions are closed.

sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The Presiding Officer,
Labour Court,
Cuddalore, N.T.

+1 C.C. To Mr. T. Dhanyakumar, Advocate SR.NO.68539.

+1 C.C. To M/s. T.S. Gopalan & Co, SR.NO.68308.

SVI (CO)
ADD 23.10.2017

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