

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Writ Petition No.15300 of 2003

The Management
Seenu Oil Mills
represented by its Proprietor
Srinivasa Babu
349, Gandhi Road
Thattanchavadi, Panruti

Petitioner

Vs

1. Nagarathinam

2. The Presiding Officer,
Labour Court,
Cuddalore.

Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the 2nd respondent in claim Petition No.218/2000 and quash his order dated 3.6.2002.

For Petitioner : Mr.Vijay Anand for
Mr.S.Balasubramanian

For Respondents : Mr.Balan Haridass (R1)

O R D E R

The petitioner is the Management of Seenu Oil Mills, Panruti (hereinafter referred to as "the Management"). One Nagarathinam was employed as a Driver under the Petitioner Management and his services were abruptly terminated in October 1993. He raised an Industrial Dispute, which was ultimately adjudicated by the Labour Court, Cuddalore in I.A.No.72 of 1994 and an award dated 17.09.1996 was passed, under which, the labour Court held that the petitioner was not legally terminated and awarded reinstatement with backwages and other attendant benefits. The award was gazetted on 07.10.1997. Thereafter, Nagarathinam filed a claim petition No.218 of 2000 under Section 33 C(2) of the Industrial Disputes Act before the Labour Court,

Cuddalore, claiming Rs.1,23,000/- under the following heads:-

S.No.	Heads	Amount (Rs)
1	Backwages @ Rs.750/- p.m. From September 1993 to March 2000 (79 months) 79 x 750	59,250.00
2	Overtime wages @ Rs.750/- p.m. for (79 months) 79 x 750	59,250.00
3	Annual Over time wages @ Rs.750/- p.a. for 6 years (6 x 750)	4,500.00
	Total	1,23,000.00

The Management filed their counter and contested the claim. Before the Labour Court, Nagarathinam examined himself as a witness and marked Exs.P1 to P3. No witness was examined on behalf of the Management. The Labour Court, by the impugned award dated 03.06.2002, has awarded payment of Rs.59,250/- with interest at 6% p.a. as backwages to Nagarathinam and has disallowed the claim of over time wages. Challenging the said award, the Management is before this Court by way of this writ petition.

2. Heard the learned counsel for the petitioner and the learned counsel for the 1st respondent.

3. The learned counsel for the Management submitted that after the award was gazetted, the Management had sent letters dated 11.11.1997, 04.12.1997, 21.01.1998 and 19.05.1998 to Nagarathinam, asking him to report to duty. Further, in response to the Advocate's notice dated 04.03.2000 (Ex.P.2), which was issued by Nagarathinam, the Management had sent a reply asking him to report to duty, despite which, Nagarathinam, did not report to duty and therefore, he will not be entitled to backwages, at least from the date of the award.

4. Per contra, the learned counsel for the 1st respondent Nagarathinam submitted that the Management had failed to adduce any evidence before the labour Court to prove that they had sent the aforesaid communications to Nagarathinam and hence the award of the labour Court is sustainable.

5. This Court gave its anxious consideration to the rival submissions.

6. A reading of the cross-examination of Nagarathinam before the labour Court in C.S.No.218 of 2000 would clearly indicate the fact that Nagarathinam has clearly admitted that he received the communications dated 11.11.1997, 04.12.1997, 21.01.1998 and 19.05.1998, that were issued by the Management, calling upon him to report to duty. He has also admitted that he received the reply notice that was sent by the Management to the Advocate's notice that was sent by him. He has further stated that in all the communications sent by the Management, they have asked him to report to duty. He has further stated in the cross-examination that he has got a rice Mill of his own. Under such circumstances, it cannot be stated that Nagarathinam would be entitled to backwages, as prayed for by him, after the passing of the award, as he had failed to report to duty, despite the letters sent by the Management, calling upon him to come for work.

7. In view of the same, this Court is of the view that the 1st respondent Nagarathinam is entitled to backwages only upto the date of award from the date of termination viz., from October 1993 to 07.10.1997.

8. Mr.R.Muralidharan, learned counsel for the first respondent submitted that Nagarathinam, the first respondent died on 21.08.2016 leaving behind his wife and four children as his heirs.

9. At the time of admission of the writ petition, this Court had granted an order of interim stay on 20.05.2003 on condition that the Management should deposit 50% of the amount determined in the impugned proceedings before the Labour Court. The learned counsel for the Management submitted that the Management had deposited a sum of Rs.29,625/- and the interim order was made absolute on 04.09.2003. The learned counsel for the first respondent pleaded ignorance of this.

10. In the result, the writ petition is partly allowed in the following terms:-

"(i) That portion of the impugned award dated 03.06.2002 in C.P.No.218 of 2000 passed by the Labour Court, Cuddalore in awarding backwages to Nagarathinam from November 1997 to March 2000 alone is set aside and the order for payment of backwages from October 1993 to October 1997 with interest @ 6% per annum is confirmed.

(ii) The petitioner Management is directed to deposit the backwages for the period from October 1993 to October 1997 with interest at 6% per annum, after deducting any

amount that has already been deposited to the credit of C.P. No.218 2000 before the Labour Court, Cuddalore, within a period of three months from the date of receipt of a copy of this order.

(iii) On such deposit, the Labour Court shall issue notice to the legal representatives of Nagarathinam, first respondent, to collect the same. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Presiding Officer,
Labour Court,
Cuddalore.

+1cc to Mr.S. Balasubramanian, Advocate, S.R.No.5989
+1cc to Mr.R. Muralidharan, Advocate, S.R.No.6189

pk(CO)
md(14/02/2017)

W.P.No.15300 of 2003

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