

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2017

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Writ Petition No.37218 OF 2003 and
WPMP.No.45144/2003

The Secretary,
Grama Rajya Nirman Sangham,
Batlagundu,
Dindigul District. Petitioner

Vs

1. The Presiding Officer,
Labour Court, Madurai.

2. A.Paramasivam 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 1st respondent made in C.P.No.241/1994 dated 11.07.2003 and quash the same.

For petitioner : Mr.N. Umapathi

For 2nd respondent : Mr.K.Elango

O R D E R

Challenging the order of the 1st respondent made in C.P.No.241/1994 dated 11.07.2003, the present Writ Petition has been filed.

2. The facts of the case are as follows:

(a) The petitioner is a Sangam under Khadi and Village Industries Commission Act, 1956 and the same was registered under the Societies Registration Act. The 2nd respondent workman was working as a Treasurer in the petitioner Sangam. The petitioner herein caused a shortage of stock notice to the 2nd respondent during the year 1991, while he was working in the Batlagundu Branch. Consequently, he was issued a Charge Memo and subsequently, his services were terminated from 28.05.1993. Aggrieved by the termination order, the 2nd respondent preferred an appeal in TNSE.No.2/93 before the Deputy Commissioner of Labour under Section 41(2) of the Shops and Establishment Act.

(b) The Deputy Commissioner of Labour, by his proceedings dated 22.03.1994, set aside the order of termination as the enquiry was not conducted in a proper manner, however, he did not order for back wages as prayed for by the 2nd respondent. Thereafter, as against the order, the petitioner Sangam did not prefer any appeal before any competent authority. Hence the order passed by the Deputy Commissioner of Labour under Section 41(2) of the Shops and Establishment Act, setting aside the termination order of the 2nd respondent has become final.

© Thereafter, the 2nd respondent was reinstated in service. After his reinstatement, he raised an Industrial Dispute under Section 33 C (2) of the Industrial Disputes Act to compute the money value due to him for the period the 2nd respondent worked in the petitioner Sangam from 01.01.1993 to 07.02.1993 and from 08.02.1993 to 30.06.1994 during that period he was not provided with employment and hence, C.P.No.241/1994 claiming salary for 16 months and 21 days, to the tune of Rs.16,128/- has been filed.

(d) After elaborate discussion, the 1st respondent Labour Court granted the salary in favour of the 2nd respondent. Aggrieved by the same, the present Writ Petition has been filed on the ground that already the 2nd respondent was paid all the dues such as Provident Fund, Gratuity etc. to the tune of Rs.30,270/- on 22.05.1999 which are evident from Ex.R.6 and Ex.R.7 receipts marked before the Labour Court.

3. The learned Counsel for the petitioner would submit that the Labour Court did not properly appreciate the documents filed by the petitioner Sangam vide Ex.R.6 and Ex.R.7 Receipts and the entire due is not settled in favour of the 2nd respondent is not sustainable.

4. However, the same is disputed by the 2nd respondent on the ground that his signature was manipulated by the petitioner Sangam and the same is elaborately discussed by the 1st respondent and it gave a verdict. Further, the learned Counsel for the 2nd respondent would also rely on a judgment of this Court in W.P.24331 of 2003 dated 16.03.2011. It is relevant to extract paragraph Nos.7 to 11 for perusal:

''7.The learned senior counsel further submitted that it has been stated in the petition filed before the Labour Court that the first respondent has not been engaged elsewhere during the period of non-employment due to termination and no counter affidavit has been filed denying the said fact. The one and the only contention raised in the counter affidavit before the Labour Court was that the appellate authority while

passing the order in T.N.S.E. No.5 of 1992 has not ordered reinstatement with backwages. Therefore, the application filed before the Labour Court is maintainable in law and on facts. The learned senior counsel also submitted that the order passed by the authority under the Tamil Nadu Shops and Establishment Act, 1947, would result in setting aside the order of termination and therefore, a delinquent employee, who has got a favourable order, would be deemed to be in service on the date of termination. In support of the said contention, the learned senior counsel has made reliance upon the Division Bench judgment of this Court in THE TATA IRON AND STEEL CO., LTD. vs. G.RAMAKRISHNA AYYAR AND P.NARAYANASWAMI [(1950) LLJ 1043 MADRAS]. Finally, the learned senior counsel submitted that the power of judicial review is very much limited, while considering the order passed by the competent authority under the Industrial Disputes Act.

8. In support of the said contention, the learned senior counsel has made reliance upon the judgment of this Court rendered in MANAGEMENT OF BATA INDIA LIMITED, HOSUR AND ANOTHER vs. PRESIDING OFFICER, INDUSTRIAL TRIBUNAL TAMIL NADU AND OTHERS [2010-II-LLJ-175 (MAD)] and submitted that inasmuch as there is no lack of jurisdiction or perversity in the order passed by the second respondent, this Court need not exercise the extraordinary and discretionary jurisdiction provided under Article 226 of the Constitution of India. Hence, the learned senior counsel submitted that the Writ Petition will have to be dismissed as devoid of merits.

9. As submitted by the learned senior counsel for the first respondent, a perusal of the order passed by the authority under the Tamil Nadu Shops and Establishment Act, 1947 in T.N.S.E. No.5 of 1992 dated 28.08.1997 would make it very clear that the order was passed on merits. It has been specifically stated in the order that the petitioner herein has not proved the allegation that the first respondent has not worked to the satisfaction on a comparison with the other employees. Apart from holding on merits against the petitioner, the authority was also pleased to hold that, the order impugned passed by the petitioner was one without jurisdiction and lacks of competency.

10. Therefore, on a reading of the order passed in T.N.S.E. No.5 of 1992, which has become final between the parties, this Court is of the view that the said order has been passed on merits against the petitioner and in favour of the first respondent. The scope of the

order passed and the effect of the order by an authority in exercising the power under Section 41(2) of the Tamil Nadu Shops and Establishment Act, 1947 has been considered by the Honourable Division Bench of this Court in THE TATA IRON AND STEEL CO., LTD. vs. G.RAMAKRISHNA AYYAR AND P.NARAYANASWAMI [(1950) LLJ 1043 MADRAS]. The following paragraph of the said judgment is apposite:

"4.It is next contended by Mr.Ramakrishna Ayyar that in any event the order of the Commissioner was bad in so far as it directed a reinstatement in service of the first respondent. The argument was that there is no specific provision in the Act which enabled the authority to make an order of reinstatement. He referred us by way of analogy to the jurisdiction of Industrial Tribunals to make orders of reinstatement, but we think such reference is wholly irrelevant. To a certain extent we agree with the learned Counsel, namely, that the authority should not have said that the employee would be entitled to reinstatement. But this is only quarrelling with his language. Actually the legal position is this. The employer passes an order dispensing with the services of an employee. That order is carried on appeal to a higher authority. That authority reverses the decision of the employer and the result is that the order of the employer is set aside. It is no longer in existence. It follows that the effect of the original order of the employer also disappears and it is as if the order is nonesse. Though, therefore, it may not be quite accurate to say that the employee will entitled to reinstatement in service, yet the result of the order of the appellate authority is virtually the same. Probably, the result of the appellate order is even Better than an order of reinstatement. It is as if the employee had never been properly dismissed from service. In this view it is not necessary to quash the order of the appellate authority even in this respect."

11.Therefore, on a consideration of the ratio laid down by the Honourable Division Bench, it is clear that once an order is set aside by the authority, then the employee concerned would be entitled to get reinstatement with consequential benefits. In other words, as a result of the order being set aside, the employee is deemed to have been in service on the date of passing such an order. The benefits to the employee would follow in pursuance to the order passed by the competent authority by setting aside the order of termination."

5. A perusal of the above judgment discloses that it is settled principle that this Court while exercising its power to issue a Certiorari, interfering with the findings of the Tribunal is very limited and unless and until, the order passed by the Labour Court is contrary or without any substantial material, the Writ Court cannot interfere.

6. In this case, even on a perusal of the receipts marked as Ex.R6 and Ex.R7, it appear that the petitioner has foregone the claim only after 1997 whereas the claim made by the 2nd respondent is the period he worked from 1993 to 1994. Hence, the Labour Court has arrived at a correct conclusion and directed the petitioner herein to pay a salary of Rs.16,128/-, which does not call for any interference. Thus, in my considered opinion, when the fact finding authority has arrived at a conclusion after contest, the writ court exercising its power under Article 226 of the Constitution of India, cannot be interfered with the same.

7. It is now represented by the learned Counsel for the petitioner that this Court by an interim order dated 30.07.2004 directed the petitioner to deposit the amount before the Labour Court. Since the Writ Petition ended in favour of the 2nd respondent, the 2nd respondent is permitted to withdraw the amount deposited before the Labour Court.

8. With the above observation, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

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To

The Presiding Officer,
Labour Court, Madurai.

+1 CC to Mr.K. Elango, Advocate sr 60274.

+1 CC to Kaavya Silambanan Associates, sr 61168.

W.P.No.37218 of 2003

SK (CO)

sp (26/09/2017)