

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 27.07.2018

Pronounced On: 03.08.2018

CORAM:

THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.P.No.1314 of 2009

P.Muthukrishnan

... Petitioner

Vs.

1.The Management of
M/s.Waczech Leather Industries,
No.96/1, Anna Salai,
Nagalkeni, Chrompet,
Chennai - 600 012.

2.The Presiding Officer,
Additional Labour Court,
Chennai - 600 104.

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, after calling for all the connected records pertaining to the passing of the award dated 08.02.2008 in I.D.No.222/99 on the file of the second respondent and quash the said portion of the award in para 12 denying Back Wages, continuity of service and other attendant benefits consequently to allow the said claims.

For Petitioner : Mr.A.Kumar for
M/s. T.R.Sundaram

For Ist Respondents: -

R2 : Court

ORDER

The instant writ petition challenges that portion of the award dated 08.02.2008, passed by respondent No.2 the order dated 02.02.2009 by which the second respondent has denied back wages, continuity of service and other attendant benefits to the petitioner.

2.The facts and brief are as under:-

(a) The petitioner was working as setting Operator under

the Respondent/Management from 05.01.1991, on a monthly salary of Rs.4,000/-.

(b) The petitioner was terminated from service with effect from 01.11.1997. The termination was challenged by the petitioner before the Additional Labour Court, Chennai, contending that no charge sheet was given, no enquiry was conducted and therefore, the termination is contrary to the provisions of the Industrial Dispute Act.

3.The first Additional Labour Court, Chennai held that the order of oral termination without any charge sheet or enquiry is in violation of Section 25 (F) of the Industrial Dispute Act. The Labour Court therefore directed the first respondent to reinstate the petitioner. However, the Labour Court did not grant any back wages or continuity of service because of the absence of any pleading in the claim statement that the petitioner is not gainfully employed elsewhere.

5.The learned counsel for the petitioner assailed the order stating that the Industrial Court ought to have been granted back wages and continuing of service. Despite service no one has appeared for the respondent.

6.The claim statement does not make any averment that he was not gainfully employed. The issue as to whether file to back wages should be granted are not in all cases as a natural consequence of an order of reinstatement has been settled by the Supreme Court in a number of Judgments. The Supreme Court in the case of Allahabad Jal Sansthaan Vs Daya Shankar Rai reported in (2005) 5 SCC 124 has observed as under:-

"A law in absolute term cannot be laid down as to in which cases, and under what circumstances, full back wages can be granted or denied. The Labour Court and/or Industrial Tribunal before which industrial dispute has been raised, would be entitled to grant the relief having regard to the facts and circumstances of each case. For the said purpose, several factors are required to be taken into consideration. It is not in dispute that the Respondent No. 1 herein was appointed on an ad hoc basis; his services were terminated on the ground of a policy decision, as far back as on 24.1.1987. The Respondent No. 1 had filed a written statement wherein he had not raised any plea that he had been sitting idle or had not obtained any other employment in the interregnum. The learned counsel for the Appellant, in our opinion, is correct in submitting that a pleading to that effect in the written statement by the workman was necessary. Not only no such pleading was raised, even in his evidence, the workman did not say that he continued to remain unemployed. In the instant case,

the Respondent herein had been reinstated from 27.2.2001."

7. Similarly, the Supreme Court in the case of U.P. State Brassware Corporation vs Udai naraina Pandey reported in (2006) 1 SCC 479 has observed as under:-

"It is not in dispute that the Respondent did not raise any plea in his written statement that he was not gainfully employed during the said period. It is now well-settled by various decisions of this Court that although earlier this Court insisted that it was for the employer to raise the aforementioned plea but having regard to the provisions of Section 106 of the Indian Evidence Act or the provisions analogous thereto, such a plea should be raised by the workman."

8. Yet again the Honourable Supreme Court in the case of Novartis vs. State of West Bengal reported in (2009) 3 SCC 124 reads as under:-

"37. Back wages in a situation of this nature had to be granted to respondents by way of compensation. If the principle of grant of compensation in a case of this nature is to be applied, indisputably having regard to the fact situation obtaining herein, namely, that they were doing a specialized job and were to reach their age of superannuation within a few years, grant of back wages was the only relief which could have been granted. It was furthermore not expected that they would get an alternative employment as they were superannuated. Burden of proof was undoubtedly upon the workmen. The said burden, however, was a negative one. Once they discharged their burden by deposing before the Tribunal, it shifted to the employer to show that their contention that they had not been employed, was incorrect. No witness was examined on behalf of the employer. Even there was no pleading in that behalf" (emphasis supplied).

9. In view of the above said Judgments, it was necessary to plead that the petitioner was not gainfully employed no where else in order to claim back wages. Since there is no pleading to this effect the Industrial Tribunal was justified in rejecting the claim for back wages.

10.The writ petition is therefore dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

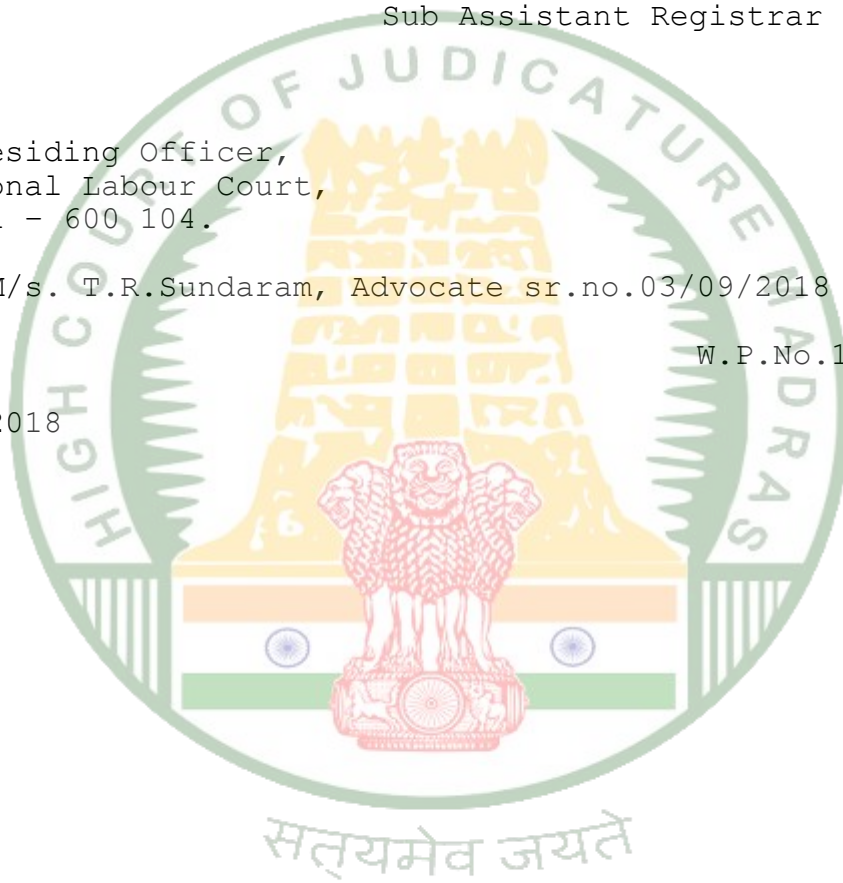
To

The Presiding Officer,
Additional Labour Court,
Chennai - 600 104.

+1cc to M/s. T.R.Sundaram, Advocate sr.no.03/09/2018

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