

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.12.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition Nos.497 and 6238 of 2016

A.J.Aruldas

.. Petitioner in W.P. No.497 of 2016

Indian Rare Earths Ltd.,
Manavalakurichi,
rep. by its Divisional Manager,
Manavalakurichi & Post,
Kanyakumari District.
of 2016

... Petitioner in W.P. No.6238

Versus

1.The Divisional Manager,
Indian Rare Earths Ltd.,
Manavalakurichi & Post,
Kanyakumari District.

.. 1st respondent in W.P. No.497 of 2016

1.A.J.Aruldas

.. 1st respondent in W.P. No.6238 of 2016

2.The Presiding Officer,
The Central Government Industrial
Tribunal-cum-Labour Court,
Chennai, Shastri Bhavan,
Nungambakkam, Chennai-600 034.

.. 2nd respondent in both petitions

Prayer in W.P. No.497 of 2016: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus by calling for the records of the second respondent passed in C.P. No.2/2015 dated 02.09.2015 and quash the same and direct the first respondent to pay all the monetary benefits from the date of termination of the petitioner till

attaining the age of superannuation, namely from 13.08.1979 to 27.08.2008.

Prayer in W.P. No.6238 of 2016: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari to call for the records connected with C.P. No.2 of 2015 and quash the order dated 02.09.2015 passed by the 2nd respondent.

For Petitioner in
W.P. No.497 of 2016
and 1st respondent in
W.P. No.6238 of 2016 : Mr.I.Jayasingh Manoharan

For 1st Respondent in
W.P. No.497 of 2016
and petitioner in : Mr.Shivathanu Mohan
W.P. No.6238 of 2016
for M/s.S.Ramasbramanian and Associates

R2 - Tribunal

COMMON ORDER

W.P. No.497 of 2016 has been filed by one A.J.Aruldas challenging the order dated 02.09.2015 passed by the second respondent in C.P. No.2 of 2015 and seeking a direction to the first respondent to pay all the monetary benefits from the date of termination till the date of attaining the age of superannuation, namely from 13.08.1979 to 27.08.2008.

W.P. No.6238 of 2016 has been filed by the Indian Rare Earths Ltd. challenging the order dated 02.09.2015 passed by the second respondent in C.P. No.2 of 2015.

2.For the sake of convenience, the parties will be hereinafter referred to as 'the employee' and the 'Management' in this order.

3.It is seen that the learned Central Government Industrial Tribunal cum Labour Court, Chennai, while considering the C.P. No.2 of 2015 filed under Section 33(C)(2) of the Industrial Disputes Act by the employee seeking to pay a sum of Rs.1,37,325/- from the Management till 31.12.1991 towards salary and bonus on the ground that the employee had pre-existing right against the Management, since he was appointed as a Care Taker in the Guest House of the Management at Manavalakurichi in Kanyakumari District from 29.09.1978 till his services were terminated on 13.08.1979, has come to the conclusion that the Management is liable to pay the back wages from 13.08.1979 to 06.01.1980 within one month, making it clear that if payment is not made within the stipulated period, it would carry interest at the rate of 9% per annum from that day.

4.Assailing the findings given by the learned Central Government Industrial Tribunal cum Labour Court, Chennai, the learned counsel for the employee submitted that when there is a finding in favour of the employee that there is a pre-existing

right, the petition filed under Section 33(C)(2) of the Industrial Disputes Act is maintainable and therefore, the Tribunal ought to have allowed the petition as prayed for, without restricting the prayer in granting back wages from 13.08.1979 to 06.01.1980. Continuing his argument, he would submit that the second respondent having found that the post of Care Taker was not abolished concurrently with the order of termination of the petitioner, ought not to have restricted the claim upto the date of re-employment with the Kattabomman Transport Corporation because the employee has got a legitimate right to claim back wages and other relief of re-employment on account of the fact that the said post was abolished. He would further submit that after the termination on 13.08.1979, the employee ought to engage himself in some other avocation. Adding further, he would submit that taking into consideration of the oral plea of gainful employment of the employee by the Management, the second respondent erroneously restricted the grant of monetary benefit for the said period and therefore, the second respondent has grossly failed to note that the service of the employee was engaged purely on temporary tenure basis by the then Kattabomman Transport Corporation for a period of 18 months with intermittent gaps on a consolidated payment of Rs.250/-. Hence, he seeks a direction to the Management to pay all the monetary benefits, even beyond 06.01.1980 during the period of re-employment.

5. The learned counsel appearing for the Management, opposing the above prayer, would submit that when it is not denied by the employee that he was not appointed gainfully as a Care Taker after his termination that took place on 13.08.1979 in the erstwhile Kattabomman Transport Corporation, the pleadings before this Court that he was only appointed as a Care Taker on a consolidated payment of Rs.250/- per month cannot be justified for allowing his prayer for payment of back wages even during the period of the gainful re-employment. The reasons being that the employee has also not even pleaded for re-instatement and he has restricted his prayer only to back wages and that the Tribunal has also given a clear finding that there was no claim for re-instatement, that shows he was gainfully employed and he did not want re-employment. Besides, the plea of consolidated payment of Rs.250/- per month is doubtful claim.

6. It is a settled legal position that when a person approaches the Labour Court for back wages on the ground that he has got a pre-existing right to allow his application under Section 33(C)(2), he should have sought for re-instatement. In the present case, the employee has not asked for re-instatement, which shows that he has been gainfully employed. Besides it is clearly admitted that he was gainfully employed in the Kattabomman Transport Corporation. Hence, the Tribunal has rightly passed the order directing the Management to pay the back wages only from 13.08.1979 to 06.01.1980. The finding given

by the Tribunal that there is a pre-existing right to entertain the petition filed under Section 33(C)(2) only for a limited period from 13.08.1979 till 06.01.1980 is in order because admittedly the employee was gainfully re-employed in the Kattabomman Transport Corporation for a specific period of six months as a Care Taker on a consolidated payment of Rs.250/- per month and was later on terminated from service on 13.08.1979. Therefore, the petition filed under Section 33(C)(2) was rightly considered by the Tribunal directing the Management to pay back wages only from 13.08.1979 to 06.01.1980 as he was subsequently re-employed gainfully. In view of these reasons, this Court, finding no infirmity in the order passed by the Tribunal, is not inclined to entertain both the writ petitions. Accordingly, the writ petitions fail and the same are dismissed. No costs.

7. After the above order, the learned counsel for the employee submitted that a cheque tendered for the said payment to the employee was refused and therefore, the Management may be directed to issue a fresh cheque for the said amount to the employee.

8. Considering the said submission, the Management is directed to issue a fresh cheque to the employee, within a period of one week from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vga

To

The Presiding Officer,
The Central Government Industrial
Tribunal-cum-Labour Court,
Chennai, Shastri Bhavan, सत्यमेव जयते
Nungambakkam, Chennai-600 034.

+2cc to Mr.S.Ramasubramanian & Asso, Advocate, S.R.No. 86158 & 18157

+2cc to Mr.S.Kadarkarai, Advocate, S.R.No. 85755

Writ Petition Nos.497 and 6238 of 2016

CA(CO)
GN(22/01/2019)