

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 10.06.2019

CORAM

THE HONOURABLE DR. JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.A.Nos.33 of 2013 & 2440 of 2013
and
M.P.No.1 of 2013

J.Udayan ... Appellant/ 2nd Respondent
in W.A.No.33 of 2013

The Management of Caterpillar
India Pvt. Ltd.,
Melnallathur, Tiruvallur - 602 004
Tamil Nadu, India
rep.by its Head-Human Services ... Appellant/Petitioner
in W.A.No.2440 of 2013

Vs

1. Management of Caterpillar (India)
Private Limited,
Melanathur - 602 004.
Thiruvallur District,
Rep.by its Head - Human Services
2. The Presiding Officer
II Additional Labour Court,
Madras. ... Respondents
in W.A.No.33 of 2013

1. The Presiding Officer
II Additional Labour Court,
Madras.
2. J.Udhayan ... Respondents
in W.A.No.2440 of 2013

These Writ Appeals filed under Clause 15 of the Letters Patent, against the order dated 28.09.2012 passed by the learned Single Judge in W.P.No.18806 of 2008 on the file of this Court.

Prayer in W.P.No.18806 of 2008: To issue a Writ of Certiorari, calling for the records of the first Respondent in I.D.No.538/2005 and quash its award dated 23/01/2008.

For Appellant : Mr.V.Prakash, Senior Counsel for
M/s.V.Sudalikannu
(in W.A.No.33 of 2013)

For R1 : Mr.Radha Gopalan
for M/s.T.S.Gopalan & Co.
(in W.A.No.33 of 2013)

For Appellant : Mr.Radha Gopalan
for M/s.T.S.Gopalan & Co.
(in W.A.No.2440 of 2013)

For R2 : Mr.V.Prakash, Senior Counsel for
M/s.V.Sudalikannu
(in W.A.No.2440 of 2013)

COMMON JUDGMENT

(Judgment of the Court was delivered by C.V.KARTHIKEYAN, J.)

W.A.No.33 of 2013 had been filed by the workman J.Udayan and W.A.No.2440 of 2013 had been filed by the Management of Caterpillar India Private Limited. Both the writ appeals has been filed assailing the order of the learned Single Judge in W.P.No.18806 of 2008 dated 28.09.2012.

2. W.P.No.18806 of 2008 had been filed by the Management, Caterpillar India Private Limited, challenging the award of the II Additional Labour Court, Chennai in I.D.No.538 of 2005 dated 23.01.2008 whereby, the Labour Court had directed the Management to reinstate the workman J.Udayan with service continuity and back wages.

3. The workman claimed to be an employee in the Management from 01.01.2004 till 03.03.2005, working without any break. He was tasked by the Management to do loading and unloading, cleaning the iron sheets with rust cleaning Sander machine, plate cleaning etc., and also to work in container lorries to put hook attached with the Fork Lift Machine/Vehicle and all other related works.

4. It is the claim of the workman that he had originally joined Hindustan Earth Moving Equipment on 25.11.1991 and completed apprenticeship. After training he worked as a casual labourer in the said company till the present Management took over the said company. On 17.07.2004, when he was performing the

work allotted to him, at about 3.30 p.m., a Fork Lift ran over his left leg and he suffered grievous injury near the knee and ankle joint. He rejoined duty on 17.01.2005. He was then assigned work in the Library section. Thereafter, he was refused employment from 04.02.2005.

5. The workman therefore raised an Industrial Dispute. Since the conciliation failed, he filed I.D.No.538 of 2005, before the II Additional Labour Court Chennai. Before the Labour Court, both the workman and the Management adduced oral and documentary evidence and on analysis of the same, the Labour Court held that he had worked for more than one year and held that denial of employment was not valid. It was also observed that the Management should have granted alternate employment. Consequently, it directed reinstatement with service continuity and back wages. This award was challenged by the Management by filing W.P.No.18806 of 2008. The learned Single Judge by order dated 28.09.2012 had granted a sum of Rs.2,00,000/- towards compensation as full and final settlement of all his claims excluding the payments made as per obligation cast on the Management under Section 17-B of the I.D.Act.

6. The reasoning of the learned Single Judge for reaching the said conclusion are extracted below for ready reference:

"14. In the light of the rival contentions, it has to be seen whether the impugned Award is liable to be interfered with.

15. This Court is not inclined to disturb the finding of fact viz., that the workman had completed 240 days of service in a period of 12 calendar months and therefore his eligible to be dealt with under Chapter V-A of the I.D.Act. Admittedly, he was not given any notice or notice pay. In normal course, he is entitled for the relief of reinstatement with all consequential back wages. But however subsequent to the accident suffered by him, he was not able to do the normal work in the assembly line and he was given light work in the library. Since the Supreme Court has held in Dalco Engineering Private Ltd., V. Satish Prabhakar Padhye and others reported in 2010-III-LLJ-64(SC), that the provisions of Disabilities Act will not apply to a private employer, this Court cannot direct the Management to provide any alternate employment to the workman for his entire service. On the background of this

fact and as directed by the Supreme Court in the judgment in Jagbir Singh V. Haryana State Agriculture Marketing Board and another reported in 2009-IV-LLJ-336(SC), the workman can be awarded a just compensation.

16. Considering the fact that the workman is only 40 years old and has been sent out though there was a promise for regularisation, this Court considers that he should be paid a sum of Rs.2,00,000/- (Rupees Two Lakhs only) towards compensation as full and final settlement of all his claims. This amount of Rs.2 Lakhs will not include the payment made as per obligation cast under Section 17-B of the I.D.Act.

17. This writ petition stands partly allowed. The Award in I.D.No.538 of 2005 dated 23.01.2008 will stand modified with a direction to the petitioner Management to pay Rs.2,00,000/- to the second respondent within a period of eight weeks from the date of receipt of a copy of this order. No Costs. Connected miscellaneous petitions are closed."

7. In Jagbir Singh V. Haryana State Agriculture Marketing Board and another reported in 2009-IV-LLJ-336(SC), on which reliance had been placed by the learned Single Judge, it had been held as follows in paragraphs 15 and 16:

"15.It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This court has distinguished between a daily wager who does not hold a post and a permanent employee. Therefore, the view of the High Court that the Labour Court erred in granting reinstatement and back wages in the facts and

circumstances of the present case cannot be said to suffer from any legal flaw. However, in our view, the High Court erred in not awarding compensation to the appellant while upsetting the award of reinstatement and back wages. As a matter of fact, in all the judgments of this Court referred to and relied upon by the High Court while upsetting the award of reinstatement and back wages, this Court has awarded compensation.

16. While awarding compensation, a host of factors, inter alia, manner and method of appointment, nature of employment and length of service are relevant. Of course, each case will depend upon its own facts and circumstances. In a case such as this where the total length of service rendered by the appellant was short and intermittent from 01.09.1995 to 18.07.1996 and that he was engaged as a daily wager, in our considered view, a compensation of Rs.50,000 to the appellant by Respondent 1 shall meet the ends of justice. We order accordingly. Such payment should be made within six weeks from today failing which the same will carry interest @ 9% per annum."

8. It is urged by Mr.V.Prakash learned senior counsel for the workman that the learned Single Judge should not have interfered with the award of the Labour Court granting reinstatement with back wages. The learned senior counsel urged this Court to consider the fact that employment is a necessity for the workman in order to provide for his family. Reliance had been placed on AIR 1952 SCR 696, Ebrahim Aboobakar and Hawabai Aboobakar of Bombay V. Custodian General of Evacuee Property, New Delhi, wherein, in paragraph 13, it had been observed as follows:-

"13. The remaining three questions canvassed before us, unless they are of such a nature as would make the decision of the respondent dated 13th May, 1950, a nullity, cannot be the subject-matter of a writ of certiorari. It is plain that such a writ cannot be granted to quash the decision of an inferior court within its jurisdiction on the ground that the decision is wrong. Indeed, it must be shown before such a writ is issued that the authority which passed the order acted without jurisdiction or in

excess of it or in violation of the principles of natural justice. Want of jurisdiction may arise from the nature of the subject-matter, so that the inferior court might not have authority to enter on the inquiry or upon some part of it. It may also arise from the absence of some essential preliminary or upon the existence of some particular facts collateral to the actual matter which the court has to try and which are conditions precedent to the assumption of jurisdiction by it. But once it is held that the court has jurisdiction but while exercising it, it made a mistake, the wronged party can only take the course prescribed by law for setting matters right inasmuch as a court has jurisdiction to decide rightly as well as wrongly. The three questions agitated before us do not seem to be questions which bear upon the jurisdiction of the court of appeal, or its authority to entertain them."

It had been urged that once it had been held that the Labour Court had jurisdiction but while exercising it, had made a mistake, the wronged party can only take the course prescribed by law for setting matters right in as much as a court has jurisdiction to decide rightly as well as wrongly. The Learned Senior Counsel stated that the learned Single Judge should not have interfered with the conclusion of the Labour Court granting reinstatement for the workman.

9. Mr.V.Prakash also placed reliance on 2018 SCC OnLine SC 2304, Pratap Mehta V. Sunil Gupta, wherein, in paragraph 32 it had been held as follows:-

"32.The findings of the fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. There cannot be any dispute to the above propositions laid down by the Constitution Bench of this Court, Waryam Singh v. Amarnath, AIR 1954 SC 215; Syed Yakoob v. K.S. Radhakrishnan, AIR 1964 SC 477. However, in the same judgment, in paragraph 8, following was laid down by this Court:-

"8.It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means.

What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record....."

The learned senior counsel stated that the conclusion of law recorded by the Labour Court on an obvious misinterpretation can be corrected by a Writ of Certiorari. He further stated that the conclusion of the Labour Court does not warrant any moulding by the learned Single Judge.

10. On the other hand, Mr. Anand Gopalan, the learned counsel for the Management supported the finding of the learned Single Judge. The Management had filed W.A.No.2440 of 2013 assailing grant of compensation of Rs.2,00,000/- as full and final settlement.

11. We have considered the arguments advanced.

12. The Hon'ble Supreme Court had held in Dalco Engineering (cited supra) that the provision of Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act 1955, more particularly, Section 47 would not apply to a private company. Admittedly, the Management in the present case is not a Government company. Even though the award of the Labour Court cannot be said to suffer from any legal flaw, however in our view following the dictum laid down in Jagbir Singh (cited supra), we hold that grant of compensation to the workman would meet the ends of justice. It is seen that the learned Single Judge had granted compensation of Rs.2,00,000/-. The reasoning of the learned Single Judge that in view of the accident suffered by him he could not discharge his normal work and had to be accommodated in the Library section cannot be faulted, particularly since the protection under Section 47 of the Persons with Disabilities Act would not apply to the respondent herein which is admittedly a private company.

13. It is also seen that during the pendency of the writ petition, the workman was paid the last drawn salary as provided under Section 17-B of the Industrial Disputes Act. It has not been complained by the learned senior counsel for the workman that the Management have stopped paying or have defaulted in payment of the last drawn salary pending the writ appeal. The writ appeal has been pending for the past six years and the Management have been complying with the directions given by the learned Single Judge in that regard.

14. However, taking into consideration the fact that as on date it would meet the ends of justice if the workman is granted an enhanced compensation, we feel that in the interest of justice, the order of the learned Single Judge can be interfered with only with respect to the quantum of compensation granted and not in other respects. Accordingly, we direct the Management to pay a sum of Rs.4,00,000/- (Rupees Four Lakhs only) as compensation as one time payment and as full and final settlement of all the claims. This would meet out the ends of justice since the workman has also been paid the last drawn salary at least from 2008 onwards.

15. In view of the above reasoning, both the writ appeals are disposed of with a direction to the Management to pay as compensation a sum of Rs.4,00,000/- as full and final settlement of all the claims of the workman. This amount would not include the payments made as per obligation cast under Section 17-B of the Industrial Disputes Act. The Management shall pay the said

sum of Rs.4,00,000/- within a period of two weeks from the date on which this order is made ready by the Registry, failing which the said amount would bear interest @ 9% per annum from the date of filing the writ petition till date of actual payment. No order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

smv

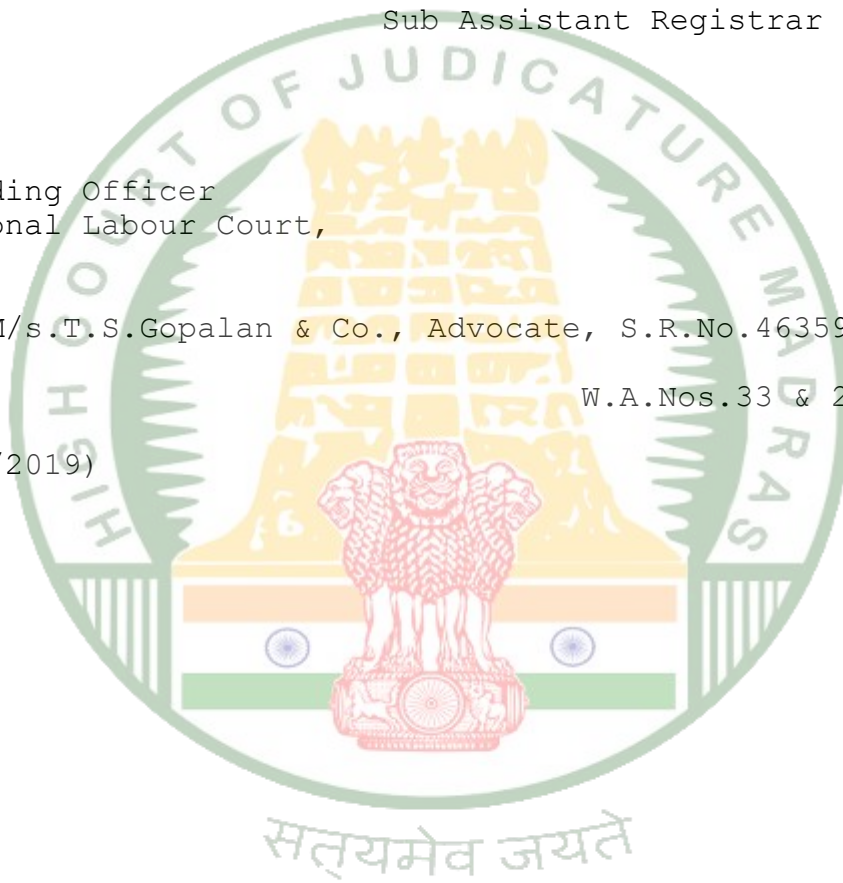
To

The Presiding Officer
II Additional Labour Court,
Chennai.

+1 cc to M/s.T.S.Gopalan & Co., Advocate, S.R.No.46359

W.A.Nos.33 & 2440 of 2013

SVI (CO)
SSM(18/07/2019)



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