

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.A.No. 564 of 2013

S.Panchatcharam Petitioner/Appellant

Vs.

1. The Presiding Officer
Labour Court, Cuddalore.
2. The Management of TAGROS Chemicals
(India) Ltd.,
4-4/1 Sipcot Industrial Complex
Cuddalore - 5. Respondents/Respondents

Writ Appeal filed under Clause 15 of Letter Patent against the order dated 25.09.2012 made in W.P.No. 25933 of 2012 on the file of this High Court.

Prayer in WP No.25933 of 2012 : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certioriarified mandamus calling for the records realting to the order of the Labour Court/ 1st respondent in I.D.No.1 of 2000 dated 18.4.2007 and to quash the same in so far as the award of the Labour Court/ 1st respondent denying back wages and wages and other benefits from 18.4.1998 till 18.4.2007 and subsequently and to direct the management/ 2nd respondent to pay back wages and other benefits between 18.4.1998 and 18.4.2007 and subsequently also to the petitioner.

For Appellant : M/s. K.Jenitha

For 2nd Respondent: M/s.Gupta & Ravi

J U D G M E N T

(Delivered by C.V.KARTHIKEYAN, J)

The Appellant has challenged the order of the learned Single Judge in W.P.No. 25933 of 2012 dated 25.09.2012 wherein the learned Single Judge had denied grant of back wages on the

ground of latches and delay though reinstatement was granted to the appellant.

2. The appellant had raised an Industrial Dispute in I.D.No. 1 of 2000 before the Labour Court, Cuddalore against the second respondent, Management of TAGROS Chemicals (India) Limited., Cuddalore, challenging retrenchment of service. By award dated 18.04.2007, the Labour Court ordered reinstatement in service with continuity of service. However, the Labour Court declined to grant the relief of back wages and other monetary benefits for the relevant period.

3. Challenging the said award, the second respondent / Management of TAGROS Chemicals (India) Ltd., had filed W.P.No. 23715 of 2007. A learned Single Judge of this Court by order dated 02.03.2012, dismissed the Writ Petition but however observed that the Labour Court without any justification also denied back wages.

4. Taking cue from the said observation, the appellant herein then filed W.P.No. 25933 of 2012. It is to be mentioned that the appellant had not challenged the denial of back wages by preferring a Writ Petition immediately after the award of the Labour Court. This fact was taken note off by the learned Single Judge in the order in W.P.No. 2593 of 2012 dated 25.09.2012 now under challenge.

5. By the said order, the learned Single Judge had dismissed the Writ Petition holding that no acceptable explanation had been given as to why the claim for back wages had not been preferred by the petitioner for five years. It was held that there were no merits in the Writ Petition and it was accordingly, dismissed.

6. The learned counsel for the appellant stated that the appellant was a poor labourer and she pleaded that the Court should show some sympathy and grant back wages.

7. The learned counsel for the second respondent, stated that the second respondent had challenged the award granting reinstatement and that the Writ Petition was dismissed and in the course of the order, the learned Single Judge had made a passing observation that back wages had also been denied which alone led the present appellant to file a Writ Petition. It was stated that the Writ Petition has been rightly dismissed on the ground of latches.

8. Having heard both the sides.

9. We are of the opinion that the order under appeal does

not warrant any interference and has to be sustained.

10. The appellant had not filed the Writ Petition seeking back wages out of necessity or as a right but only owing to an observation of the Court. No explanation has been given as to why such right was not claimed for a period of five years.

11. In fact, the Hon'ble Supreme Court has considered the entitlement of an employee for back wages when the order of dismissal is set aside. In the decision in *Banshi Dhar vs State of Rajasthan and Anr* reported in 2007 (1) SCC 324, the Hon'ble Supreme Court observed that no hard and fast rule can be laid down in regard to the grant of back wages and each case has to be determined on its own facts.

12. In the decision in *Muir Mills Unit Of N.T.C. (U.P) Ltd vs Swayam Prakash Srivastava & Anr* reported in 2007 (1) SCC 491, the Hon'ble Supreme Court has reiterated the same law by holding that the payment of full back wages is not a natural consequence of setting aside the order of termination of service.

13. It is not a rule of thumb that in every case where reinstatement is ordered, the payment of back wages is a natural consequence. It depends on the facts of each case. In the present case the charge against the appellant was that he took part in a strike and opened a valve reactor and drained the entire raw material into a gutter with intent to cause loss to the Management and the raw materials so let out by him had leaked upto the effluent treatment plant. Even though during the enquiry, the workmen was found guilty, the Labour Court had interfered with the said finding only holding that it was based on assumptions. The fact of leakage had been established. Both the Labour Court and the learned Single Judge had denied grant of back wages.

14. In *State Bank of India Vs. Mohammed Abdul Rahim* reported in 2013 (11) SCC 67, the Hon'ble Supreme Court expressed the opinion that the grant of back wages is not automatic of reinstatement and has to be judged in the context of totality of the facts. It is thus seen that grant of back wages is not an automatic consequence of reinstatement.

15. In *Novaltis India Ltd., Vs. State of West Bengal and others* reported in 2009 (3) SCC 124, the Hon'ble Supreme Court considered the plea of gainful employment after analysing the scope of Section 106 of the Evidence Act. The Hon'ble Supreme Court held that there must be a pleading by the Management about the gainful employment of the workmen. In that case, the burden will be shifted on the workmen to discharge his obligation that he was not gainfully employed. In the instant case, the

appellant herein had not discharged this obligation.

16. Taking into consideration the ratio laid down, we are of the considered opinion that the Judgement of the learned Single Judge does not warrant any interference and accordingly, the Writ Appeal is dismissed. No order as to costs.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

vsg

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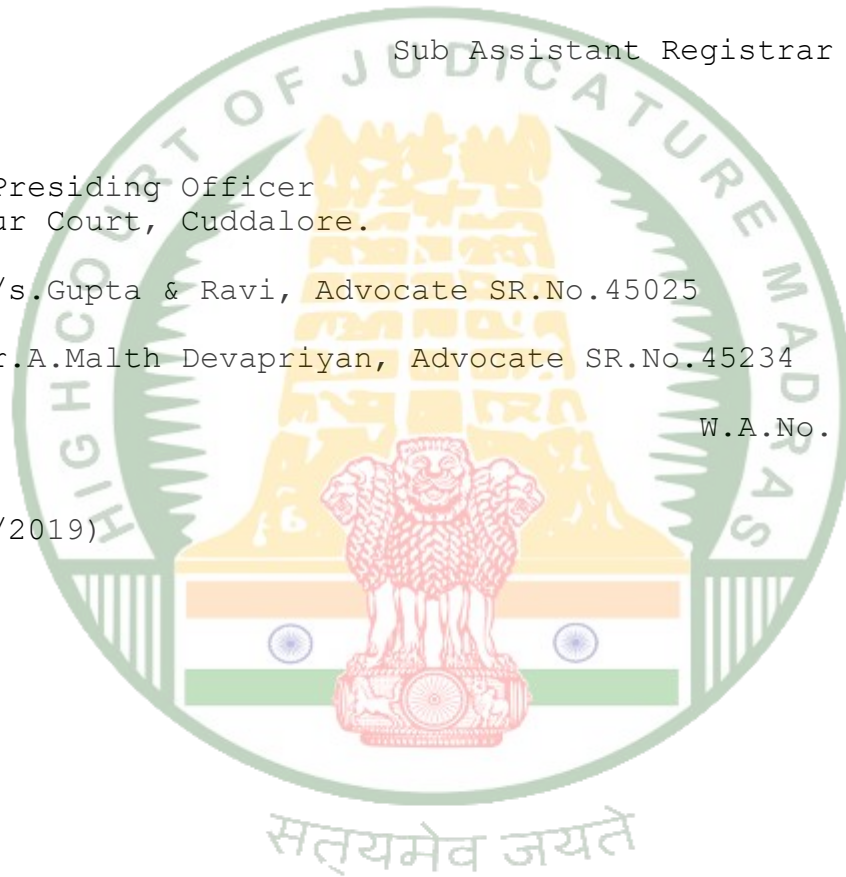
The Presiding Officer
Labour Court, Cuddalore.

+1cc to M/s.Gupta & Ravi, Advocate SR.No.45025

+1cc to Mr.A.Malth Devapriyan, Advocate SR.No.45234

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VD(CO)
GMY(04/07/2019)



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