

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S. VAIDYANATHAN

W.P.No.221 of 2013

K.Thirunavukkarasu

..Petitioner

Vs

1.The Presiding Officer
Labour Court, Salem.

2.The Regional Manager
Tamil Nadu Civil Supplies Corporation Ltd.,
Seelanaickenpatti
Salem-636 201

...Respondents

Prayer:- This Writ Petition is filed, under Article 226 of Constitution of India, to issue a writ of Certiorari calling for the entire records relating to the order dated 24.07.2012 in C.P.No.55 of 2007 passed by the 1st respondent/Presiding Officer of the Labour Court, Salem, from the file of the 1st respondent/Presiding Officer Labour Court, Salem, and quash the same.

For Petitioner : Mr.D.Shivakumaran

For Respondents: Mr.C.Munusamy for R2
R1- Labour Court.

ORDER

The petitioner has come forward with the present writ petition challenging the order in C.P.No.55 of 2007 dated 24.07.2012 wherein the Labour Court has computed a sum of Rs.11,476/- at 6% interest per annum payable by the Civil Supplies Corporation by holding that the petitioner would not be entitled to any other benefits like bonus, leave salary etc.

2. The Petitioner/workman joined the services of the 2nd respondent Tamil Nadu Civil Supplies Corporation Ltd., as Bill Clerk in C.R.S., at Komarapalayam. In view of some irregularities and misappropriation found during surprise check

of the said shop on 11.08.1979, disciplinary proceedings have been initiated against him. In respect of the said irregularity of the corporation money, a criminal case in C.C.No.1044 of 1981 was filed on the file of Judicial Magistrate Court, Sankari. On proven charges, he had been removed from service with effect from 27.08.1979 vide proceedings dated 17.02.1982.

3. A perusal of the award of the Labour Court, Salem, in C.P.No.55 of 2007 shows that in the criminal case, after full trial, the petitioner was acquitted. Against the dismissal, the petitioner raised a dispute for reinstatement with full backwages, which was referred to Labour Court, Coimbatore in I.D.No.272 of 1988, later, transferred to the Labour Court, Salem, by renumbering the case as I.D.No.73 of 1992.

4. The Labour Court, Salem, in I.D.No.73 of 1992, granted the relief of reinstatement with backwages and continuity of service and held that the charges are not proved. In W.P.No.16507 of 1995, filed by the Management, the award of the Labour Court was modified to the extent of reduction of 50% of backwages.

5. Before the Labour Court, the workman filed C.P.No.55 of 2007, wherein it is averred that the respondent/Management has worked out the backwages due to the petitioner as Rs.45,000/- and deducted a sum of Rs.35,000/- towards the amount already paid at Rs.500/- per month to the petitioner and requested the Labour Court to pay Rs.10,000/- alone from the deposit of Rs.1,50,000/-, thereby requesting the Labour court to refund the balance amount to the respondent. In the above referred Computation Petition, the workman also sought for arrears of Bonus, leave wages due to him and in total a sum of Rs.5,02,087/-.

6. During the pendency of the proceedings, the petitioner has also attained the age of superannuation. The Labour court, accepting the case of the Management that the petitioner's salary was periodically revised and by taking into account, the sum of Rs.500/- as last drawn pay on the date of disposal of the Writ Petition, but without taking into account the subsequent revisions, granted the relief of 50% of the amount on that Rs.500/- and arrived at the backwages payable at Rs.11,476/- together with interest at 6% per annum. However, the Labour Court, citing the decision of the Apex Court reported in (2007) 2 SCC 433/2007 (1)LLN 725 [J.K.Synthetics Ltd., Vs. K.P.Agrawal and another], pointed out that the petitioner is not entitled for promotion or salary in the promoted post, when he was under termination from service. The Labour Court cited from the above

decision that there is a misconception that whenever reinstatement is directed, continuity of service and consequential benefits should follow as a matter of course; the disastrous effect of granting several promotions as a consequential benefit to person who has not worked for 10 to 15 years and who does not have the benefit of necessary experience for discharging the higher duties and functions of promotional posts, is seldom visualized while granting consequential benefits automatically.

7. The only question that has to be decided herein is as to whether the petitioner would be entitled to monetary benefits or not.

8. The petitioner is entitled to all the monetary benefits on par with the co-employees. The Labour Court, having ordered for reinstatement holding that the termination is illegal, should have granted the relief to the petitioner in toto, namely, continuity of service with all consequential benefits and in the decision quoted by the Labour Court, it is categorically stated that whenever there is reinstatement, continuity of service and consequential benefits cannot be ordered as a matter of course.

9. In this case, there is order of reinstatement with continuity of service, which has been confirmed by the learned Single Judge, however, by reduction of 50% of the backwages, on the ground that charges against the workman had not been established. The said order passed in W.P.No.16507 of 1995 dated 06.09.2001 has become final without challenge by the Management. Once an employee is reinstated and has got the benefit of award, the petitioner is entitled to wages on par with co-employees. There is no reason as to why the statement made by the employee, claiming a sum of Rs.5,02,187/- has not been disputed by the Management. However, the grounds raised by the workman, challenging the order of the Labour Court, cannot be accepted.

10. During the course of argument, this court has also suggested to the counsel for the Management as to whether in toto, a sum of Rs.5 lakhs can be paid to avoid interest payable to the petitioner or else the petitioner is entitled to interest at the rate of 6% per annum for non-payment of award amount as per the orders of the Labour court. However, the learned counsel appearing for the 2nd respondent represented that it will be difficult for him to decide and the Corporation will have to take a decision. Once the criminal court has acquitted the delinquent employee, the Labour Court has held that the worker

would be entitled to reinstatement with continuity of service with full backwages and in the writ petition, the backwages alone was reduced to 50%, however, the other monetary benefits due, has got to be extended to the workman.

11. The Hon'ble Supreme Court has clearly held in the case of J.K.Synthetics Ltd., Vs. K.P.Agrawal and another [(2007) 2 SCC 433] that a person, without actually discharging in the higher posts for several years cannot seek the benefit of promotion and its benefits. For the sake of brevity, the relevant portions of the judgment are extracted below:-

"There is a misconception that whenever reinstatement is directed, "continuity of service" and "consequential benefits" should follow as a matter of course. The disastrous effect of granting several promotions as a "consequential benefit" to person who has not worked for 10 to 15 years and who does not have the benefit of necessary experience for discharging the higher duties and functions of promotional posts, is seldom visualized which granting consequential benefits automatically. Whenever Courts or Tribunal direct reinstatement/ they should apply their judicial mind to the facts and circumstances to device whether "continuity of service" and/ or "consequential benefits" should also be directed."

But at the same time, the consequential benefits on account of continuity of service, has to be necessarily extended. In the light of the judgment in A.P.State Transport Corporation Vs. P.Srinivas and another, reported in (2001) II LLJ 1633 AP, wherein it has been held as follows:

"4. Since the pay of the employee was fixed only in 1995, which fact was brought to our notice by the learned standing counsel for the Corporation on instructions from the Corporation, we are of the view that the writ petition cannot be dismissed on ground of laches. Now, the only question that remains to be considered is, whether the respondent employee is entitled to have his pay fixed on the basis of the national increments that would have been earned by him during the period from July 8, 1978, i.e., the date on which he was removed from service to December 1, 1987 the date on which he was reinstated into service and for the consequential arrears of salary. As rightly held by the learned single Judge, this question is well settled by the decision of this Court in T.Narayana V. Andhra Pradesh State Road Transport Corporation 1998 (4) L.L.N. 960, which was affirmed by

a Division Bench of this Court as also by the Hon'ble Supreme Court. In view of this, the writ appeal fails and it is accordingly dismissed. No costs."

Hence, I am of the view that the Labour Court has erred in depriving the employee the benefit of continuity of service and the decision of the Apex Court referred to by the Labour Court, namely 2007 (1)LLN 725 is not at all applicable to the facts of the case. In the case on hand, the petitioner is stated to have retired from service and therefore, he is entitled to get the backwages alone.

12. Since the respondent/Management has not raised any objection to the claim of the employee before the Labour Court on the computation petition and also taking into consideration the other aspects of the case, the Management is directed to pay the claim amount of Rs.5,02,187/- as demanded by the employee together with interest from the date of petition till the amount is actually disbursed.

13. In the above context, it is worthwhile to refer a decision of the Supreme Court reported in 1993 (3) SCC 214 = AIR 1994 SC 23 (Central Co-operative Consumers' Store Ltd. Vs. Labour Court, H.P. at Shimla and another), wherein, the Apex Court held as follows:

"5.Public money has been wasted due to adamant behaviour not only of the officer who terminated the services but also due to cantankerous attitude adopted by those responsible for pursuing the litigation before the one or the other authority. They have literally persecuted her. Despite unequal strength the opposite party has managed to survive. We are informed that the opposite party has been reinstated. This was put forward as bonafide conduct of petitioner to persuade us to modify the order in respect of back wages. Facts speak otherwise. Working life of opposite party has been lost in this tortuous and painful litigation of more than twenty years. For such thoughtless acts of its officers the petitioner-society has to suffer and pay an amount exceeding three lakhs is indeed pitiable. But considering the agony and suffering of the opposite party that amount cannot be a proper recompense. We, therefore, dismiss this petition as devoid of any merit and direct the petitioner to comply with the directions of the High Court within the time granted by it. We however leave it open to the society to replenish itself and recover the amount of back

wages paid by it to the opposite party from the personal salary of the officers of the society who have been responsible for this endless litigation including the officer who was responsible for terminating the services of the opposite party. We may clarify that the permission given, shall have nothing to do with the direction to pay the respondent her back wages. Step if any to recover the amount shall be taken only after payment is made to the opposite party as directed by the High Court.... "

14. The above decision of the Supreme Court has been followed by me in the case of The Management, Metropolitan Transport Corporation (Chennai) Ltd., Pallavan Illam, Anna Salai, Chennai-600 002 -Vs- 1. Thiru.D.Ezhilarasan and 2. The Presiding Officer, III Additional Labour Court, City Civil Court Annexure Building, High Court Compound, decided in W.P.No.37839 of 2016 on 01.11.2016. In view of the aforesaid decision of the Apex Court as well as this court and also taking note of the amount due to the employee, which has not been paid so far, this court directs the 2nd respondent/Management to pay the above mentioned claim amount within two months from the date of receipt of a copy of the order. The entire interest portion will have to be recovered from the officer, who is responsible for payment of the amount and that the Chairman/Managing Director/Regional Manager, who is incharge of the Civil Supplies Corporation Limited shall not draw his/her salary till the entire amount is paid to the employee.

15. The Writ Petition stands allowed on the above terms. The impugned order dated 24.07.2012 stands modified as indicated above. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Presiding Officer
Labour Court, Salem.

2.The Regional Manager
Tamil Nadu Civil Supplies Corporation Ltd.,
Seelanaickenpatti
Salem-636 201

+1cc to Mr.D.Shivakumaran, Advocate sr.61414
+1cc to Mr.C.Munusamy, Advocate sr.60785

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