

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.24292 of 2013

M.K.Ramakrishnan

... Petitioner

vs.

1. The Management of Express Carriers Ltd.,  
South India House,  
36-40, Armenian Street,  
Chennai 600 001.

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

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus, calling for the records of the 2<sup>nd</sup> Respondent, relating to its order dated 08.07.2013, made in C.P.No.1916 of 2011, and quash the same as illegal and consequently issue a direction to the 1<sup>st</sup> Respondent to pay a sum of Rs.12,73,200/-, as claimed in the Claim Petition.

For Petitioner : Mr.K.Sasindran

For 1<sup>st</sup> Respondent : Mr.P.T.Perumal

: R2 - Labour Court

O R D E R

Petitioner has come up with the present Writ Petition, seeking to quash the order dated 08.07.2013 made in C.P.No.1916 of 2011, and for a consequential direction to the 1<sup>st</sup> Respondent to pay him a sum of Rs.12,73,200/-, as claimed in the Claim Petition.

2. It is seen that the Petitioner joined as a Driver under the 1<sup>st</sup> Respondent/Management on 01.03.1979. The case of the Petitioner is that he was suspended from service on 24.10.1985, and without conducting proper enquiry, he was terminated from service by an order dated 27.03.1986. Challenging his non-

employment and termination from service, the Petitioner raised an Industrial Dispute in I.D.No.2 of 1987 before the 2<sup>nd</sup> Respondent/Labour Court.

3. Upon appreciation of both oral and documentary evidence, the Labour Court, by an Award dated 26.06.1992 in I.D.No.2 of 1987, held that the termination of the Petitioner is unjustified and directed the 1<sup>st</sup> Respondent/Management to reinstate him into service with backwages, continuity of service and with all other attendant and consequential benefits.

4. Challenging the said Award, the 1<sup>st</sup> Respondent/Management filed a Writ Petition in W.P.No.16898 of 1992 and this Court, by an interim order dated 12.01.1996 in W.M.P.No.1626 of 1995, directed the 1<sup>st</sup> Respondent/Management to deposit backwages to the credit of I.D.No.2 of 1987 in a Nationalized Bank in a Fixed Deposit Scheme. When the said Writ Petition was listed for final hearing on 14.01.2000, none represented the Management, and hence, the Writ Petition was dismissed for default. As the Management did not come up with an Application to restore the same, the Award passed by the Labour Court in I.D.No.2 of 1987, became final and enforceable.

5. Pursuant thereto, as the 1<sup>st</sup> Respondent/Management was not willing to reinstate the Petitioner into service, he filed a Claim Petition in C.P.No.218 of 2000 before the 2<sup>nd</sup> Respondent/Labour Court, under Section 33c(2) of the Industrial Disputes Act, for computation of monetary benefits due to him, with effect from 01.03.1986 to 30.04.2000, as per the Award dated 26.06.1992 passed in I.D.No.2 of 1987. The 2<sup>nd</sup> Respondent/Labour Court passed an order dated 23.05.2006 in C.P.No.218 of 2000, directing the 1<sup>st</sup> Respondent/Management to pay a sum of Rs.3,33,567/- to the Petitioner, towards back wages and bonus.

6. Since the 1<sup>st</sup> Respondent/Management did not pay the said amount, the Petitioner was constrained to file a Writ Petition in W.P.No.15966 of 2008, praying for a writ of mandamus, directing the District Collector, Chennai, to initiate action against the 1<sup>st</sup> Respondent/Management, under Section 33-C (1) of the I.D. Act, to recover the amount of Rs.3,33,567/- as per the order dated 23.05.2006 made in C.P.No.218 of 2000.

7. This Court, by an order dated 16.09.2008, allowed the said Writ Petition and directed the District Collector, Chennai, to give suitable instructions to the Tahsildar, Fort-Tondiarpet Taluk, to recover the amount due to the Petitioner from the 1<sup>st</sup> Respondent/Management, as per the order dated 23.05.2006 passed in C.P.No.218 of 2000. Aggrieved by the order passed in W.P.No.15966 of 2008, the 1<sup>st</sup> Respondent filed W.A.No.240 of 2009.

8. After considering the entire case, a Division Bench of this Court disposed of the said Writ Appeal, by a judgment dated 14.07.2010, and directed the 1<sup>st</sup> Respondent herein to make payment of backwages to the Petitioner, as per the Award, within a period of six weeks from the date of receipt of a copy of this order, to the credit of C.P.No.218 of 2000, and the Petitioner was permitted to withdraw the said amount by making proper application. Pursuant to the order of the Division Bench, the 1<sup>st</sup> Respondent/Management deposited the amount before the Labour Court, and the Petitioner received the amount of Rs.3,33,567/- on 12.05.2011 from the Labour Court, Chennai.

9. The grievance of the Petitioner is that though he is entitled to be reinstated into service, the 1<sup>st</sup> Respondent/Management, did not offer him employment, despite repeated demands. Hence, the Petitioner filed a Claim Petition in C.P.No.1916 of 2011 before the 2<sup>nd</sup> Respondent/Labour Court, praying to compute the money value of the benefit, for the period from 01.05.2000 to 31.08.2011 under Section 33(c)(2) of the Act, at Rs.12,73,200/- and to direct the 1<sup>st</sup> Respondent to pay the said amount.

10. Before the Labour Court, in C.P.No.1916 of 2011, the Petitioner examined himself and marked documents vide Exs.P1 to P10. However, on behalf of the 1<sup>st</sup> Respondent/Management, none were examined and no documents were marked. After enquiry, the Labour Court, dismissed the said Claim Petition on 08.07.2013, on the ground that the Petitioner has not requested the 1<sup>st</sup> Respondent/Management to reinstate him in service as per the Award and hence, he is not entitled to any monetary benefit under Section 33(c)(2) of the Act. Challenging the said order, the Petitioner is before this Court, with the present Writ Petition.

11. Heard the learned counsel on either side and perused the material documents available on record.

12. It is no doubt true that the Petitioner wrote a letter to the 1<sup>st</sup> Respondent/Management, seeking reinstatement into service, based on the Award dated 26.06.1992 passed in I.D.No.2 of 1987. As the 1<sup>st</sup> Respondent/Management did not reinstate the Petitioner into service, even after passing of the Award, the Petitioner filed C.P.No.1916 of 2012 before the Labour Court, Chennai, praying to compute the money value of the benefit for the period from 01.05.2000 to 31.08.2011, under Section 33(c)(2) of the Industrial Disputes Act.

13. In this case, from the documents produced before the Labour Court, it is seen that there is no iota of evidence that

the 1<sup>st</sup> Respondent/Management had asked the Petitioner to report for work. From the records, it is seen that the letter dated 06.09.2006 sent by the Petitioner to the 1<sup>st</sup> Respondent/Management, is marked as Ex.P4. But, the Acknowledgement Card produced by the 1<sup>st</sup> Respondent/Management is dated 12.10.2006.

14. On a careful perusal of the records, it is seen that the letter of the Petitioner dated 06.09.2006 and the Acknowledgment Card, have no correlation. Also, there is a possibility that the letter dated 06.09.2006 could have been posted belatedly, and the same might have been received by the 1<sup>st</sup> Respondent/Management on 12.10.2006.

15. As the Petitioner herein had requested for reinstatement into service and offered his willingness to report for work on 06.09.2006 and the said letter has been received by the 1<sup>st</sup> Respondent/Management, on 12.10.2006, the finding of the Labour Court that the Petitioner did not evince any interest to report for work, cannot be accepted. Once there is an adverse Award or order against the Management, it is the duty cast upon the employer to send a communication to the worker, calling upon him to come and report for work.

16. Hence, this Court is of the view that the order dated 08.07.2013 passed by the Labour Court in Claim Petition No.1916 of 2011, requires interference, and accordingly, it is set aside. This Court, further holds that the backwages sought by the Petitioner in the said Claim Petition shall be paid to him, within forty-five (45) days from the date of receipt of a copy of this order, failing which, the amount payable will carry interest at 12% per annum, from today. It is open to the 1<sup>st</sup> Respondent/Management to recover the entire amount from the Official, who is responsible to implement the same. It is needless to mention that the personal properties of any of the persons concerned under the Management, can be attached for payment to be made to the worker.

17. Last, but not the least, as the Award of the Labour Court is in force, being not replaced by any other Award or Settlement, it is open to the Government to sanction prosecution under the provisions of the Industrial Disputes Act, 1947, if a complaint is made under Section 29 of the Act, to fix pension falling under Section 32 of the Industrial Disputes Act, in the light of the Apex Court decision in the case of Life Insurance Corporation of India vs. D.J. Bahadur, 1981 (1) LLJ 1. The Government shall take into account, the decision of the Apex Court in the case of Raj Kumar Gupta vs. Lieutenant Governor, Delhi reported in 1997 (1) LLJ 994, while sanctioning prosecution.

In fine, this Writ Petition is allowed with the above direction and observation. No costs. Consequently, connected M.P.No.1 of 2013 is closed.

(aeb)

Sd/-  
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

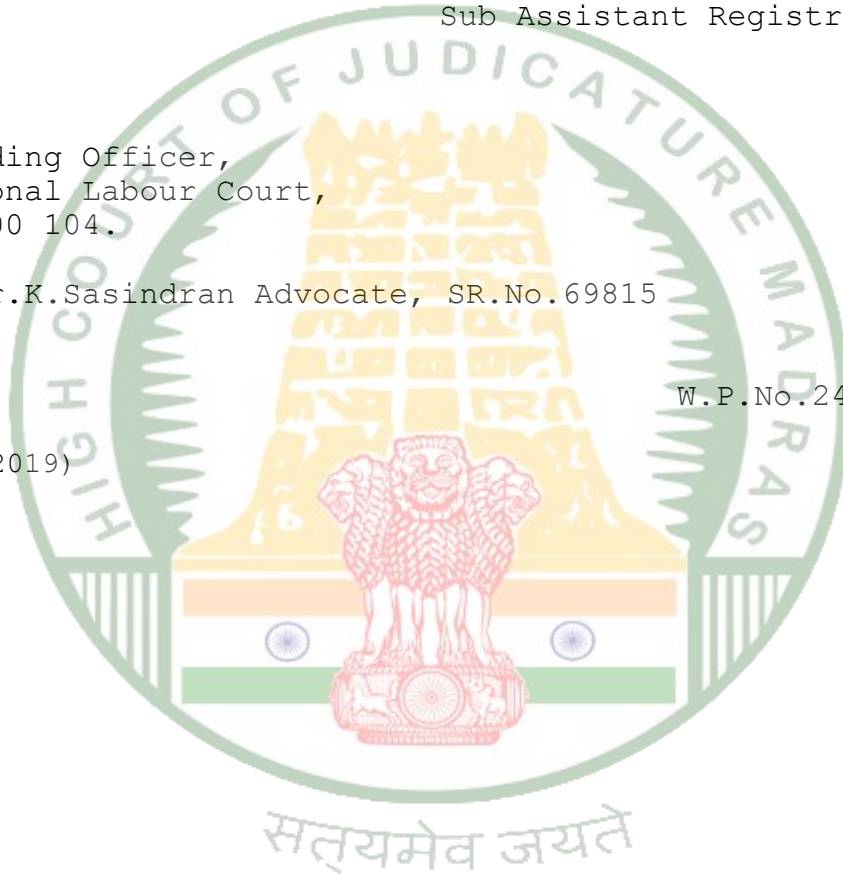
To

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

+1cc to Mr.K.Sasindran Advocate, SR.No.69815

W.P.No.24292 of 2013

Kak(05/11/2019)



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