

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.Nos.25032 to 25034 of 2013

G.Balaraman ... Petitioner in W.P.No.25032 of 2013
K.Vijayakumar ... Petitioner in W.P.No.25033 of 2013
P.Samidurai ... Petitioner in W.P.No.25034 of 2013

vs.

1. The Presiding Officer,
II Additional Labour Court,
Chennai 600 104.
2. The Management,
Babu Industries,
No.563, M.T.H. Road,
Ambattur,
Chennai 600 098. ... Respondents in all W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorarified mandamus calling for the records pertaining to the Award of the 1st Respondent passed in I.D.Nos.279, 277 and 278 of 2011, respectively, dated 25.02.2013 and quash that portion of the order not ordering for reinstatement with consequential and all attendant benefits with back wages, etc. from the date of termination 13/05/2011, 02/06/2011 and 28.05.2011 respectively till reinstatement and consequently direct the 2nd Respondent to reinstate the Petitioners with continuity of service, back wages, consequential and all attendant benefits, bonus, etc. from the date of termination till the date of reinstatement with costs, interest, etc.

For Petitioner in all W.Ps. :

Mr.P.Narayanamoorthy

For 2nd Respondent in all W.Ps.: Mr.T.Sai Krishnan

C O M M O N O R D E R

Petitioners have come up with the above Writ Petitions seeking to quash a portion of the Award dated 25.02.2013 passed by the 1st Respondent in I.D.Nos.279, 277 and 278 of 2011, respectively, in respect of not ordering reinstatement with consequential and all attendant benefits with back wages, etc. from the date of their termination till reinstatement and for a consequential direction to the 2nd Respondent to reinstate them into service with continuity of service, back wages, consequential and all attendant benefits, bonus, etc. from the date of their termination till the date of reinstatement with costs, interest, etc.

2. As the issue involved in the above Writ Petitions is one and the same, they are taken up for disposal by a common order.

3. It is seen that in respect of their claim, Petitioners herein have individually initiated industrial dispute before the Labour Court. By separate Awards dated 25.02.2013 in I.D.Nos.279, 277 and 278 of 2011, respectively, the Labour Court, finding that the 2nd Respondent/Management has not established by producing proper evidence that the employees have abandoned their job, ordered the Management to pay a sum of Rs.55,000/- as compensation to each of the Petitioners herein, rather than reinstating them into service, as there is no cordial relationship between the Management and the Petitioners herein.

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

5. It is not in dispute that the Petitioners were employed in the 2nd Respondent/Management and the Management has deprived them work on the ground that they have abandoned their service. There is no iota of evidence to prove that show cause notice was issued to the last known addresses of the Petitioners herein asking them to report for work. Also, it is seen that the 2nd Respondent/Management has neither established their case before the Labour Court, by conducting a domestic enquiry after issuance of charge memo and seeking for explanation from the Petitioners herein to prove the charges against the Petitioners, except letting in evidence and producing Ex.R1-Attendance Register. The Attendance Register was carefully examined by the Labour Court, and as there was an endorsement made by the Labour Inspector, the said

document was disbelieved by the Labour Court. Further, Petitioners herein were examined as witnesses before the Labour Court.

6. At this juncture, it is worth referring to the decision rendered by the Apex Court in the case of *Jai Shanker vs. State of Rajasthan*, reported in AIR 1966 SC 492, wherein, it was held that it is the mandatory duty of the employer to issue notice to the employee, call for an explanation from him and conduct an enquiry, in case of abandonment of service. It was further held therein that notice will have to be sent to the last known address of such employee, failing which, the theory of abandonment has to be disbelieved.

7. In view of the above, this Court has no other option except to interfere with the Award dated 25.02.2013 passed by the Labour Court on the ground of perversity, as there is no evidence with regard to strained relationship between the Management and the employees. Hence, the Award passed by the Labour Court is interfered with, thereby directing the 2nd Respondent/Management to reinstate the Petitioners into service with continuity of service, all attendant and consequential benefits.

8. As it is represented that the Petitioners/employees have already retired from service, this Court makes it clear that they would be entitled to all the above benefits up to the date of their superannuation.

9. The 2nd Respondent/Management is expected to implement the Award within two months from the date of receipt of a copy of this order, taking note of the decision rendered by the Apex Court in the case of *Tamil Nadu State Transport Corporation vs. Neethivilangan, Kumbakonam* reported in (2001) 9 SCC 99, as the order of this Court has replaced the original Award. It is needless to state that if any complaint is made by the workman under Section 29 of the Industrial Disputes Act, 1947, person falling under Section 32 of the Act needs to be prosecuted and the Government shall sanction prosecution taking note of the decision of the Apex Court in the case of *Raj Kumar Gupta vs. Lieutenant Governor, Delhi* reported in 1997 (1) LLJ 994. It is further made clear that if the admitted amount is not paid, it is open to the workman to seek remedy under Section 33C(1) of the Industrial Disputes Act, 1947 in view of the decision of the Apex Court rendered in the case of *Fabril Gasosa vs. Labour Commissioner* reported in (1997) 3 SCC 150. In case of disputed amount, the computation lies only by invoking Section 33C(2) of the Industrial Disputes Act, 1947.

In fine, Writ Petitions are allowed with the above direction and observation. No costs.

Sd/-
Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

(aeb)
To:

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

+1cc to Mr.Sai and bahrath , Advocate SR.No. 67018
+3ccs to Mr.P.Narayanamoorthy , Advocate SR.No. 66474

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gp (CO)
A.SK(09/09/2019)



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