

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.31436 of 2013

K.Lakshmanan

... Petitioner

vs.

1. The Presiding Officer,
Labour Court,
Coimbatore.

2. The Management,
T.Stanes & Company Ltd.,
8/1597, Trichy Road,
Coimbatore - 641 018.
(amended as per order in I.A.No.371/2009)

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorari, calling for the entire records pursuant to the order dated 21.11.2012 passed in I.D.No.345 of 2006 on the file of the 1st Respondent and to quash the same.

For Petitioner : Mr.G.B.Saravanabhavan

For 2nd Respondent : Mr.Anand
for M/s.T.S.Gopalan

O R D E R

Aggrieved by the Award dated 21.11.2012 passed by the Labour Court in I.D.No.345 of 2006, denying backwages, the workman has come up with the present Writ Petition.

2. According to the Petitioner, he was employed as a permanent worker in the 2nd Respondent/Management, since 26.09.1996 and he had worked for 480 days without any break in service. As the Petitioner was continuously demanding fair wages and other benefits through their Union (Desiya Podhu Thozhilalar Sevasangam), he was victimized continuously by frequent transfers, from Erode to Madurai on 01.02.2005, from Madurai to Coimbatore on 01.04.2005 and from Coimbatore to Vellore on 01.06.2005.

3. It is the case of the Petitioner that in order to wreck vengeance for his trade Union activities, the 2nd Respondent/Management issued a Show Cause Notice dated 14.10.2005 giving him two months' notice and thereafter, by a letter dated 16.12.2005, terminated him from service. Aggrieved by the same, the Petitioner raised an Industrial Dispute in I.D.No.345 of 2006, praying reinstatement with continuity of service with full backwages and all other attendant benefits.

4. As the Labour Court partly allowed the Industrial Dispute by directing the 2nd Respondent/Management to reinstate the Petitioner into service, however without backwages, the Petitioner is before this Court with the above Writ Petition.

5. Heard the learned counsel for the parties and perused the material documents available on record.

6. In paragraph 20 of the Award passed by the Labour Court, it is stated that insofar as backwages are concerned, the burden is upon the Petitioner that he has not been gainfully employed elsewhere. As the Petitioner has not discharged the said burden and has not even stated in his evidence that he has not been gainfully employed elsewhere, the Labour Court came to the conclusion that the Petitioner is gainfully employed elsewhere and held that he is not entitled to backwages.

7. It is seen that paragraph 20 of the Award runs counter to the Petitioner's Claim Statement before the Labour Court, wherein, he has categorically stated that he is without employment. Once the employee has made an averment in his Claim Statement that he is not gainfully employed, the burden shifts on the employer to establish that the employee is gainfully employed.

8. When an employer is not able to establish that the employee is gainfully employed elsewhere, certainly the employee is entitled to backwages. In the Award of the Labour Court, the last drawn monthly emoluments of the employee is mentioned as Rs.7,100/-. The employee has attained superannuation, is the submission of the employer.

9. This Court intends to give a quietus to the issue on hand and shorten the life of litigation, and is not willing to drive the employee to the Labour Court, for computation of wages under Section 33(C) (2) of the Industrial Disputes Act, 1947, and thereafter file a Petition under Section 33(C) (1) of the Act, as it is a time consuming process.

10. In this connection, it is worth referring to the recent ruling of the Supreme Court, in the case of Jayanthibhai

Raojibhai Patel vs. Municipal Council, Narkhed (C.A.No.6188 of 2019, dated 21.08.2019), wherein, the Apex Court reaffirmed the law that payment of full backwages for the period for which no service has been rendered would be the normal rule in case of wrongful termination of service, and awarded a lump sum amount of Rs.5,00,000/- as backwages for the period between the date of the order of removal of the employee and the date on which he attained the age of superannuation. Relevant portion of the said decision is extracted hereunder:

"13. Having due regard to the principles which have been enunciated in Deepali Surwase by this Court, the High Court was not, in our view, justified in denying the backwages to the appellant altogether. Bearing in mind the circumstances which have been noted above, a lumpsum compensation should be directed to be paid.

14. The ends of justice would be met by directing that the appellant be paid an amount quantified at Rs.5 lakhs in full and final settlement of his claim for backwages for the period between the date of the order of removal and the date on which he attained the age of superannuation. This payment to the appellant shall be made in addition to the retiral benefits to which he is entitled in terms of the order of the High Court. The payment of Rs.5 lakhs shall be made within a period of two months from the date of receipt of a certified copy of this order."

11. In view of the foregoing, this Court holds that the Petitioner is entitled to a lumpsum amount of Rs.5,00,000/- (Rupees Five Lakhs only) as backwages payable to him upto the date of his superannuation within a period of 45 days from the date of receipt of a copy of this order. It is made clear that if the said sum is not disbursed to the Petitioner/workman within the time stipulated, the 2nd Respondent/Management will have to pay interest on the said sum at 12% per annum, from today. The compensation shall be spread over for the purpose of getting benefits of Income Tax, as has been held by the Apex Court in the case of Sundaram Motors Pvt. Ltd. vs. Ameerjan reported in 1985 (II) LLJ 22.

12. The other portion of the Award dated 21.11.2012 passed by the Labour Court made in I.D.No.345 of 2006 with regard to reinstatement, with continuity of service and payment of other attendant benefits, stands unaltered.

13. As the Award of the Labour Court has been modified, it is open to the Petitioner/workman to invoke Section 29 of the Industrial Disputes Act, 1947 and persons falling under Section 32 of the Act need 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 amount is not paid, it is open to the workman to seek remedy under Section 33c(1) of the Act, 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 fine, the Writ Petition is disposed of with the above direction and observation. No costs. Consequently, connected W.M.P.No.31119 of 2017 is closed.

s/d-
Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

(aeb)

To:

The Presiding Officer,
Labour Court,
Coimbatore.

+1 CC to Mr.G.B.Saravanabhavan, Advocate sr 73106.

+1 CC to Mr.T.S. Gopalan, Advocate sr 73101.

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W.P.No.31436 of 2013

RSV (CO)
SP (04/11/2019)

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