

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.03.2019

CORAM

THE HON'BLE MR.JUSTICE V.PARTHIBAN

W.P.NO.15426 OF 2018

R.Babu

... Petitioner

vs.

1. The Presiding Officer,
III Addl.Labour Court,
High Court Building,
Chennai-600 104.

2. The Management,
Precifine Die and Casting

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records on the files of the first respondent made in I.D.No.209 of 2016, dated 11.09.2017 insofar as the first respondent denied reinstatement, continuity of service, backwages and all other attendant benefits and quash the same.

For Petitioner .. Mr.K.Bharathi

R1 .. Court

For Respondents .. No appearance for R2

ORDER

The case of the petitioner is that he was working as a Turner in the second respondent company from 22.05.2014. It appears that on 05.03.2016, there was a fault in the lathe machine, which was operated by the petitioner and the same was reported by him to the Management. Since the machine was under repair, when the petitioner reported for duty on 07.03.2016, he was denied employment stating that his services were terminated orally by the Management. The petitioner was not furnished with any reasons, except stating that the machine was under repair. Although the petitioner had made attempts to contact the Management, he was not successful. A written representation was

also submitted by the petitioner on 21.03.2016, however, no reply has been forthcoming from the Management to the said representation. Therefore, the petitioner raised a dispute under Section 2A of the Industrial Disputes Act before the Labour Conciliation Officer. However, the Conciliation Officer could not effect any conciliation and therefore, a failure report was submitted on 08.09.2016. Thereafter, the dispute came for adjudication before the first respondent Labour Court.

2. In the proceedings before the first respondent, despite sufficient opportunities were given, there was no representation on behalf of the Management and therefore, the Management was set ex-parte. On behalf of the workman, he was examined and Exs.W1 to W8 were marked. The Labour Court, on the basis of the oral evidence and the materials placed before it for consideration, has ultimately come to the conclusion that the employment of the workman with the second respondent Management was established and his last drawn salary was Rs.16,500/-. Since no evidence was let in nor any written submission filed on behalf of the Management, the first respondent/Labour Court accepted the case of the workman on the basis of evidence let in on his behalf. Except filing a written submission before the Conciliation Officer, the Management has not chosen to either appear in person or file any written submissions. Therefore, the Labour Court had come to the conclusion that the termination of the workman was illegal and contrary to the provisions of the Industrial Disputes Act.

3. While holding as such, the Labour Court, on the ground that the petitioner was employed only for a short period, i.e. from 04.06.2014 to 07.03.2016, instead of ordering reinstatement, awarded compensation of Rs.25,000/-. The said award passed by the Labour Court is put to challenge by the petitioner in the present writ petition.

4. The case of the petitioner is that once the Labour Court found that the termination was illegal and the provisions of the Industrial Disputes Act had not been followed while terminating the petitioner, as a matter of course, the Labour Court ought to have ordered reinstatement with continuity of service and backwages. The Labour Court cannot order compensation when no such claim was either made by the employee or pleaded by the Management. The Management has not appeared before the Labour Court and made any submissions with regard to any difficulty in taking back the employee. When such is the position, the course adopted by the Labour Court in ordering compensation, that too, a meager amount of Rs.25,000/- is legally unsustainable and cannot be countenanced even on facts. This is particularly so when the Labour Court itself has found that the last drawn salary of the petitioner was Rs.16,500/-.

5. When the matter is taken up today, despite service of notice, there was no representation on behalf of the Management. Even on earlier occasions also there was no representation.

6. This Court is perfectly in agreement with the submissions made on behalf of the counsel for the petitioner/employee. Once the Labour Court has come to a definite conclusion that the termination of the petitioner was illegal and void, as a matter of course, it should have ordered reinstatement with continuity of service and backwages. Unless the Labour Court comes to a conclusion that it was not conducive for industrial peace to order reinstatement, it cannot order compensation alone instead of reinstatement.

7. In this case, the Management was not represented before the Labour Court and therefore, there was no occasion for the Labour Court to come to any conclusion for ordering compensation alone. It appears that the Labour Court has gone out of the way to protect the interest of the Management despite the Management not appearing before the Labour Court and despite several opportunities given to them, even as per the observations made by the Labour Court in this regard. When such is the position, the Labour Court ought to have ordered reinstatement and ought not to have ordered compensation. Even the compensation which is ordered is woefully inadequate and low, considering the last drawn salary drawn by the petitioner.

8. For the above said reasons, this Court is of the view that the award of the Labour Court cannot stand the test of judicial scrutiny and the same is liable to be interfered with. Therefore, the impugned award dated 11.09.2017 made in I.D.No.209 of 2016 is hereby set aside. The petitioner/employee is entitled to succeed. The second respondent Management is directed to reinstate the petitioner/employee in service with continuity of service and all attendant benefits and the petitioner is also entitled to 50% of the backwages for the period of non-employment.

The writ petition shall stand allowed as indicated above. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

msk

To

1. The Presiding Officer,
III Addl.Labour Court,
High Court Building,
Chennai-600 104.

+1cc to Mr.K.Bharathi, Advocate, S.R.No.26370

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PPA (CO)
CS/08/05/2019



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