



WEB COPY



W.P.No.8455 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2025

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.8455 of 2014

Saraswathi

...Petitioner

Vs.

1. The Managing Director,
Craigmore Plantation (India),
Kolakombai Post – 643 218,
Nilagiri.

2. The Presiding Officer,
The Labour Court,
Coimbatore.

...Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records on the file of the 2nd respondent relating to the award dated 28.06.2013 in I.D.No.152 of 2005, quash the same to the extent that the petitioner is denied backwages and consequently direct the respondent to grant backwages from the date of dismissal to till the date of actual reinstatement.

For Petitioner : M/s.Anna Mathew

For Respondents : Mr.C.A.Diwakar, for R1
R2 – Labour Court



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ORDER

This Writ petition has been filed seeking quashment of the award passed by the 2nd respondent dated 28.06.2013 in I.D.No.152 of 2005 only to the extent that the petitioner is denied backwages and to consequently direct the respondents to grant backwages to the petitioner from the date of dismissal to till the date of actual reinstatement.

2. It is the case of the 1st respondent/management that on 02.08.2024, the petitioner, along with her husband, threatened the supervisor, and the petitioner's husband assaulted the supervisor. Based on the said incident, according to the 1st respondent, it followed the due process of law and ultimately dismissed the petitioner from service. The petitioner raised objection about the appointment of Enquiry officer and pointed out many irregularities in the conduct of Enquiry, leading up to her dismissal. Aggrieved by the same, the petitioner raised an industrial dispute in I.D.No.152 of 2005 before the Labour Court, Coimbatore. The petitioner examined herself as a witness and marked 35 documents. On the side of the 1st respondent-management, two witnesses were examined and three documents were marked. On an analysis of both oral and



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documentary evidence, the Labour Court directed the management to reinstate the petitioner into service with continuity of service and other attendant benefits but without backwages, solely on the ground that the petitioner has failed to produce any material to show that she was not gainfully employed during the relevant period. Seeking backwages, the petitioner has filed the present writ petition.

3. Learned counsel for the petitioner-workman submitted that the entire domestic enquiry was nothing but farce, and the petitioner has raised her objections in the manner in which the enquiry was conducted and at every stage, her objections were overruled. Indeed, the Labour Court itself has framed preliminary issue as to whether the enquiry conducted by the Enquiry officer is a valid one and ultimately, the Labour Court held that the enquiry was not conducted in a fair manner and gave an opportunity to the 1st respondent-management for adducing fresh evidences. Therefore, the learned counsel submitted that, when the very enquiry is found to be done in a unfair manner, the Labour Court has rightly held that the petitioner is entitled for reinstatement and also granted continuity of service. Having granted the above two reliefs, the logical conclusion would be grant of backwages also. However, the



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Labour Court has strangely fixed the burden on the petitioner to show that she was not gainfully employed during the period of her dismissal, which is not sustainable and accordingly, prayed that backwages could be added.

4. Per contra, the learned counsel appearing on behalf of the 1st respondent-management submitted that the Labour Court has grossly erred in ordering reinstatement of the petitioner-workman and the order of dismissal was passed only after following the due process of law and therefore the entire award has to be struck down.

5. Heard learned counsel on either side and perused the materials available on record.

6. Pending writ petition, as the petitioner-workman was reinstated, the only issue arises for consideration in the present Writ petition is as to whether the petitioner would be entitled to backwages or not?

7. The Labour Court has strangely fixed the burden on the workman to prove that she was not gainfully employed during the period



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of her dismissal. Certainly, such a burden could not be fastened on the petitioner-workman to prove that she was not gainfully employed anywhere. Rather, the burden is on the employer to prove that the petitioner-workman was working and earning during her non-employment period. Hence, this Court has no hesitation to hold that though the Labour Court has given proper and cautious reasons for reinstating the petitioner with continuity of service and other benefits by considering the period of service rendered by the petitioner, however, was not correct in fixing the burden on the petitioner to prove her non-employment during the period of her dismissal and to that extent, the order of the labour court has to necessarily be interfered with.

8. Considering the fact that, the petitioner/workman has been subsequently reinstated and also considering the issue involved and the passage of time from the date on which the workman was dismissed from service, as about two decades have passed since the order of dismissal, this Court, in exercise of its powers, is inclined to direct the 1st respondent-management to pay 50% of the backwages in favour of the petitioner-workman by calculating the same from the date of her dismissal till the date of her reinstatement, within a period of four weeks



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from the date of receipt of a copy of this order, failing which, the said amount will carry interest at the rate of 6% per annum.

9. With the above modifications and directions, this Writ petition stands disposed of. No costs. Consequently, the connected Miscellaneous petitions, if any, are closed.

20.02.2025
(2/2)

skt

NCC : Yes / No
Index : Yes / No
Speaking order : Yes / No

To:

The Presiding Officer,
The Labour Court,
Coimbatore.



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M.DHANDAPANI, J.

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