



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 03.10.2019
CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. [MD]No.1288 of 2018

1.M.Manivannan
2.K.Anandh @ Anandhan : Appellants/Petitioners

Vs.

1.The Management,
Ponds Hindustan Unilever Ltd.,
St. Mary's Road,
Kodaikanal - 624 101.

2.The Management,
Hindustan Unilever Ltd.,
Head Office, Unilever House,
S.D. Sawant Marg,
Chakala, Andheri (E),
Mumbai - 400 099.

3.The Presiding Officer,
Labour Court,
Tiruchirappalli. : Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent, praying to set aside the order passed by the learned Judge in W.P. [Md]No.18937/2016 dated 04.06.2018 in so far as restricting the reliefs to a sum of Rs.1,00,000/- to each of the appellants and direct the respondents 1 and 2 to pay Rs.2,57,937/- from 09.11.2001 to till the date of payment and to pay to each of the appellants with interest at the rate of 12% per annum after adjusting some of Rs.1,00,000/- (One Lakh) which was ordered to be paid in the writ petition.

Prayer in W.P.[MD]No.18937/2016 :

Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records pertaining to the impugned order passed by the third respondent, dated 23.01.2013 relates to Point No.3 and quash the same as illegal and arbitrary and consequently directing respondents 1 and 2 to give back wages of the petitioners service period till the closure of the Company.



For Appellants : Mr.A.Rahul

JUDGMENT

[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

WEB COPY

This appeal filed by the workmen is directed against the order in W.P.[MD]No.18937 of 2016. The said writ petition was filed by the appellants / workmen challenging the finding of the Labour Court, Trichy, insofar as it relates to Point No.3, in its award dated 23.01.2013 in I.D.No.142/2003 & 145/2003. The learned Single Judge agreed with the finding rendered by the Labour Court stating that the respondent management has closed down and there is no possibility to give an order of reinstatement and the training given to the employee is absolutely of no use and a sum of Rs.12,500/- was given as compensation in lieu of employment, that too about 18 years back ie., in 2001. Further, the Court held that considering the long lapse of time, the second respondent management has to pay a sum of Rs.1,00,000/- to each of the appellants on the ground that they will have to be pay the compensation and also gratuity. The appellants are aggrieved by the said finding.

2.Heard Mr.A.Rahul, learned Counsel for the appellant, assisted by Mr.S.Subramani, learned Counsel.

3.Before we examine as to whether the Labour Court was right in denying backwages to the appellants, we need to take the finding rendered by the Labour Court with regard to the first issue whether the appellants are trainees or workmen of the respondent management. This aspect was considered by the Labour Court, the oral and documentary evidences were appreciated and the following finding has been rendered:

"On the basis of these reasons, this Court is of the opinion that the petitioners were employed as permanent employees beyond the period of 480 days within the period of 2 years in the work which is of permanent nature. Even though the respondent had used the word as 'trainee' this Court has to lift the veil the company and find out the real status of the persons working in the company and they must be given relief as per law.

In this view, the entire discussions revealed that the petitioners were working in the work which is of permanent nature in the 1st respondent company from 1996 to June 1999 and thereby they are entitled for statutory benefits under the I.D.

On the basis of complete scrutiny of records, this Court has come to conclusion that petitioners were working as a regular permanent workmen of 1st respondent



company from 1996 to 1999 and their services were utilized by the company by unit the name such as trainee and in that circumstances the denial of employment on 23.09.99 and without show cause notice and without following industrial procedures is illegal.

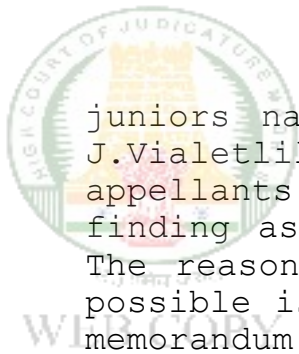
WEB COPY

So, the petitioners are entitled for reinstatement with continuity of service and back wages."

4.The above finding clearly shows that the appellants / trainees were rejected by the Labour Court and it was held that they are entitled for reinstatement with continuity of service and backwages. The Labour Court while deciding the second issue namely denial of employment was justified or not, answered the issue in favour of the workmen holding that the denial of employment to the appellants was not justifiable. The finding held so, the question was as to what relief the workmen are entitled to. While considering the said issue, the Labour Court held that there is no possibility for reinstatement since the company has been closed down at the behest of the Tamil Nadu Pollution Control Board as the company has been causing pollution. After having rendered such a finding, the Labour Court held that the appellants had not pleaded about non-employment and therefore, they are not entitled to backwages. This finding was put to challenge in the writ petition. However, the learned Single Bench held that a compensation amount of Rs.1,00,000/- would meet the ends of justice ie., it will include not only the compensation but also the gratuity.

5.In our considered view, the writ Court ought to have considered as to whether the finding rendered in the third relief with regard to the relief granted to the respondents is correct or not. However, such an endeavour has not been made. We have no hesitation to hold that the finding rendered by the Labour Court in the third issue is erroneous. This is so because the Labour Court held that the appellants are full time employees and the continuity of employment was not justified. Therefore, automatically they should be entitled to all benefits which were extended to similarly placed regular employees. It may be true that re-employment is impossible because the factory has been closed down. That does not mean that the appellant / workmen should be compelled to accept the meagre compensation which is not even of the limit of compensation given to regular employees who had opted for voluntary retirement under the scheme.

6.The Labour Court holds that the appellants have not pleaded about their non-employment. This is factually incorrect because in the proof affidavit, a specific plea has been raised by the workmen that they are not employed elsewhere. Therefore, this finding also is erroneous. Furthermore, the Labour Court failed to take note of the issue that the VRS amount and exgratia amount paid to their



juniors namely, P.Andiappan, J.Vijayaragavan, D.Mahesh, C.Yasodha, J.Vialetlilly, A.Vennela and M.Balasundaram was not extended to the appellants. Admittedly, the Labour Court has not recorded any finding as to why the backwages should be denied in its entirety. The reason assigned by the Labour Court that reinstatement is not possible is not a ground to deny backwages. The appellants in their memorandum of grounds of appeal have contended that they are entitled to a total amount of Rs.7,71,158/- which includes VRS compensation, backwages, provident fund, bonus and interest at 12% p.a.

7.In the light of the conclusion which we have arrived at, we have to necessarily interfere in the order passed in the writ petition and consequently the decision of the Labour Court on Issue No.3 in its award dated 23.01.2013. For the above reasons, the writ appeal is allowed and the order passed in the writ petition is set aside and the award of the Labour Court in I.D.Nos.142/2003 & 145/2003, insofar it relates to the finding on Issue No.3 is set aside and it is held that the **(*)appellants** are to be treated on par with their employees who are paid VRS amount, exgratia amount and the **(*)appellants** are entitled for backwages and all other consequential benefits. No costs.

Sd/-
Assistant Registrar(CO)

**(*)corrected as per order of
this Court dated 18.11.2019**

Sd/-
Assistant Registrar(CO)

/TRUE COPY/

Sub Assistant Registrar

MR
To

The Presiding Officer, Labour Court,
Tiruchirappalli.

+2. C.C. to M/S.A.Rahul, Advocate SR.No. 99260

Judgment made in
W.A. [MD]No.1288 of 2018
Dated: **03.10.2019**

JM/22.10.2019/4P/4C
TR(26.11.2019) 4P 4C