

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2020

CORAM:

THE HONOURABLE MR. JUSTICE T. RAJA

Writ Petition No.6434 of 2010

R.Ayyappan

... Petitioner

Vs

1. The Industries Commissioner and Director of Industries and Commerce, Chepauk, Chennai-600 005.
 2. The Management of the Kinnakorai Industrial Co-operative Tea Factory Limited, I nd.No.1697, Kinnakorai Post-643 219, The Nilgiris District.
- ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 1st respondent bearing Rc.No.6651/ICM/2010 dated 05.03.2010 and quash the same and consequently, direct the 1st respondent to direct the 2nd respondent to re-fix the pay of the petitioner as if he continued in service without any interruption from the date of the award passed by the Labour Court, Coimbatore in I.D.No.446 of 2004 dated 26.04.2006 with all monetary benefits arising there from within a time frame.

For Petitioner : Mr.K.M.Ramesh

For Respondents: Ms.Thangavadhana Balakrishnan

Addl.G.P. for R1

Mr.D.Sreenivasan for R2

O R D E R

The petitioner has come to this Court in the year 2010 seeking for issuance of a Writ of Certiorarified Mandamus, challenging the impugned order dated 05.03.2010 passed by the Industries Commissioner and Director of Industries and Commerce, Chepauk, Chennai-5, the 1st respondent herein wherein the request of the petitioner to re-fix his pay taking into account the increments earned by him during the period from the date of dismissal to the date of his reinstatement, was refused.

2. Learned Counsel appearing for the petitioner submitted that the petitioner was employed in the 2nd respondent Industrial Co-operative Tea Factory as Junior Assistant. While so, he was placed under suspension w.e.f. 31.10.1996 on the allegation that he has submitted a false Medical Certificate though he was in judicial custody in connection with a criminal case. After holding enquiry, he was dismissed from service by order dated 31.7.1998. Since a criminal appeal was pending as against the order of conviction before this Court, he was unable to challenge the dismissal order. After he was acquitted in the Criminal Appeal, he challenged the dismissal order dated 31.7.1998 by raising an industrial dispute in I.D.No.446/2004 on the file of the Labour Court, Coimbatore. The learned Labour Court, Coimbatore, in its Award dated 26.04.2006 directed to reinstate the petitioner in service with continuity of service, however, without back wages. The said award became final and concluded since the 2nd respondent did not challenge the same. Therefore, the award passed by the Labour Court, Coimbatore, directing the respondents to give continuity of service clearly shows that the petitioner is entitled to get increments as though he was in service from the date of dismissal till the date of reinstatement. Since the 2nd respondent has not given the increments and other consequential benefits by giving the continuity of service as ordered by the Labour Court, the petitioner has advised to come to this Court.

3. A detailed counter affidavit has been filed by the 1st respondent.

4. Learned Additional Government Pleader appearing for the respondents submitted that the petitioner was placed under suspension on 31.10.1996 following the enquiry procedure since he was found guilty of the charges and thereupon he was dismissed from service by order dated 31.07.1998. Besides, criminal proceedings were also initiated against him for submitting a false Medical Certificate. He was in judicial custody in connection with the criminal case. The Sessions Court has also convicted the petitioner on 13.02.1995. The petitioner again filed a Criminal Appeal and succeeded on the benefit of doubt given by the appellate court. Only thereafter, he has raised an Industrial Dispute in I.D.No.446/2004 on the file of the Labour Court, Coimbatore. But the Labour Court, without considering the period of limitation, passed an award directing the respondents to reinstate the petitioner in service with continuity of service, however, without back wages. Accepting the award passed by the Labour Court dated 26.04.2006, the petitioner was reinstated in service on 15.03.2007 F.N. He also reported for duty. While reinstating the petitioner on 15.03.2007, the 2nd respondent also has fixed his pay in the cadre of Junior Assistant as Rs.3200-85-4900. In the meanwhile,

the 2nd respondent also filed a Separate Petition under Section 36(A) of the Industrial Dispute Act before the Deputy Commissioner of Labour, Coimbatore narrating the entire facts and finally prayed to interpret the phrase ''to reinstate the petitioner with continuity of service and without any other relief'' and also to hold that the management implemented the award properly. That petition is still pending. But, according to the learned Counsel for the petitioner, that petition was closed whereas the learned Additional Government Pleader stated that the said petition is pending even now.

5. Considered the rival submissions made on either side and I have also perused the materials available on record carefully.

6. At the outset, the facts that the petitioner was placed under suspension w.e.f. 31.10.1996 on the allegation that he has submitted a false Medical Certificate though he was in judicial custody in connection with a criminal case and after holding enquiry, he was dismissed from service by order dated 31.7.1998 are not in dispute. Since the Sessions Court convicted him in connection with the criminal case, he filed the Criminal Appeal before this Court and succeeded on the ground of benefit of doubt is also not in dispute. Only thereafter, he has raised an Industrial Dispute in I.D.No.446/2004 on the file of the Labour Court, Coimbatore in which the Labour Court, passed an award directing the respondents to reinstate the petitioner in service with continuity of service, however, without back wages. Accepting the award passed by the Labour Court dated 26.04.2006, the petitioner was reinstated in service w.e.f. 15.03.2007 with the basic pay of Junior Assistant at Rs.3200/-. Now the grievance of the petitioner is that no increments were given for the dismissal period. It appears that the petitioner has filed a petition before the Deputy Commissioner of Labour, Coimbatore dated 29.08.2008 alleging violation of the award by the Management and the Management filed its remarks dated 07.11.2008. The Management also filed Additional affidavit in April 2009 narrating the entire facts. In addition, the Management also filed a separate petition under Section 36(A) of the Industrial Disputes Act before the Deputy Commissioner of Labour, Coimbatore, narrating the entire facts praying to interpret the phrase ''to reinstate the petitioner with continuity of service and without any other relief'' and also to hold that the management has implemented the award properly. According to the learned Additional Government Pleader, that petition is still pending though the learned Counsel for the petitioner stated that it was closed.

7. Under such circumstances, when the petitioner was reinstated in service with the basic pay of the Junior Assistant at Rs.3200/- from 15.03.2007 F.N. and clarification has been

sought for by the Management from the Deputy Commissioner of Labour, Coimbatore, in respect of implementation of the award in its letter and spirit without any violation, I find no merit in the present Writ Petition. Moreover, after the petitioner was dismissed from service on 31.7.1998, he was convicted by the learned Sessions Judge in its order dated 13.02.1995. Thereafter, when he filed Crl.A.No.219/95, learned Appellate Court acquitted him on the ground of benefit of doubt on 10.08.2001. When the order of dismissal from service of the petitioner was made on 31.7.1998, after six years, he raised an Industrial Dispute in the year 2004 in I.D.No.446 of 2004. The learned Labour Court, Coimbatore, allowed the Industrial Dispute by passing award dated 26.04.2006 denying back wages for the period not in service, on the basis of no work no pay between 31.7.1998 i.e., the date of dismissal till the date of the award i.e. on 26.4.2006, therefore, when it is an admitted fact that the petitioner was not in employment, he cannot ask for refixation of his pay.

8. Thus, for all the reasons stated above, the Writ Petition fails and the same is accordingly dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Judge Labour Court,
Coimbatore.
2. The Industries Commissioner and Director
of Industries and Commerce, Chepauk,
Chennai-600 005.
- 3.The Management of the Kinnakorai
Industrial Co-operative Tea Factory
Limited, I nd.No.1697, Kinnakorai Post-643 219,
The Nilgiris District.

+1 cc to Mr.K.M.Ramesh, Advocate Sr.No. 19624
+1 cc to The Government Pleader, Sr.No. 20224

W.P.No.6434 of 2010

VGII(CO)
RMP(21/07/2020)