

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2020

CORAM

THE HON'BLE MR.JUSTICE M. DHANDAPANI

W.P.No.18549 of 2020

P.Varadhan

...Petitioner

-Vs-

M/s.Lotus Footwear Enterprises Ltd, Unit-I  
Rep.by its General Manager Mr.R.Sivalingam  
Plot No.3-B, SIPCOT Industrial Park  
Mathur Post, Managal Village  
Vembakkam (Taluk), Thiruvannamalai  
District - 631 701.

...Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorari calling for the records in connection with the Award pronounced by the Principal Labour Court, Vellore in I.D.No.124 of 2016 on 25.02.2019 and quash the portion of the award which denying back wages to the petitioner while granting the relief of reinstatement with continuity of service.

For Petitioners : Mr.K.Sudalai Kannu

O R D E R

The prayer sought for herein is to call for the records in connection with the Award pronounced by the Principal Labour Court, Vellore in I.D.No.124 of 2016 on 25.02.2019 and quash the portion of the award denying back wages to the petitioner while granting the relief of reinstatement with continuity of service.

2. The case of the petitioner is that he joined the respondent Management as Clerk on 06.10.2008 and he was promoted as Operator on 06.10.2010. He was a member of "Works Committee" which was established by the respondent Management. There was no trade union in the respondent factory till 2014. In the year 2014, a Union called "United Labour Federation" was established and the petitioner was elected as Executive Member of the said Union. It is the further case of the petitioner that the petitioner was victimized due to his involvement in the trade union activities and ultimately he was issued with a charge memo on 01.07.2015 for frivolous charges, for which he submitted his explanation on 08.07.2015. However, the respondent Management, without considering his explanation, conducted an enquiry and based on the Enquiry Officer's report, the petitioner was

dismissed from service on 27.06.2016. Pursuant to the same, the petitioner raised an industrial dispute in I.D.No.124 of 2016 on the file of the Principal Labour Court, Vellore. The labour Court passed an award on 25.02.2019, holding that the charges have not been proved and directed the Management to reinstate the petitioner with continuity of service but without backwages. Aggrieved against the denial of backwages, the petitioner is before this Court with the aforesaid prayer.

3. Learned counsel for the petitioner submitted that the petitioner's last drawn salary was Rs.18,000/- per month and he was not gainfully employed elsewhere after the dismissal from service and is suffering from severe economic hardship. Learned counsel further contends that he was not examined as a witness before the labour Court and hence that portion of the award denying backwages is liable to be quashed. He also submitted that, the Management has not disputed or denied the fact that the petitioner was not gainfully employed elsewhere after the dismissal from service. On all the above grounds, the petitioner assailed the impugned award passed by the labour Court as unsustainable to the extent of denial of backwages and prays the indulgence of this Court in quashing that portion of the award with respect to the denial of backwages.

4. I have considered the submissions made by the learned counsel for the petitioner and perused the materials placed on record.

5. Admittedly, the petitioner raised an industrial dispute in I.D.No.124 of 2026 on the file of the Principal Labour Court, Vellore. Though no witnesses were examined on the side of the petitioner as well as the Management, exhibits were marked viz., Ex.W1 to W24 on the side of the employee and Ex.M1 to M28 on the side of the Management. After elaborate adjudication, the labour Court came to the conclusion that, the petitioner was entitled for reinstatement into service, but without backwages.

6. The only ground raised by the petitioner to assail the impugned Award is that, the fact that the petitioner was not gainfully employed elsewhere during the period of dismissal of service was not disputed by the Management and hence inference has to be drawn to the effect that the petitioner is entitled for backwages. Learned counsel for the petitioner would strenuously contend that, the principle of 'No Work No Pay' would not be applicable in the present case for the reason that the respondent Management has not disputed the fact of non-employment of the worker as claimed by him.

7. Insofar as the principle of 'No Work No Pay' is concerned, there is a catena of decisions by the Supreme Court

of India and the following judgments would apply to the facts of the case.

8. In "U.P. State Brassware Corp. Ltd. v. Uday Narain Pandey, (2006) 1 SCC 479", the Supreme Court has held that,

"It is observed that the person is not entitled to get something only because it would be lawful to do so. If that principle is applied, the functions of an Industrial Court shall lose much of their significance. Although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result but now, with the passage of time, a pragmatic view of the matter is being taken by the court realizing that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched."

9. In the case of "Haryana Urban Development Authority v. Om Pal, (2007) 5 SCC 742", it was held that,

"It is now also well-settled that despite a wide discretionary power conferred upon the Industrial Courts under Section 11A of the 1947 Act, the relief of reinstatement with full back-wages should not be granted automatically only because it would be lawful to do so. Grant of relief would depend on the fact situation obtaining in each case. It will depend upon several factors; one of which would be as to whether the recruitment was effected in terms of the statutory provisions operating in the field, if any."

10. The Supreme Court in "Hindustan Tin Works (P) Ltd., -Vs- Employees" reported in 1979 AIR 75, 1979 SCR (1) 563, held that,

"In the very nature of things there cannot be a straitjacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the

relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and fanciful but legal and regular.

As already noted, there was no application of mind to the question of back wages by the Labour Court. There was no pleading or evidence whatsoever on the aspect whether the respondent was employed elsewhere during this long interregnum."

11. Following the aforesaid judgments of the Honourable Supreme Court of India, I am of the considered view that the aforesaid principles laid down will squarely apply to the facts and circumstances of the case and the labour Court was justified in not awarding backwages to the petitioner. The argument that the fact of non-employment claimed by the petitioner was not disputed by the management is misplaced and cannot be accepted for the simple reason that it is the petitioner who has to prove that he was not gainfully employed elsewhere during the period of dismissal till the period of reinstatement and cannot take advantage of the non-denial of the respondent Management with respect to his non-employment stated in his own statement in the affidavit. Moreover, the petitioner has not submitted any documentary evidence to show that he was not gainfully employed in the interregnum.

12. Accordingly, for the above reasons I do not find any infirmity in the impugned award passed by the Labour Court. The writ petition fails and the same is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

KST

To

1. The Principal Judge, Labour Court, Vellore.

+lcc to Mr.K.Sudalai Kannu, Advocate, S.R.No.41455

W.P.No.18549 of 2020

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rv(07/01/2021)