



IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 24.08.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.295 of 2011
and
M.P.No.1 of 2011

E.Mohan Kumar

...Petitioner

Vs

1. M/s.Kumaran Transport,
No.1, Sathiyar nagar,
Poondi Thangammal Street,
New Washermanpet,
Chennai - 600 081.

2. The Presiding Officer,
II Additional Labour Court,
Chennai.

...Respondents

PRAYER:- Writ Petition has been filed under Article 226 of Constitution of India, prayed to issue Writ of Certiorari Mandamus to call for records in the impugned order of the 2nd respondent in C.P.No.26/2006 dated 22.04.2010 and quash that portion of the award granting Rs.20,000/- towards back wages and direct the 1st respondent to pay back wages for the entire period from the date of termination till date of reinstatement in addition to the amount of Rs.20,000/- awarded by the 2nd respondent. (prayer amended as per order dated 18.11.2013 in MP.No.2 of 2011 in W.P.No.295 of 2011)

For Petitioner : Mr.A.Thirumaran

For R1 : Mr.M.R.Dharani Chander

ORDER

By consent of both the parties, this writ petition is taken up for final disposal.

2. The petitioner herein claims that though he was working with the first respondent, his service was terminated on 21.12.2004 and the first respondent had not paid the required wages. In this background, the petitioner had approached the



authority under the Shops and Establishment Act and by order dated 26.10.2005, the first respondent herein was set ex-parte and the order of termination dated 20.12.2004 was set aside. The first respondent herein had not taken any steps to either set aside the ex-parte order or challenge the order of the authority dated 26.10.2005. It is in this stage, the petitioner herein had filed a claim petition on 31.01.2006 before the second respondent herein under Section 33C(2) of the Industrial Disputes Act for computation of the wages.

3. The Labour Court, through the order dated 22.04.2010, had computed the wages and had ordered for payment of compensation of Rs.20,000/- to the petitioner herein together with interest at the rate of 6% per annum from the date of the order, i.e., from 22.04.2010, till the date of actual payment.

4. On a perusal of the order passed by the Labour Court, it is seen that the Labour Court had taken into account the claim made by the petitioner that his salary was Rs.6,500/- and that neither the petitioner nor the first respondent herein had produced documents to substantiate the salary. In spite of the same, the Labour Court had fixed the monthly salary of the petitioner at Rs.3,500/- per month and had taken into account their claim of 5 years of service. The compensation for closure of the business was calculated at 15 days salary per year amounting to Rs.1,750/- per year and accordingly arrived at the total compensation of Rs.8,250/-. By giving credit to the notice pay at Rs.3,250/-, the Labour Court had computed the total salary payable at Rs.12,250/- to the petitioner. Apart from this computation, the Labour Court had further added a sum of Rs.8,750/- as a gracious payment by way of compensation and in total, a sum of Rs.20,000/- has been arrived as the compensation.

5. In my view, the sum of Rs.20,000/-, coupled with interest at the rate of 6% per annum from the date of the order, seems to be reasonable.

6. The learned counsel for the petitioner brought to the notice of this Court about the interim orders passed by this Court directing the first respondent to deposit the sum of Rs.20,000/-, which has not been complied.

7. The learned counsel for the first respondent would submit that the petitioner's business was closed, owing to termination of their contract.

8. I am not in agreement with the defence taken by the first respondent that they are unable to pay the computed wages owing to termination of the contract.



9. The claim made by the petitioner pertains to the services rendered by him under the first respondent when the contract was alive. That apart, this defence was not taken before the authority under the Shops and Establishment Act, when the order dated 26.10.2005 came to be passed. Neither did the first respondent take any effective steps to have the order of the authority under the Act set aside nor appealed against. While that being so, such a ground that they are unable to pay the computed wages, owing to termination of the contract, cannot be sustained.

10. In the light of the above observations, this Court is of the view that the petitioner could be entitled for the amount computed by the Labour Court in the impugned order dated 22.04.2010 and the first respondent could be directed to pay the said sum, together with interest, within a stipulated time.

11. Accordingly, the impugned award passed in C.P.No.26/2006 dated 22.04.2010, insofar as it grants Rs.20,000/- towards back wages is concerned, is sustained. Consequently, there shall be a direction to the first respondent herein to pay the sum of Rs.20,000/-, together with interest at the rate of 6% per annum, commencing from 22.04.2010, till the date of actual payment to the petitioner herein, within a period of 6 weeks from the date of receipt of a copy of this order. The writ petition is ordered, accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

hvk

To

The Presiding Officer,
II Additional Labour Court,
Chennai.

+1cc to Mr.A.Thirumaran, Advocate, S.R.No.42474

W.P.No.295 of 2011

BS (CO)
RGA (21/12/2021)