



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2021

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MS.JUSTICE R.N.MANJULA

W.A.No.1282 of 2019

Shri A.J.Aruldas Appellant/Petitioners

Vs.

1.The Divisional Manager,
Indian Rare Earths Ltd.,
Manavalakurichi & Post,
Kanyakumari District.

2.The Presiding Officer,
The Central Government Industrial
Tribunal-cum-Labour Court,
Chennai,
Shastri Bhavan,
Numgambakkam,
Chennai-600 034.

..... Respondents/Respondents

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent, against the order passed by the learned single Judge dated 12.12.2018 in W.P.Nos.497 & 6238 of 2016.

Prayer in W.P. No.497 of 2016: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus by calling for the records of the second respondent passed in C.P. No.2/2015 dated 02.09.2015 and quash the same and direct the first respondent to pay all the monetary benefits from the date of termination of the petitioner till attaining the age of superannuation, namely from 13.08.1979 to 27.08.2008.

Prayer in W.P. No.6238 of 2016: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari to call for the records connected with C.P. No.2 of 2015 and quash the order dated 02.09.2015 passed by the 2nd respondent.

For Appellant .. Mr.I.Jayasingh Manoharan

For Respondent .. Mr.Shivathanu Mohan for
Mr.S.Ramasubramaniam for R1
R2-Tribunal



JUDGMENT

(Judgment of the Court was made by R.N.MANJULA, J.)

This intra-Court Writ Appeal has been directed against the common order of a learned single Judge dated 12.12.2018 in W.P.Nos.497 and 6238 of 2016.

2. The brief facts which led to the filing of the present Writ Appeal, can be stated as under:

The appellant herein, is the employee under the 1st respondent Management herein. The appellant was appointed as a Caretaker at the Guest House of the 1st respondent Management at Manavalakurichi on 29.09.1978. He was terminated from service on 13.08.1979. The appellant filed a Writ Petition in W.P.No.5897 of 1979 and challenged the termination Order. In an order dated 14.12.1984 passed in the said Writ Petition, the order of termination was quashed. In the said order, the Appellant was directed to approach the concerned Authority for getting the reliefs of reinstatement and other benefits. The records show that the appellant had raised an industrial dispute before the appropriate authority and the same was referred for conciliation. Since conciliation was failed, a failure report was given on 27.11.1986. Subsequent to the failure report, the appellant has not filed any industrial dispute before the jurisdictional Labour Court. But the appellant filed a straight claim petition before the Principal Labour Court, Madurai in C.P.No.106 of 1992 by claiming that he is entitled to back wages and it should be computed at Rs.1,37,325/-. The appellant has claimed the back wages from 13.08.1979 till the date of filing of the claim petition.

2.1 In pursuant to District transfer, the Claim Petition seems to have been transferred to Labour Court, Tirunelveli and renumbered as C.P.No.180 of 1992. Since the appellant failed to make his appearance before the Labour Court and pursue the claim application, it was dismissed for default. Thereafter, he filed a petition to restore the Claim Petition along with a petition to condone the delay and it was dismissed. The appellant has challenged the order of dismissal made in the petition to condone the delay through a Writ Petition in W.P.(MD) No.4857 of 2009, which was allowed by an order dated 21.02.2014. The Management has challenged the order passed in the above said Writ Petition by filing a Writ Appeal in W.A.No.550 of 2014. During the hearing of the Writ Appeal, it was submitted by the Management that the right jurisdictional Court is Central Government Industrial Tribunal-cum-Labour Court (CGIT) but the appellant has filed the Claim Petition before some other Court. It is further submitted that the appellant without raising any industrial dispute for his reinstatement and other reliefs, has chosen to directly file this claim petition. The Writ Appeal was



allowed, but however, the claim petition which was allowed to be restored was deemed to be the Claim Petition pending before the CGIT cum Labour Court. In view of that, the said Claim Petition stood before the CGIT and got renumbered as C.P.No.2 of 2015. In the said petition, CGIT has passed an Award on 02.09.2015 as under:

"15. The Respondent has contended in the Counter Statement that the petitioner has taken up employment with the erstwhile Kattabomman Transport Corporation Ltd and he was earning sufficiently. The counsel for the Respondent has argued that in any case the petitioner was employed after his termination and therefore he is not entitled to backwages. It has been pointed out on behalf of the petitioner that no documents are produced by the Respondent to support this contention. No doubt, documents are not available in this respect. However, the admission of the petitioner is sufficient to show that he became employed not long after the termination. His admission during the cross-examination is that after his termination he worked in Kattabomman Transport from 07.01.1980 to 20.10.1991. He has stated that he has resigned from the job. He had admitted that action has been taken against him for embezzlement with meal coupons. After he left the job at Kattabomman Transport Corporation he had started business along with his friend. So it is very much clear that the petitioner was gainfully employed at least from 07.01.1980, after his termination.

16. The counsel for the Respondent has pointed out that in his petition the petitioner has claimed only back wages and there is no claim for reinstatement on his part. According to the counsel this was because the petitioner was gainfully employed. However, this could also have been because the post has been subsequently abolished as claimed by the Respondent. The order of termination has been quashed only in 1984. So, in any case the petitioner is to be treated to have been in service even after the date of termination. It is very much clear that the post of Caretaker existed even on 07.01.1980 the date on which the petitioner got employment in Kattabomman



WEB COPY

Transport Corporation since Ext.W5 and Ext.W6 admitting existence of the post are in 1982. So the petitioner would be entitled to back wages until the date on which he got employment. Therefore, the petitioner is entitled to back wages from 13.08.1979 to 06.01.1980.

Accordingly an order is passed as below:

The Respondent shall pay the petitioner backwages from 13.08.1979 to 06.01.1980 within one month. If payment is not made within the stipulated period, it would carry interest @ 9% per annum from this day."

3. Aggrieved by the above order of CGIT in restricting the quantum of the back wages only for a limited period, the appellant/workman, had filed a writ petition in W.P.No.497 of 2016. The 1st respondent/Management also challenged the said order and filed a writ petition in W.P.No.6238 of 2016 before this Court.

4. Both the Writ Petitions were taken up together and dismissed vide a common order dated 12.12.2018. The operative part of the order of the learned single Judge as found in paragraphs 6 to 8, is extracted as under:

"6.It is a settled legal position that when a person approaches the Labour Court for back wages on the ground that he has got a preexisting right to allow his application under Section 33(C)(2), he should have sought for reinstatement. In the present case, the employee has not asked for reinstatement, which shows that he has been gainfully employed. Besides it is clearly admitted that he was gainfully employed in the Kattabomman Transport Corporation. Hence, the Tribunal has rightly passed the order directing the Management to pay the back wages only from 13.08.1979 to 06.01.1980. The finding given by the Tribunal that there is a preexisting right to entertain the petition filed under Section 33(C)(2) only for a limited period from 13.08.1979 till 06.01.1980 is in order because admittedly the employee was gainfully reemployed in the Kattabomman Transport Corporation for a specific period of six months as a Care



WEB COPY

Taker on a consolidated payment of Rs.250/ per month and was later on terminated from service on 13.08.1979. Therefore, the petition filed under Section 33(C)(2) was rightly considered by the Tribunal directing the Management to pay back wages only from 13.08.1979 to 06.01.1980 as he was subsequently re-employed gainfully. In view of these reasons, this Court, finding no infirmity in the order passed by the Tribunal, is not inclined to entertain both the writ petitions. Accordingly, the writ petitions fail and the same are dismissed. No costs.

"7.After the above order, the learned counsel for the employee submitted that a cheque tendered for the said payment to the employee was refused and therefore, the Management may be directed to issue a fresh cheque for the said amount to the employee.

"8.Considering the said submission, the Management is directed to issue a fresh cheque to the employee, within a period of one week from the date of receipt of a copy of this order."

5. Challenging the above order of the learned single Judge, the appellant/workman has preferred the present Writ Appeal. We heard both the learned counsel appearing for the appellant and for the 1st respondent Management and perused the records placed before us.

6. It is submitted by the learned counsel for the appellant that the Labour Court as well as the High Court has allowed the back wages only for a limited period between 13.08.1979 and 06.01.1980 at a consolidated rate at Rs.250/- per month under the presumption that after termination, the appellant has gainfully employed himself in Kattabomman Transport Corporation; but he had worked only for a brief period and not in continuous employment as observed by the Labour Court; further the wages fixed for the post of Care is higher; during his initial appointment with the 1st respondent as Care Taker, his basic pay was at Rs.240/- p.m and his consolidated pay would come to Rs.550/-; but the Labour Court has worked out the back wages only at the rate of Rs.250/- p.m.

7. The learned counsel appearing for the respondents submitted that the workman has never filed any Industrial dispute to adjudicate his right for reinstatement or to get



back wages; hence he has no pre-existing right to claim back wages and further the back wages as computed by the Labour Court has already been disbursed to him by way of a cheque; thereafter, he has no claim against the 1st respondent/management.

WEB COPY

8. The entitlement if any for this appellant should be traced back from the earliest order dated 14.12.1984 passed in W.P.No5897 of 1979. The appellant had filed the said Writ Petition for quashing the order of termination. The said Writ Petition was allowed and the order of termination was quashed. However, the Court has directed the appellant to work out his remedy for reinstatement etc., before the appropriate authority. In which case, whatever benefits, the appellant could claim by virtue of the said order can come only through the reliefs that might be granted by the appropriate authority. The appellant did not prefer any industrial dispute subsequent to the order passed in the Writ Petition. But he has straight away filed a Claim Petition before the Labour Court, Madurai in order to compute back wages. He claimed that he had a pre-existing right by virtue of the order passed in the Writ Petition. Such contention of the appellant is fundamentally wrong and the workman cannot claim for computation of back wages without getting his right for reinstatement as adjudicated by the appropriate authority or the Labour Court and an award is passed.

8.1 In fact, the failure report of the Conciliation Officer was given only on 27.11.1986. Thereafter, at least the appellant ought to have filed an industrial dispute before the jurisdictional Labour Court and work out his remedies for reinstatement and backwages. But he has filed a Claim Petition before the Labour Court, Madurai. By virtue of the subsequent judgment in W.A.(MD) No.550 of 2014, dated 05.08.2015, he got the benefit of deeming the said claim petition as the one pending before the Central Government Industrial Tribunal-cum-Labour Court (CGIT). The CGIT in its order has made an observation that the post of Care Taker existed even as on 07.01.1980, the date on which, the appellant had got the alternative gainful employment in Kattabomman Transport Corporation and so the back wages can be granted only from 13.08.1979 to 06.01.1980.

8.2 Even without claiming for the relief of reinstatement in the same post or in some other alternate post along with back wages and got it adjudicated, the appellant has filed a Claim Petition directly by presuming that he had a pre-existing right to get back wages. He had got his employment with Kattabomman Transport Corporation from 07.01.1980. Taking into consideration of all these facts, the Central Government Industrial Tribunal-cum-Labour Court has rightly fixed the back wages for a limited period between the date of his termination and the date of getting the alternate gainful



employment. (from 13.08.1979 to 06.01.1980). The learned Single Judge has rightly appreciated the above facts and entitlement of the Appellant and confirmed the order of the CGIT. Hence, we do not find any reason to interfere.

WEB COPY

Accordingly, the Writ Appeal fails and it is dismissed.
No costs.

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

suk

To

1. The Divisional Manager,
Indian Rare Earths Ltd.,
Manavalakurichi & Post,
Kanyakumari District.

2. The Presiding Officer,
The Central Government Industrial
Tribunal-cum-Labour Court,
Chennai, Shastri Bhavan,
Numgambakkam, Chennai-600 034.

+1cc to Mr.I.Jayasingh Manoharan, Advocate, S.R.No. 31484

W.A.No.1282 of 2019

GSM(CO)
GN(13/08/2021)