



WEB COPY

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 23.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.34074 of 2013 & 6192 of 2017
and M.P.Nos.1 of 2013 and 1 of 2014
W.M.P.No.16104 of 2019 & 6677 of 2017

(Through Video Conference)

W.P.No.34074 of 2013:

Krishnammal

... Petitioner

Vs

- 1) The Corporation of Chennai
Rep. by its Commissioner,
Ripon Buildings,
Chennai 600 003
- 2) The Zonal Officer,
Old Zone V, New Zone VIII,
Corporation of Chennai,
Thiru-v-ka Park,
Shenoy Nagar, Chennai 600 030
- 3) The Presiding Officer,
II Additional Labour Court,
High Court Buildings,
Chennai 600 104

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the respondents viz. I.D.No.482 of 2004 on the file of II Additional Labour Court, Chennai order dated 29.05.2009 and quash the same and consequentially direct the respondent to reinstate the Petitioner with full backwages attendance and all other benefits from the date to till date.

For Petitioner : M/s.N.Beulah John Selvaraj

For R-1 : Mrs.Karthikaa Ashok,
Standing Counsel



W.P.No.6192 of 2017:

- 1) The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai 600 003
- 2) The Zonal officer,
Zone- V, Now VIII,
Corporation of Chennai,
Kilpauk, Chennai 600 010

...Petitioners

Vs.

- 1) The Presiding Officer,
Principal Labour Court- I,
Chennai 600 014

2) Tmt. Krishnammal

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the file of the 1st respondent herein in I.D.No.482 of 2004 and quash the impugned order dated 29.05.2009 as highly illegal.

For Petitioner : Mrs.Karthikaa Ashok

For R-2 : M/s.N.Beulah John Selvaraj

C O M M O N O R D E R

Since the issue involved in both the Writ Petitions are one and the same, they are disposed of by this common order.

2. The petitioners in W.P.No.6192 of 2017 has come forward with the present Writ Petition and it has been filed by the Management, challenging the Award of the Labour Court made in I.D.No.482 of 2004, dated 29.05.2009, insofar as the grant of relief of reinstatement with all other benefits.

3. The petitioner in W.P.No.34074 of 2013 has been filed by the Employee, challenging the order portion of the Award made in I.D.No.482 of 2004, dated 29.05.2009 that deprived backwages to the petitioner.

4. It has been stated that the Employee has committed a grave misconduct, proving incorrigibly unfit for service and that she was on leave and no medical certificate has been produced. However, it has been held that the Employee was on



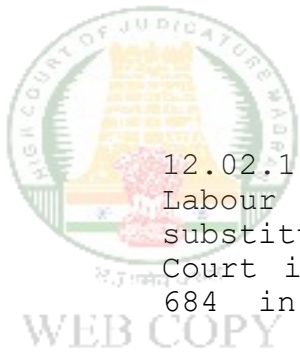
leave at the time of enquiry and the Labour Court held that she should be considered for reinstatement. The condition of the Employee was accepted by M.W.1 in the cross examination. It is the finding of the Labour Court that the Management also has not produced the necessary records. The Labour Court proceeded on the basis that, the Employee had not committed any misconduct earlier and passed an award in I.D.No.482 of 2004, dated 29.05.2009.

5. As the Employee had approached the Labour Court, after a lapse of three years, from the date of dismissal, the Labour Court deprived her backwages. However, the Labour Court ordered for her reinstatement, invoking Section 11A of the Act and interfering with the punishment.

6. Mrs.Karthika, learned standing counsel for the Corporation, has vehemently contended that the Labour Court ought not to have granted reinstatement, when the Employee's charges have been serious in nature and that though there is a delay in filing the Writ Petition, which is due to the fact that the previous Counsel has not properly intimated to the Corporation and that they came to know about the Award only at the time of adjudication of the Computation Petition. This submission cannot be accepted as the Writ Petition has been filed after eight years in the year 2017 on 10.03.2017, challenging the Award of the Labour Court, dated 29.05.2009.

7. The Computation Petition in C.P.No.271 of 2011 was filed wherein parties have appeared and contested. Atleast at that stage, the Corporation should have filed a Writ Petition. After computation, claiming amount for a further period, another Computation Petition has been filed in 2015, which was also contested by the Corporation. Only in the year 2017, after eight years, the present writ petition has been filed. The Corporation has woken up from the slumber, only after eight years and this Court cannot come to the rescue of the Corporation, more so, when they are not vigilant. The Employee has raised a dispute belatedly. Hence, the Labour Court has rightly deprived the backwages, as the Court felt that monetary liability shall not be foisted on the Corporation. Atleast at that stage, the Corporation should have reinstated the Employee or approached the Court to avoid further damage.

8. Having invited a damage in C.P.No.271 of 2011 and thereafter, contesting the Claim Petition of the year 2015, and filing a writ petition in 2017, shows that they have taken the Award of the Labour Court very lightly. Due to the sluggish attitude of the Corporation, tax payer's money have to be paid to the Employee, even without extracting work. It is a very sad state of affairs. The Employee was removed from service on



12.02.1999 and more than twelve years have gone by. As the Labour Court has rendered a finding of fact, this Court cannot substitute its view in place of the view taken by the Labour Court in the light of the decision reported in (1963) 1 LLJ 684 in Agnani (W.M.) vs Badri Das and others.

9. These Writ Petitions stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

10. It is open to the Employee to make a complaint under Section 29 of the Act and the Government MUST sanction prosecution against the officials within three months, who are falling under Section 32 of the Act and who are responsible to implement the Award of the Labour Court for non-implementation. Proceedings under Sections 33 C(2), c(1) and 29 of the Act are independent of each other, and merely because Computation Petition is pending, it cannot be a ground for non-sanction of prosecution. Let the officials appear before the Criminal Court to face the prosecution. The officer, who is responsible for non-implementation of this Award may be posted in a non-sensitive post, adverse entry is entered in the service records to avoid further promotion.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To:

- 1) The Commissioner,
Corporation of Chennai,
Ripon Buildings, Chennai 600 003
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- 3) The Presiding Officer,
II Additional Labour Court,
High Court Buildings,
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4) The Presiding Officer,
Principal Labour Court- I,
Chennai 600 014

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+1cc to M/s.N.Beulah John Selvaraj Advocate, S.R.No.35749

+2cc to,Mrs.,Karthikaa Ashok Advocate, S.R.No.35889,35887

W.P.Nos.34074 of 2013 &
6192 of 2017

SR-II (CO)
CT(28/09/2021)