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IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 28.09.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.34933 of 2014

The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai 600 003.

...Petitioner

Vs

1.Prabakara Rao
2.The presiding Officer,
Principal Labour Court,
Chennai. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the orders on the file of the second respondent herein in I.D.No.250 of 2012 and quash the impugned award dated 02.02.2013 passed by the second respondent herein.

For Petitioner : Ms.Karthikaa Ashok

For Respondents : Mrs.D.Nagasaila for R1
R2-The Labour Court

ORDER

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

2.The first respondent herein, was appointed as a Record Clerk in the petitioner/Corporation on compassionate ground. The petitioner/Corporation initiated departmental action against him on the ground that he had suppressed the fact that their mother was regularly employed in the Central Government, which is contrary to the scheme of compassionate appointment and accordingly, he was dismissed from his service, after an enquiry. The individual dispute raised by the first respondent herein before the Labour Court in I.D.No.250 of 2012 was allowed and the first respondent was directed to reinstate the first respondent back into service, together with back wages and continuity of service. In the said dispute, the

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petitioner/Corporation was set ex-parte. The award has been challenged in the present writ petition. Incidentally, the petitioner had filed an application before the Labour Court under Section 48(2) of the Industrial Dispute Act, 1947 seeking for condonation of delay in setting aside the exparte award and the application was dismissed on 17.07.2014, stating that the delay of 451 days was not properly explained.

3.The learned counsel for the petitioner would submit that as per the scheme of compassionate appointment, a legal heir of the employee cannot claim appointment if any one of the legal heirs are under regular Government service. By placing reliance on G.O.Ms.No.155, Labour and Employment Department, dated 16.07.1993, the learned counsel submitted that when the dependant of the deceased employee was in regular employment of the Government, the other dependants will not be eligible for compassionate appointment. According to her, the first respondent had suppressed this aspect and had obtained appointment on compassionate ground, which is against the scheme and therefore, the order of dismissal was rightly imposed. The learned counsel also made an earnest request that the petitioner may be given an opportunity to put forth all these objections before the Labour Court, since he was set ex-parte and had not appeared before the Court.

4.On the contrary, Mrs.D.Nagasaila, learned counsel for the first respondent would raise a preliminary objection that though the petitioner was set ex-parte in the Industrial dispute, they had filed an application to set set aside the ex-parte award which was also dismissed and which has not been challenged and therefore, the present writ petition itself is not maintainable.

5.This apart, the learned counsel submitted that the Government Order in G.O.Ms.No.155 dated 16.07.1993 enables the other legal heirs of the employee to apply for compassionate appointment, even though one of the family members is in Government service. But the only factor that requires to be looked into is whether such an earning member is supporting the family. In this background, she would submit that there were sufficient materials before the Labour Court to establish that the mother of the first respondent herein was not supporting the family and even otherwise, the petitioner has not chosen to substantiate these grounds before the Labour Court. The learned counsel also submitted that, though the Labour Court has passed an award of reinstatement, the petitioner had not been paid then the last drawn wages under Section 17-B of the Industrial Disputes Act, 1947.

6.I have given careful consideration to the submissions made by the respective counsels.

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7.The object of the scheme for compassionate appointment is to rely the family of the deceased Government employee from and out of the indigent circumstances owing to the death of such an employee. That this noble intent, the scheme has excluded the benefit of such an appointment to the other dependents of the family of the deceased employee, when one of them is already in Government service. To this extent, there is no controversy or difference of opinion on the scope of the scheme. In the present case, the dismissal of the first respondent was presumptively on the ground that his mother was in Government service and as such, his appointment was improper. However, G.O.Ms.No.155 also provides an exception to the general rule by enabling the extension of compassionate appointment to a dependent, even when one of the other dependent is in Government service and when such a Government servant does not support the family of the deceased. The relevant portion of the Government Order reads as follow:

> "In regard to the second condition mentioned in para 1 above, it is considered that if a member of the family is already on employment and supports the family then the restriction may be applied. When a dependent of the family is employed, the factors to be ascertained are, whether he is regularly employed and is actually supporting the family. If that person was employed even before the death of the Government Servant and was living separately without extending any help to the family, then the case of other eligible dependants will be considered."

8.In view of the aforesaid relaxation or exception, the basis on which the first respondent was dismissed from the service has become unfounded. The Labour Court has taken note of this aspect in its award by holding that the petitioner/Corporation had not let any contra evidence to the claim of the first respondent that his mother was living separately and not supporting his family. Having failed to establish their case before the Labour Court, it is not permissible now for the petitioner to seek for the indulgence of this Court to re-appreciate the evidences before the Labour Court and rendered a contra finding.

9.Before the Labour Court, the petitioner herein was set ex-parte and the impugned order came to be passed, which is under challenge in the present writ petition. However, the facts remains that the petitioner had filed an application under Section 48(2) of the Industrial Disputes Act, 1947, to condone the delay of 451 days in filing the application in IA.No.52 of 2014 in I.D.No.250 of 2012 to set aside the ex-parte order, which was dismissed on 17.07.2014. The petitioner herein had not challenged this order. Nevertheless, this Court does not intend

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into delve upon this technical aspect, since the original order itself has been dealt in the present writ petition.

10.The learned counsel for the petitioner made an earnest request to given them an opportunity to put forth their case before the Labour Court by setting aside the ex-parte order. The first respondent herien was dismissed from service way back in the year 2010 and though the award came to be passed in the year 2013, the facts remains that he is yet to be reinstated back to the services. After this prolonged period of 10 years, it would not be proper to remit back the matter to the Labour Court for fresh consideration. The Labour Court while passing the impugned award, had directed for payment of the entire backwages to the first respondent herein. Since the delinquency attributed to the first respondent was neither intended by way of victimisation, this Court is of the view that the payment of backwages could be reduced to 50%.

11.For the reasons stated above, the impugned award passed in I.D.No.250 of 2012 dated 02.02.2013 is sustained, to the extent of the orders reinstating the first respondent herein back into service together with continuity of service, are concerned. Insofar as payment of backwages, the same is reduced to 50% of the entire back wages payable to the first respondent herein. The first respondent herein is at liberty to file an appropriate application before this Court seeking for withdrawal of 50% of the backwages lying in deposit, pursuant to the order of the Hon'ble Division Bench of this Court in W.A.No.1605 of 2016 dated 19.01.2018. After such withdrawal, the petitioner/Corporation is also at liberty to withdraw the remaining portion of the amount lying in the deposit.

12.Apart from the aforesaid backwages, the petitioner/Corporation shall also pay the entire outstanding 'last drawn wages' due to the first respondent herein under Section 17-B of the Industrial Disputes Act, 1947 from the date of filing of this writ petition, i.e., (18.12.2014) till the date of actual reinstatement, together with interest at the rate of 10% per annum. The petitioner shall endeavour to release the arrears of Section 17-B wages as expeditiously as possible, in any event, within a period of 8 months from the date of receipt of a copy of a copy of this order.

13.The writ petition stands disposed of accordingly. No costs.

Sd/-
Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

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To

1.The presiding Officer,
Principal Labour Court,
Chennai.

2.The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Chennai 600 003.

+1CC to Mr.D.Nagasaila, Advocate, SR.No. 50369
+1CC to M/s.Karthikaa Ashok, Advocate, SR.No. 50455

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NMI(CO)
B.VC (27/10/2021)

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