

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2021

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

WP NO.31844 OF 2019

AND

WMP NOS.32085 AND 32086 OF 2019

The Superintending Engineer
Vellore Electricity Distribution Circle
Tamil Nadu Electricity Board
Gandhi Road,
Vellore - 632 006. Petitioner

Vs.

P.Kala Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records from the Principal Labour Court, Vellore, in C.P.No.91 of 2016 and quash the order dated 30.07.2018.

For Petitioner : Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co.,

For Respondent : Mr.J.Saravana Vel

O R D E R

This Writ Petition is directed against the Award dated 30.07.2018 passed by the Principal Labour Court, Vellore, in the Computation Petition filed by the respondent / employee.

2. According to the writ petitioner, the respondent / employee was terminated from service on 21.04.1997. From the date of appointment of the respondent / employee viz., from 31.03.1996 till 21.04.1997, she had put in only 13 months of service. An Award was passed on 18.12.2001 setting aside the termination order with a direction to reinstate the respondent into service with backwages and continuity of service. The writ petitioner filed a writ petition against the award passed by the Labour Court in I.D.No.82 of 1999, dated 18.12.2001, only on 22.02.2003. Thereafter, the petitioner approached this Court by

way of filing a petition for vacating the stay and for payment of last drawn wages under Section 17-B of the Act on 08.10.2003. Between 18.12.2001 and 08.10.2003, the respondent has not asked for reinstatement. But the Labour Court, without considering this issue, has computed the entire backwages from the date of award till the date of the order passed in the Computation Petition.

3. The learned counsel for the petitioner would rely on the judgment of this Court in PEER MOHAMED & CO., VS. MOHAMED HUSSAIN AND ANOTHER [1968 (2) LLJ 98] wherein, this Court, considering the conduct of the employee, refused to grant backwages for the period during which, the employee failed to ask for reinstatement. In that case, an award was passed by the Labour Court, setting aside the termination as early as on 05.05.1962, whereas the employee has approached the employer only in 1963 after a period of one year. In those circumstances, it was held by this Court that it is the duty of the employee concerned either to claim or inform in writing that he is ready and willing to join the service within a reasonable time or to give a notice that he should be reinstated, failing which, he would be taking legal proceedings against the employer. In the absence of any of these things, the employer is under no legal obligation to take steps to reinstate the employee who was dismissed by him, but subsequently restored to his job by the order of the Tribunal. In essence, it was observed that the employee is also equally responsible to express his readiness to join service within a reasonable time and without expressing such desire and keeping quiet for months together asking for backwages is not reasonable.

4. The learned counsel for the petitioner would also rely on a judgment of the Kerala High Court in ANNAMMA THOMAS VS. T.JOSEPH AND OTHERS [1984 (II) LLN 813]. In that case, after reinstatement by the Labour Court, the employer preferred a writ petition, challenging the award. But there was no order of stay of the implementation of the award. But the employee has not sought for reinstatement or expressed his willingness to work despite the pendency of the writ petition. In such circumstances, it is held by their Lordships that the entitlement of future wages is not automatic. Unless the employee expresses his willingness and waits until the award become final, he is not entitled to future wages.

5. But in the instant case, the situation is entirely different. The above cited judgment will not apply to the present case. The fact of the case is that the respondent / employee was appointed on compassionate ground. At the time of appointment, she made a declaration that she passed 8th Standard. Later, by way of communication from the Education Department, it

was found that her certificate was bogus and she was not entitled to employment. Consequently, the petitioner had initiated disciplinary action and terminated the service. But, before the Labour Court, the petitioner / employer failed to produce the crucial communication received from the Education Department that the certificate obtained from the respondent was bogus one. Therefore, the Labour Court has set aside the order of termination and directed the employer to reinstate the respondent within a period of two months from the date of the award with backwages, continuity of service and other attendant benefits. This award was challenged before this Court in W.P.No.12165 of 2003 and interim stay was also granted. The respondent filed a petition for vacating the interim stay and also for payment of backwages under Section 17-B, on 08.10.2003. The petitioner / employer has chosen to pay the last drawn wages under Section 17-B of the Act and has not reinstated the respondent in service.

6. This Court, by its order dated 11.12.2015, has confirmed the award passed by the Labour Court. Thereafter, it is stated that the respondent has written a letter to the writ petitioner for reinstatement in the year 2016. Since the petitioner has not provided reinstatement, the respondent filed a claim statement on 06.10.2016 claiming money value of the benefits under Section 33(C)(2) of the Industrial Disputes Act, 1947, to the tune of Rs.42,46,089/-. The quantum of the claim was disputed by the writ petitioner and they filed a counter statement seeking permission to file a correct statement. During the pendency of the claim petition, the employer filed a Writ Appeal with delay, which was dismissed by the Division Bench of this Court on 07.06.2018 in CMP No.18389 of 2017 in WA SR No.56754 of 2017. Accepting the statement made in the calculation memo filed by the writ petitioner, the Labour Court has ordered payment of money value of the backwages and other attendant benefits on 30.07.2018. Against which, respondent filed an Execution Petition vide E.P.No.13 of 2019 in C.P.No.91 of 2016 on 24.01.2019, in which, time was sought for by the employer on the ground that review application was filed and the same was pending.

7. In the interregnum, the writ petitioner filed a Review Application in Rev.Aplw.No.224 of 2018. This Court, by its order dated 03.10.2019, dismissed the Review Application. Thereafter, the Labour Court has proceeded with the execution proceedings. In such circumstances, the order passed in the Computation Petition dated 30.07.2018 is now put to challenge before this Court.

8. The learned counsel appearing for the petitioner would vehemently contend that in view of the judgments passed by this Court in PEER MOHAMED & CO., MADRAS VS. MOHAMED HUSSAIN AND ANOTHER [1968 (2) LLJ 98] the employee is not automatically entitled to the reinstatement with backwages. Upto the date of award, there is no request for reinstatement. After the award, equal responsibility is cast on the employee to ask for reinstatement or implementation of the award within a reasonable time. Between 18.12.2001 and 22.02.2003, the employee had kept quiet and therefore, she is not entitled to ask for the entire backwages. He would rely on the judgment of the Hon'ble Supreme Court in S.S.SHETTY VS. BHARAT NIDHI LITD [AIR 1958 SC 12] for the proposition that the Courts cannot compute the wages on mathematical exactitude, but, on the facts and circumstances of the case, a reasonable computation shall be made. It is very clear that the award was passed as early as in 2001. Therefore, it is incumbent on the employer to implement the same. Without implementing the award, the employer has chosen to challenge the award and obtained stay of the implementation of the award. In such circumstances, it should be construed that the employer was not willing to provide reinstatement and has chosen the alternative path of paying the last drawn wages under Section 17-B of the Industrial Disputes Act, 1947, as ordered by the Labour Court. Even before the Labour Court, when the Computation Petition is filed, the employer has not taken a stand as to the entitlement of the employee for reinstatement. Had an opportunity was given to the employee, she would have explained as to whether she had asked for reinstatement within a reasonable period from the date of award or not?. It is not possible at this distance of time i.e., after a period of two decades to expect the employee to prove the issue as to her entitlement. At this juncture, this Court is not inclined to interfere with the findings of fact on the issue of entitlement to claim backwages that too when the employer has not chosen to raise the issue at the appropriate time before the appropriate forum. In the considered opinion of this Court, when an award is passed directing the employer to reinstate the employee within a period of two months, it is the responsibility of the employer either to implement the award within the time granted by the Labour Court or to challenge the same. The employer has chosen the second avenue and has challenged the award and obtained stay of proceedings and the stay will operate from the date of the award and therefore, the contention of the learned counsel for the petitioner that even in the worst case scenario, the period between 2001 and 2003, shall be excluded cannot be countenanced. The contention of the respondent that her request for reinstatement was denied by the petitioner / Management would lead us to the logical conclusion that it must be true. Unless the award of reinstatement is varied by an appellate forum or modified by way of contract between the parties, the legal

fiction would be that the employee continue to be under employment and entitled to wages. By choosing to challenge the award and obtained a stay, it is not open to the petitioner to raise the issue that the employee had failed to express her willingness to work.

9. The Hon'ble Supreme Court in S.S.SHETTY VS. BHARAT NIDHI LTD. [AIR 1958 SC 12] has observed as under:-

"15.The benefit of reinstatement which is awarded to a workman under the terms of the award does not become a term or condition of the contract between him and the employer. There are no doubt other reliefs by way of changes in the terms and conditions of employment which when awarded by the appropriate tribunal might be treated as implied terms of the contract between the employer and the workers to whom the award applies and would enure for the benefit of the worker until varied by appropriate legal proceedings. There is no statutory provision in that behalf contained in the Industrial "Disputes Act, 1947. But it is interesting to note that in the Industrial Disputes Order, 1951, obtaining in England there is enacted which runs as follows:

"Section 10: Award to be implied term of contract: Where an award on a dispute or issue has been made by the Tribunal then as from the date of the award or from such other date, not being earlier than the date on which the dispute or issue to which the award relates first arose, as the Tribunal may direct, it shall be an implied term of the contract between the employer and workers to whom the award applies that the terms and conditions of employment to be observed under the contract shall be in accordance with the award until varied by agreement between the parties or by a subsequent award of the Tribunal or until different terms and conditions of employment in respect of the workers concerned are settled through the machinery of negotiation or arbitration for the settlement of terms and conditions of

employment in, the trade or industry or section of trade or industry or undertaking in which those workers are employed."

16. Whatever be the position in regard to the terms and conditions of employment thus varied in accordance with the terms of the award, the benefit of reinstatement awarded to a workman certainly cannot be treated as part of the contract between him and the employer. The effect of an order of reinstatement is merely to set at naught the order of wrongful dismissal of the workman by the employer and to reinstate him in the service of the employer as if the Contract of employment originally entered into had been continuing. The terms and conditions of the contract which obtained when the workman was in the employ of the employer prior to his wrongful dismissal which has been set aside continue to govern the relations between the parties and the workman continues in the employ of the employer under those terms and conditions. There is no variation of those terms and conditions of the contract. The only thing which happens is that the workman is reinstated in his old service as before.

17. The monetary value of the benefits of such reinstatement is therefore to be computed not on the basis of a breach of the contract of employment nor on the basis of a tort alleged to have been committed by the employer by reason of the non-implementation of the direction for reinstatement contained in the award. The analogy of a suit for a declaration that the workman is continuing in the employ of the employer and that he should be paid the salary and benefits, etc., which would have been earned by him up to the date of the institution of the suit also does not strictly apply for the simple reason that the workman here is not asking for a declaration that he is still continuing in service on the ground that there was a termination of his service after the award, which termination is void. What he is asking for is a computation in terms of money of the benefit of reinstatement which was granted to

him by the Industrial Tribunal and which the employer did not implement.

18. The purpose of the enactment of Section 20(2) of the Act is not to award to the workman compensation or damages for a breach of contract or a breach of a statutory obligation on the part of the employer. Any money which is due from an employer under the award can by virtue of the provisions of Section 20(1) of the Act be recovered by the appropriate Government on an application made to it by the workman. Where however any benefit which is not expressed in terms of money is awarded to the workman under the terms of the award it will be necessary to compute in terms of money the value of that benefit before the workman can ask the appropriate Government to help him in such recovery. Section 20 sub-section (2) provides for the computation in terms of money of the value of such benefit and the amount at which such benefit should be computed is to be determined by the Industrial Tribunal to which reference would be made by the appropriate Government for the purpose. Such computation has relation only to the date from which the reinstatement of the workman has been ordered under the terms of the award and would have to be made by the Industrial Tribunal having regard to all the circumstances of the case. The Industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by Industrial Tribunals in the event of industrial disputes arising between the parties in the future."

10. Therefore, the contention of the writ petitioner that the respondent has put in only 13 months of service and that she is not entitled to compute the backwages for a period of 20 years without asking for reinstatement from the date of the award is not sustainable. Since the employer having failed to reinstate the employee and continued the agitation till date,

cannot deny the backwages as well as the future benefits pursuant to the award. Therefore, the Writ Petition merits no consideration and accordingly, stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS VI)

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Sub-Assistant Registrar

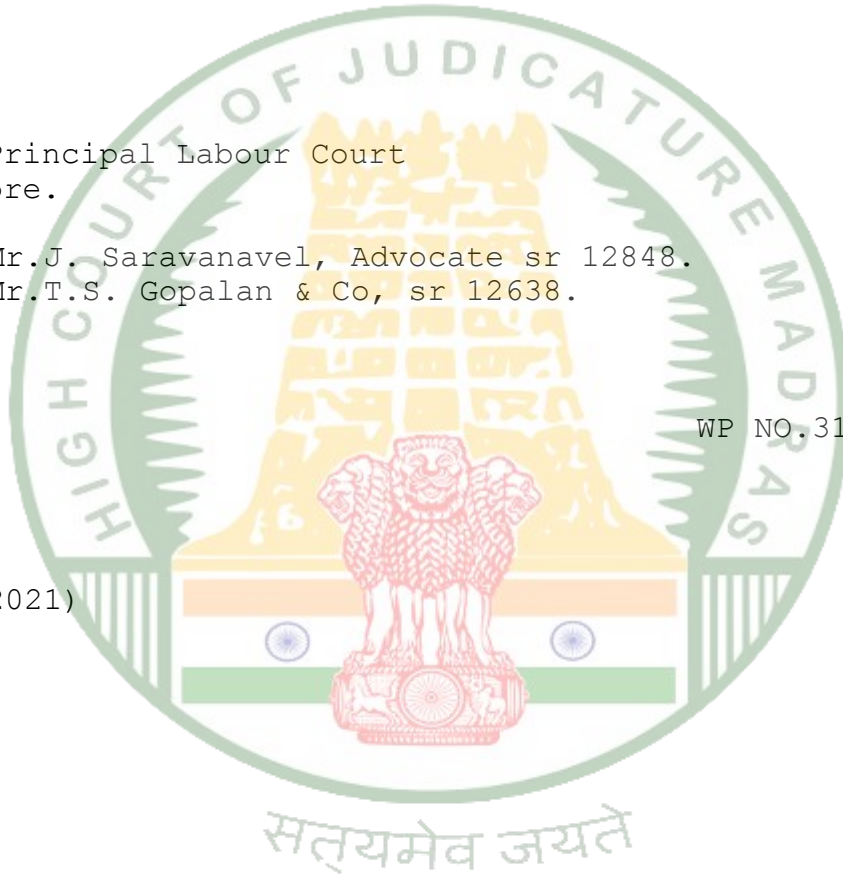
TK
To

The Principal Labour Court
Vellore.

+1 CC to Mr.J. Saravanavel, Advocate sr 12848.
+1 CC to Mr.T.S. Gopalan & Co, sr 12638.

WP NO.31844 OF 2019

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