



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.03.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.9267 of 2010

and

M.P.(MD)No.1 of 2010

G.Ganesan

... Petitioner

versus

1. The Management,
Dattatreya Textiles Ltd.,
Marthur Road,
Therku Theru (P.O.)
Melur Taluk, Madurai District.

2. The Presiding Officer,
Labour Court,
Madurai.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for the records of the proceedings of the Labour Court/2nd respondent made in I.D.No.140/1998 dated 25.01.2010 and quash the same and direct the 1st respondent Mill to reinstate the petitioner in the Mill itself with back wages and all other benefits.

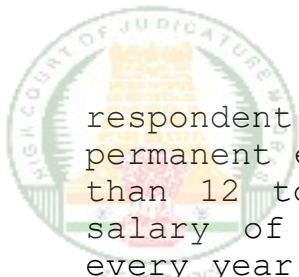
For Petitioner : Mr.M.C.Swamy

For Respondents : Mr.C.Karthikeyan
for M/s.P.Chandra Bose for R1

ORDER

The writ petition has been filed seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the 2nd respondent in I.D.No.140/1998 dated 25.01.2010 and quash the same and direct the 1st respondent Mill to reinstate the petitioner in the Mill with back wages and all other benefits.

2. The petitioner was originally recruited as a trainee apprentice by the 1st respondent Mill in the year 1986. After satisfactory training, he was taken on probation by the 1st respondent Mill.



respondent and on completion of probation, he was observed as a permanent employee of the Mill and even after the completion of more than 12 to 13 years of unblemished service, he was paid monthly salary of Rs.2500/- to Rs.2700/-. According to the petitioner, every year, the first respondent would normally declare the bonus on the eve of Diwali Festival, but, in the year 1996, the first respondent did not make any announcement with regard to the bonus. Therefore, all the workmen joined together and requested the Management to declare the bonus. In spite of their request, the Management was delaying to declare the bonus. Therefore, all the labourers voluntarily went on strike on 07.11.1996. The first respondent, with a revenge attitude, stopped the employees from entering into the mill premises from 19.11.1996 onwards and refused to allow them to work. Thereafter, on 17.01.1997, the Management issued a charge memo to the petitioner and suspended him. For the said charges, the petitioner sent reply, denying the said charges and requested the Management to drop the proceedings against him and reinstate him in service. However, the respondent did not drop the charge memo proceedings and orally terminated the petitioner.

3. The said oral termination was challenged before the Labour Officer, Madurai, seeking intervention to resolve the dispute by effective conciliation by considering a representation dated 30.04.1997. During the conciliation proceedings, the Management in their objections dated 16.06.1997, stated that the employees were unauthorizedly absent from 19.11.1996 onwards and for their unauthorized absence, the disciplinary proceedings are pending and therefore, the Management cannot reinstate the employees. Finally, the Labour Officer sent a failure report under Section 12(4) of the Industrial Dispute Act, on 31.08.1997. Based on the failure report, the petitioner raised an Industrial Dispute before the Labour Court, Madurai, in I.D.No.140 of 1998, seeking reinstatement of service along with back wages. Before the Labour Court, the Management filed a counter stating that the employees had absented themselves from attending the Mill from 19.11.1996 onwards, even though majority of the employees resumed work on 20.11.1996. Further, the Management pleaded that a transfer order was passed and the petitioner was transferred to some other unit. Accepting the transfer order, the Labour Court passed an award 25.01.2010, directing the petitioner to join the duty in the transferred place. However, the Labour Court denied the back wages. Challenging the said award, the present writ petition has been filed.

4. Mr.M.C.Swamy, learned counsel appearing for the petitioner submits that the denial of bonus by the Management, led the workers to go on strike and thereafter, the workers were not allowed to enter into the premises and they were issued with charge memo and finally, they were orally terminated by the Management.

5. It is the main contention of the petitioner that no service charge was imposed till raising the industrial dispute and only



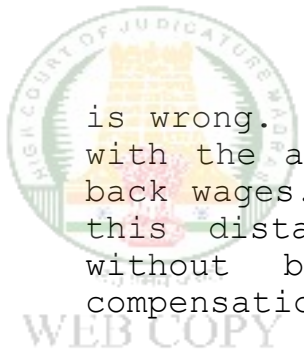
after raising the industrial dispute, petitioner was placed under suspension for 30 days and thereafter, the transfer order was passed. Accepting the transfer order, the Labour Court passed the award for reinstatement in service in the transferred place and also directed the petitioner to join duty in the transferred place. However, the Labour Court denied the back wages. This Court, while entertaining the writ petition, granted interim stay of reinstatement in service in the transferred place. Therefore, he has not joined the duty in the transferred place. Further, it is the main grievance of the petitioner that since he has received meager salary, that amount would not be sufficient for him to maintain himself and his family, if he joins duty at the transferred place. At this distance point of time, this Court may award appropriate compensation to the petitioner in order to resolve the dispute between the petitioner and the Management.

6. The learned counsel appearing for the first respondent submitted that since the petitioner participated in the strike, the Management issued a charge memo to him and after conducting the enquiry, on 10.09.1998, the order of suspension was issued only for 30 days. After that, the transfer order was issued on 30.09.1998. Though the first respondent Management is ready to reinstate the petitioner, the petitioner has not joined the duty, even after the award was passed by the Labour Court, directing him to join duty in the transferred place. Therefore, he prayed for dismissal of the writ petition.

7. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the first respondent.

8. The fact in the present case is not in dispute. Admittedly, the petitioner raised an Industrial Dispute challenging the oral termination. Before the Labour Court, the Management stated that since the petitioner participated in the illegal strike, he was issued with a charge memo. On the contrary, the petitioner claimed that no punishment was imposed till raising the industrial dispute and only after raising the industrial dispute, the petitioner was imposed with the punishment of suspension for 30 days and thereafter, the transfer order was passed.

9. Accepting the transfer order, the Labour Court passed an award for reinstatement of service in the transferred place, however, denied the back wages. Challenging the said award, the present writ petition has been filed. This Court, while entertaining this writ petition, granted interim stay of reinstatement of service in the transferred place. Therefore, the petitioner has not joined the duty in the transferred place. It is the further contention of the petitioner that the salary received by him is meagre, which would not be sufficient to maintain himself and his family, however, the petitioner has not taken any plea that he was not lawfully employed and, therefore, denial of back wages



is wrong. In the absence of such plea, this Court cannot interfere with the award passed by the Labour with respect to the denial of back wages. However, this Court is of the considered view that at this distant point of time, instead of ordering reinstatement without backwages, as ordered by the Tribunal, a lumpsum compensation to the petitioner would meet the ends of justice.

10. In similar circumstances, the Division Bench of this Court, in the case of **MAK India Private Limited represented by its Managing Director, Coimbatore vs. A.Palaniswamy & Others** reported in (2010) 0 Supreme (Mad) 1136, has held as follows:

"12. We are of the considered view that as the High Court is not an Appellate Authority under Article 226 of the Constitution of India and the learned single Judge was right in not interfering with the findings of the Labour Court but exercised his judicial discretion in judicial review by denying the backwages for a period of seven years from August 1984 to July 1991 and further directed reinstatement of the respondents 1 to 3/claimants in their respective posts with continuity of service and payment of backwages from August 1991, thereby modifying the Award passed by the Labour Court.

13. Coming to the aspect of the present case, the learned counsel for the Appellant/Management informs this Court that the Appellant/Management is not functioning and as a matter of fact, the respondents 1 to 3/claimants had settled their accounts after the dismissal order dated 14.08.1984, issued to them.

14. The respondents have filed counter affidavit stating that they have approached the Management and they were denied employment. According to the Management, the accounts were settled and hence there was no question of employment.

15. It cannot be forgotten that the date of dismissal of the respondents 1 to 3/claimants dates back to 14.08.1984, 14.06.1984 and 14.09.1984 respectively and nearly 15 years have gone by. In the affidavit filed by respondents 1 to 3, there are no averments that the respondents 1 to 3 were not gainfully employed elsewhere. Therefore taking note of the development that the Appellant/Management is not functioning (as informed by the learned counsel for the appellant), such orders of reinstatement of the respondents 1 to 3/claimants in their respective posts with continuity of service and payment of backwages from 1991 as ordered by the learned single Judge passed in the writ petition in W.P.No.6556 of 1990 dated 23.09.1998 will not serve the desired purpose to the respondents/claimants and in order to do equitable



justice and to promote the substantial cause of justice, we are inclined to interfere with the said order of the learned single judge and instead we direct the Appellant/Management to pay a sum of Rs.50,000/- (Rupees fifty thousand only) each to the respondents/claimants in full quit as compensation within a period of eight weeks from the date of receipt of a copy of this order and accordingly, dispose of the writ appeal in the above terms without costs. The connected miscellaneous petition is closed.

11. Applying the principles laid down by the Division Bench of this Court and also considering the fact that the petitioner entered into service as apprentice in the year 1986 and he was made permanent and he was orally terminated in the year 1996 and after a period of a decade and a half, reinstatement of the petitioner would not be in the interest of either side and therefore, instead of reinstating the petitioner, in order to do equitable justice and to promote substantial cause of justice, this Court is inclined to fix a fair compensation and accordingly, the first respondent is directed to pay a sum of Rs.1,25,000/- (Rupees One Lakh Twenty Five Thousand only) as compensation in full quit, to the petitioner/workman within a period of eight weeks from the date of receipt of a copy of this order. Accordingly, the order passed by the Labour Court, Madurai, in I.D.No.140/1998 dated 25.01.2010 is modified in the above terms.

12. With the above modification, this Writ Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

The Presiding Officer,
Labour Court,
Madurai.

+1 CC to M/s.M.C.SWAMY, Advocate (SR-14249[F] dated 29/03/2021)

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