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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **09.03.2021**

CORAM:

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P.(MD)No.14342 of 2012

A.Babu Mohammed Feroz Khan .. Petitioner

Vs

The Management,
M/s.Khandelwal Lab Ltd.,
79/87D, Ladpeth,
Mumbai-33. .. Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the Award in I.D.No.285 of 2001 dated 17.05.2012 passed by the Labour Court, Madurai and quash the same insofar as denying backwages are concerned and direct the respondent to pay full backwages to the petitioner.

For Petitioner : Mr.Sankaralingam
for M/s.R.Subramanian

For Respondent : Mr.S.Karthik
for M/s.Profexes Associates

O R D E R

This writ petition has been filed for the issue of writ of certiorarified mandamus to call for the records pertaining to the Award in I.D.No.285 of 2001 dated 17.05.2012 passed by the Labour Court, Madurai and quash the same insofar as denying backwages are concerned and direct the respondent to pay full backwages to the petitioner.

2.The case of the petitioner is that the petitioner was appointed as medical representative in the year 1981 by the respondent. He has completed 18 years of service in the respondent Organisation and he was also the office-bearer of the Federation of Medical & Sales Representatives Association of India (FMRAI) which was recognized by the Management. A grievance committee was formed consisting of Respondent-Management and Union Representatives to solve various disputes. The petitioner was a representative from the Union and he was also a signatory to the agreement. Therefore, the respondent grudging ill-will against the petitioner and resorted to various victimization measures for his lawful trade union activities. While so, the respondent issued charge memo on 8.7.1999 and placed the petitioner under suspension by an order dated

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18.6.1999. The petitioner submitted his explanation on 28.7.1999. Thereafter, the respondent conducted an enquiry by appointing enquiry officer and the enquiry officer found that except one charge, the other five charges are proved and accordingly filed proven minutes. Based on the proven minutes, the respondent discharged the petitioner from service on 4.5.2000.

3. As against the order of discharge from service, the petitioner raised an Industrial Dispute in I.D.No.285 of 2001 before the Labour Court, Madurai under Section 2 (A) (ii) of Industrial Disputes Act and the respondents filed objections and also filed I.A.No.35 of 2002 for deciding the preliminary issue whether the petitioner is a workman under the Industrial Disputes Act and in that IA, the petitioner filed counter. Thereafter, the Labour Court was tried the case independently and after analysing the documentary evidences, which were placed by the petitioner as well as the respondent in respect of each dispute, dismissed the industrial dispute. Aggrieved by the same, the petitioner filed a writ petitions in W.P.Nos.11250 and 11251 of 2004 before this Court. This Court, by order dated 20.9.2011 allowed the writ petitions and remanded the matter back to the Labour Court for fresh consideration. Thereafter, the Labour Court set aside the punishment of termination and directed the respondent to disburse all the terminal benefits within 3 months and awarded that the petitioner is entitled for continuity of service and other benefits but without backwages. Challenging the award insofar as denying backwages, the present writ petition has been filed.

4. The learned counsel for the petitioner would submit that thought the petitioner was discharged from service in the year 2000, however, the Labour Court passed the award in the year 2012 denying the backwages for 12 years is not sustainable one. He would further submit that the petitioner has not involved in any gainful employment in the interregnum period and the management did not establish that the petitioner was gainfully employed and in the absence of any evidence to prove that the petitioner was gainfully employed, denying back wages to the petitioner is not sustainable in the eye of law and therefore, the learned Counsel prayed for allowing the writ petition and thereby ordering for backwages.

5. Per contra, the learned counsel appearing for the respondent would submit that initially the preliminary award was passed against the petitioner and thereafter the petitioner filed writ petitions before this Court and this Court has allowed the said writ petitions and remanded the matter back to the authority for fresh consideration. In compliance to the order of this Court, the Labour Court passed the final award. Hence, there is no delay on the part of the respondent management for concluding the disciplinary proceedings. Further, the petitioner did not file any documents to prove that he was not gainfully employed in the interregnum period. Hence, denial of backwages is perfectly in order. Accordingly, there

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is no need to interfere with the order impugned in this writ petition.

6. Heard the learned Counsel on either side and carefully perused the materials placed on record.

7. Before this Court ventures into the merits of the contention raised on either side, it would be first necessary to bear in mind the scope and jurisdiction of this Court under Article 226 of the Constitution of India, while examining the correctness of the award of the Labour Court. The Hon'ble Supreme Court in a catena of decisions has held that normally a writ court should not interfere with the award of the Labour Court, unless the award is perverse. It has been further held that if the award is not irrational or perverse, the High Court should not interfere with the reasons in the award. Further, it has been held that this Court should not re-appreciate the evidence placed before the Labour Court and substitute its own conclusions, merely because this Court is of the opinion that a different conclusion could have been arrived at on the available evidence. Bearing this legal principle in mind, this Court proceeds to examine the correctness of the impugned award.

8. Considering the facts and circumstances of the case, admittedly, the petitioner appointed as medical representative in the year 1981 by the respondent. Subsequently, the petitioner was discharged from service in the year 2000 within one year from the issuance of charge memo. Initially, the Labour Court passed a preliminary award and the said award was challenged before this Court and the matter was remanded back for fresh consideration. Immediately, the Labour Court passed the award in the year 2012 denying the backwages. The petitioner did not produce any evidence or document to prove that he was not gainfully employed in the interregnum period. Therefore, in the absence of any evidence on the side of the petitioner to prove that he had not involved in any gainful employment during the interregnum period, the denial of back wages by the Labour Court cannot be interfered with.

9. In the light of the above discussion, I am not inclined to interfere with the order of the Labour Court, Madurai passed in I.D.No.285 of 2001, dated 17.05.2012 and therefore,this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

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Sub Assistant Registrar(CS)

RJJ

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+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-9845[F] dated 10/03/2021)

+1 CC to M/s.S.KARTHIK, Advocate (SR-10227[F] dated 11/03/2021)

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