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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2022

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THE HONOURABLE MR.JUSTICE M.S. RAMESH

W.P.NO.16121 OF 2013

R.Varalakshmi

...Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Puducherry.

2.The Managing Director,
ESSEM Technologies Private Limited,
RS.No.88/1, Sanniyasikuppam,
Mannadipet Commune,
Pondicherry.

...Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, after calling for the concerned records from the first respondent, quash the award passed by the first respondent Labour Court dated 17.01.2013 in I.D.No.4 of 2008 insofar as denying back wages and consequently, direct the second respondent to pay full back wages.

For Petitioner : Mr.Balan Haridas

For Respondents : R1 - Court
R2 - M/s.S.Harinyi

ORDER

The petitioner/workman has challenged the Award dated 17.01.2013 passed in I.D.No.4 of 2008, insofar as denying the payment of back wages is concerned. The Labour Court, based on the oral and documentary evidences before it, had found the termination of the petitioner dated 01.02.2006 to be bad in law and accordingly, had set aside the same by ordering reinstatement. But insofar as the denial of back wages is concerned, the Labour Court had taken into account that the petitioner had admitted that she was on leave between 11.08.2005 to 31.01.2006 and had failed to prove that such a leave was taken with a permission of the second respondent/Management.



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"6. In the case of Deepali Gundu Surwase V. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and Others reported in 2013 (10) SCC 324, the Hon'ble Supreme Court had held that in cases of wrongful termination, reinstatement with continuity of service and back wages is the normal rule. The relevant portion of the order reads thus:-

"38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages."

7. Likewise, in Raj Kumar Dixit Vs. Vijay Kumar Gauri Shanker, Kanpur Nagar reported in 2015 (9) SCC 345, the Hon'ble Supreme Court had held that, once the termination is held to be bad in law, compensation in lieu of reinstatement is impermissible and that such a workman will be entitled for all the benefits. The relevant portion of the order reads as follows:-

19. Awarding compensation to an amount of Rs. 2 lakhs to the workman by the High Court in lieu of reinstatement of the appellant-workman along with 50% back wages is once again contrary to the well settled principles of law as has been laid down by this Court in a catena of cases, particularly, the case of Punjab Land Development and Reclamation Corporation. Ltd. v. Presiding Officer, Labour Court,[1] wherein the Constitution Bench held that the order of termination simpliciter has to be held bad in law for non-compliance of the mandatory requirements provided under the Act and further held that the order of termination will be rendered void-ab-initio in law and therefore, the workman is entitled for



partly modified by directing the second respondent/Management to pay full back wages to the petitioner from 01.02.2006 till the date of reinstatement i.e. on 19.03.2013, within a period of eight (8) weeks from the date of receipt of a copy of this order.

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In the result, this Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar (CS-VIII)

// True Copy //

Sub Assistant Registrar

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To

1.The Presiding Officer,
Labour Court,
Puducherry.

2.The Managing Director,
ESSEM Technologies Private Limited,
RS.No.88/1, Sanniyasikuppam,
Mannadipet Commune,
Pondicherry.

+1cc to Mr.Balanharidas, Advocate Sr.No.13228

+1cc to Mr.S.Harinya, Advocate Sr.No.13903

W.P.No.16121 of 2013

RR(CO)
RVM(17/03/2022)