



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Friday, the Seventh day of January Two Thousand Twenty Two

PRESENT

THE HON`BLE MR.JUSTICE M.S.RAMESH

WMP.No.7599 of 2019

in WP.No.5017 of 2018

V.DHANABAGYAM
W/O VELUMANI,
2/604, PILLAYARKOVIL STREET,
VENKITAPURAM, COIMBATORE 641062

[PETITIONER]

Vs

1 THE GENERAL MANAGER,
SRI RANGAVILAS GINNING, SPINNING
AND WEAVING MILLS,
333, AVANASHI ROAD,
PEELAMEDU (PO), COIMBATORE 641004

[RESPONDENTS]

2 THE PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM LABOUR COURT,
1ST FLOOR, B WING, NO.26, HADDOWS ROAD,
SHASTRI BHAVAN, CHENNAI 600 006

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to direct the Writ Petitioner Management either to reinstate the petitioner or to pay him the 17B/ last drawn wages every month from the date of filing of the Writ Petition [in WMP.No.7599 of 2019] till the disposal of the WP.No.5017 of 2018

Order : This miscellaneous petition coming on this day for hearing upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.V.AJOY KHOSE, Advocate for the petitioner and of MR.ANAND GOPALAN, Advocate for M/S.T.S.GOPALAN AND CO., Advocate for the 1st Respondent, the court made the following order:-

Heard the learned Counsel for the parties.



2. The application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as the "ID Act") seeking approval of the dismissal order dated 11.10.2012 of the workman, was rejected on 08.03.2017, which rejection order is under challenge in the main Writ Petition. The present Miscellaneous Petition is one seeking either to reinstate the petitioner herein or to pay the last drawn wages under Section 17B of the ID Act.

3. While the petitioner-Management would submit that, the Management had offered for reinstatement and directed the workman to report for duty at their Cambodia Mill, the workman had failed to report and therefore, she is not entitled for the 17B wages. The learned counsel for the 2nd respondent would submit that the last place of employment of the workman was at Pankaja Mill, and since the Management had passed an order, directing her to report at Cambodia Mill, the offer cannot be termed as "an order of reinstatement at all". According to the learned counsel, the Management is required to reinstate the workman in the original place of employment only and the present order cannot be termed as an "order of reinstatement" and therefore, the workman would be entitled for Section 17B wages.

4. In **P.D.Sharma Vs. State Bank of India** reported in **AIR 1968 SC 985**, the Hon'ble Supreme Court had held that when the application under Section 33(2)(b) is rejected, then the action taken by the employer becomes *ab-initio-void* and the employee is deemed to continue in service and his conditions of service will also continue, without any break, as if the order in question had not been made at all.

5. In the case of **Lakshmi Mills, Ltd., Coimbatore Vs. Labour Court, Coimbatore and another** reported in **1997 (3) L.L.N. 354**, a Hon'ble Division Bench of this Court had held that the term "reinstatement" would mean, reinstatement to the original place of employment. The observation of the Hon'ble Division Bench in this regard reads as follows:-

"12.But it remains to be seen that the transfer would affect the employee in the matter of getting the emoluments and reinstatement means reinstatement to the original position. When there is an award directing the management to reinstate him, it is not possible for the management to say that they will transfer him from the place where he was originally working to a new place."

6. In **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and Others** reported in **2013 (10) SCC 324**, the Hon'ble Supreme Court had held as follows:-

"22.The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer."



7. The ratios held in the aforesaid decisions clearly indicates that when the Management chooses to reinstate any of their workmen, such a reinstatement can only be at the place of the concerned workman's original employment, as held by the Hon'ble Supreme Court in Deepali Gundu Surwase and P.D.Sharma's cases (Supra). Likewise, it will not be open to the Management to reinstate a workman by transferring him to another place from his original place of employment, which ratio had been held by the Hon'ble Division Bench in Lakshmi Mills' case (supra). When the dismissal order itself becomes ab-initio-void in view of the rejection of the Approval Petition, reinstating the workman by transferring him to some other place, other than his original place of employment, is an illegal action and totally contrary to the ratio laid down in the aforesaid decision.

8. In this background, the present decision of the Management to reinstate the workman by transferring her from Pankaja Mill to Cambodia Mill through the Transfer Order dated 11.09.2012, cannot be deemed to be a "reinstatement order at all". Hence, the question of the workman not reporting for duty at the transferred place does not arise. While that being so, the workman would be entitled for receiving the last drawn wages under Section 17B of the ID Act. The workman in her affidavit filed before this Court has also stated that she has not been gainfully employed from the date of rejection of the Approval Petition, which is not disproved by the Management.

9. In the light of the above observations, there shall be a direction to the Management to pay the workman namely, Smt.V.Dhanabagiam, her last drawn wages under Section 17B of the ID Act, commencing from 05.03.2018 (i.e.,) from the date of filing of this Writ Petition and continue to pay the same till the final decision of this Court in this Writ Petition.

10. At this juncture, the learned Counsel for the Management would submit that the petitioner's mill is under severe financial crisis and therefore seeks for indulgence of this Court to pay the arrears of the 17B wages at a later stage.

11. The ground of financial crisis of the Management cannot be a factor for denying the wages under Section 17B, particularly, when the Management has not chosen to pay the same for all these period of more than two years. However, by taking sympathetic approach on the prevailing pandemic situation, the Management is granted liberty to pay the cumulative arrears of wages under Section 17B of the ID Act in three equal months instalments commencing from the first week of February, March and April and continue to pay the monthly last drawn wages, till the final decision of this Court in this Writ Petition.



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12. The Registry is directed to post the main Writ Petition for final disposal on 30.03.2022.

-sd/-
07/01/2022

/ TRUE COPY /

Sub Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

THE PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM LABOUR COURT,
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Order
in
WMP.No.7599 of 2019
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Date :07/01/2022

From 26.2.2001 the Registry is issuing certified
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RA 10/02/2022