



W.P.No.14361 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2022

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.14361 of 2014

C.Baskar

..Petitioner

vs

1. The Presiding Officer,
The Addl. Labour Court,
Vellore.

2. N.M.Zackariah & Co.,
Tanners & Exports,
Rep by its Officer,
67, EVK Sampath Road,
Chennai-600 007.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus to call for the records relating to the Award dated 18.05.2011 passed in I.D.No.88 of 1999, quash that portion Award dated 18.05.2011 passed in I.D.No.88 of 1999, denying reinstatement, continuity of service, back wages and other attendant benefits and consequently direct the 2nd respondent to reinstate the petitioner in service with continuity of service and with backwages and other attendant benefits, Award costs.



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For Petitioner : Mr.S.T.Varadarajulu

For Respondents : R1-Court
Mr.A.V.Suresh

ORDER

This writ petition has been filed challenging a portion of the award dated 18.05.2011, denying reinstatement, continuity of service, backwages and other attendant benefits and to direct the 2nd respondent to reinstate the petitioner in service with continuity of service and backwages and other attendant benefits.

2. The petitioner joined in service of the 2nd respondent on 27.07.1993 as a mechanic and due to ill health, he took medical leave from 25.08.98 to 4.11.1998 and took treatment at ESI Hospital. However, he was not given employment, when he reported for duty on 05.11.1998. The 2nd respondent issued charge memo and did not conduct enquiry. The petitioner raised industrial dispute before the 1st respondent/Labour Court and after trial, the Labour Court awarded a compensation of Rs.50,000/- to the petitioner, denying reinstatement, continuity of service, backwages and other attendant benefits. Hence, this writ petition.



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3. Heard the learned counsel for the petitioner, the learned counsel appearing for the 2nd respondent and perused the materials available on records.

4. It is the specific case of the respondent Management that the petitioner was unauthorizedly absent for duty from 25.08.1998 to 04.11.1998 i.e., for a period of 61 days, without applying any leave or getting prior permission of the management. Though the petitioner had stated about his health and medical treatment from ESI Hospital, Ambur, there was no statement about specific problem in his health and what for, he had taken treatment in ESI Hospital, Ambur. The petitioner had taken leave without informing or giving any leave letter to the management. The petitioner also admitted in the cross examination that he did not sent any leave letter to the management nor he produced the medical report from the ESI Hospital. He also admitted that he did not sent any notice to the management seeking re-employment to him. The second respondent had issued the show cause notice to the petitioner on 28.08.1998 through RPAD regarding absent of the petitioner from 25.08.1998 till the date of show cause notice. Again, one more show cause notice was sent to the petitioner



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on 07.09.1998 about his absence and asking him to give proper explanation in writing and to join duty. But the petitioner issued reply notice to the second respondent on 17.09.1998 with false allegation along with medical certificate from E.S.I., Hospital, Ambur. The petitioner without giving any information or leave letter to the second respondent management absented from duty. So. the second respondent issued notice framing charge against the petitioner. Though the petitioner submitted his explanation on 20.11.1998, he did not give any details. Thereafter, the petitioner was terminated from service. The petitioner filed Industrial Disputes under Section 2A(1) before the Labour Court, Vellore on 01.12.1998. From the oral and document evidence, the learned Judge came to the conclusion that the petitioner absent himself from 25.08.1998 without applying for any medical leave or prior intimation to the management and the same is not in accordance with the service rules. The Labour Court has also observed that the management is entitled to conduct domestic enquiry against the misconduct of the petitioner, but before conducting the disciplinary proceedings, the petitioner has filed a petition before the Labour Officer, Vellore stating that he was terminated from service. The learned Judge had concluded that the petitioner is not entitled to get the relief of reinstatement



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in service and all other benefits, however he is entitled to get a compensation of Rs.50,000/- and awarded a sum of Rs.50,000/- as compensation to the petitioner. The Labour Court has also cited a decision of the Hon'ble Supreme Court reported in 2010(2) SCC (L & S) 309 (Senior Superintendent Telegraph (Traffic), Bhopal vs. Santhosh Kumar Seal & others), wherein it is stated as follows:

9. In the last few years it has been consistently held by this Court that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that monetary compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate.

10. In a recent judgment authored by one of us (R.M. Lodha, J.) in Jagbir Singh v. Haryana State Agriculture Mktg. Board [(2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545], the aforesaid decisions were noticed and it was stated: (SCC pp. 330 & 335, paras 7 & 14)

“7. It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in



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contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.”

11. In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice. In our considered view, the compensation of Rs 40,000 to each of the workmen (Respondents 1 to 14) shall meet the ends of justice. We order accordingly. Such payment shall be made within 6 weeks from today, failing which the same shall carry interest at the rate of 9% per annum. ...

5. From the above decision, it is seen that the relief by way of reinstatement with back wages is not automatic and it would be



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inappropriate, in the given facts and circumstances of the case. The second respondent has given sufficient opportunity to the petitioner. The 2nd respondent issued show cause notice on 28.08.1998 through registered post regarding the absence of the petitioner from 25.08.1998 till the date of show cause notice. Again, another show cause notice was issued to the petitioner on 07.09.1998 asking him to give proper explanation in writing and to join duty. Though the petitioner replied on 17.09.98, he has not given proper details. The petitioner did not state the specific problem in his health and what for he had been taking treatment in E.S.I. Hospital Ambur. Hence, a charge memo was issued on 10.11.1998. Before taking any disciplinary action, the petitioner filed the petition before the Labour Court on 1.12.1998. The petitioner has neither applied for any medical leave nor given prior intimation to the management. The act of the petitioner is not in accordance with the service rules. Therefore, this Court is of the opinion that compensation instead of reinstatement would meet the ends of justice and the Labour Court has rightly done so.

6. In view of the above discussion, this Court finds that there is no infirmity or illegality in the award passed by the Labour Court and therefore,



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this Court is not inclined to interfere with the same.

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7. In the result, the Writ Petition stands dismissed. No costs.

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Index:Yes/No
Speaking/Non-speaking order
vsi

To

The Presiding Officer,
The Addl. Labour Court,
Vellore.



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J.NISHA BANU,J.

vsi

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