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W.P.No.15527 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.15527 of 2014

D.Rajendran

...Petitioner

Vs

1.The Presiding Officer,
III Additional Labour Court,
Chennai - 600 104.

2.The Management of
Iyyappa Enterprises,
CP-39, Razack Garden Main Road,
MMDA Colony, Arumbakkam,
Chennai - 600 106.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records on the file of the 1st respondent pertaining to the proceedings in the award in I.D.No.703 of 2003 dated 08.11.2012 and quash the same in respect of portion of award denying back wages and other attendant benefits.



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For Petitioner : Mr.D.Bharathy

For R1 : Labour Court

For R2 : Mr.A.R.Gokulnath

ORDER

Heard Mr.D.Bharathy, learned counsel appearing for the petitioner and Mr.A.R.Gokulnath, learned counsel appearing for the second respondent.

2. In connection with an alleged incident of assault of a co-worker, the management claims that the petitioner herein had abandoned his services from 07.04.2003 onwards. However, in the claim statement, the petitioner had alleged that the management had denied employment to him from 07.04.2003 onwards and therefore had raised a dispute claiming that he was employed under the management for a monthly salary of Rs.1,500/-. The Labour Court had taken into account the evidence of M.W.1, whereby they had offered employment to the petitioner and accordingly, allowed the claim petition for reinstatement and continuity of service. However, the award of back wages was denied. The present Writ Petition is against the portion of the award denying back wages.



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WEB COPY 3. Two infirmities that are apparent in the award of the Labour Court are that the Labour Court had not taken into account the conduct of the management when they had admitted that the petitioner had abandoned his services and no further disciplinary action was initiated, much less a show cause notice. Likewise, while denying the back wages, there is absolutely no reasoning in the award for such denial.

4. The learned counsel for the petitioner submitted that the petitioner had been employed from the year 2001 onwards and from 07.04.2003 onwards, the management had denied employment. He further submitted that though he had claimed the last drawn wages to be at Rs.1,500/- per month, he would be satisfied if the same is determined at Rs.1,200/-, as found by the Labour Court.

5. The learned counsel for the second respondent submitted that since they were not aware of the last known address of the petitioner, they had not sent any notice to him in connection with his non-reporting for duty. He would further submit that since the Labour Court had found the incident of



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assault to be true, the back wages was rightfully denied and therefore, the petitioner is not entitled to claim the same.

6. The reasoning adopted by the second respondent firm for non-issuance of a show cause notice, when it was found that the petitioner had abandoned his services, is that they were not aware of the last known address of the petitioner. In the counter affidavit filed before the Labour Court, they have admitted that though they were initially not aware of the petitioner's residential address, the same came to their knowledge when a conciliation petition was filed by him. Even at this stage, the management had not taken any steps for issuance of a show cause notice or for further departmental action. Even otherwise, I am not in agreement with the submission that the management was not aware of the last known address of their own employees. Many of the Labour Court legislations that covers the petitioner's firm, requires the last known address of all their employees and pleading ignorance of such last known address is unacceptable. Thus, the mode in which the petitioner was in non-employment, is opposed to the procedure contemplated under the service regulations.



7. Though the Labour Court had found that the fact of termination of service has not been established, it had not ventured into the aspect of failure on the part of the management in taking steps for initiating departmental action, when it was found that the petitioner had abandoned his services, which by itself is a misconduct.

8. This apart, whenever an order of discharge or dismissal is set aside, the award of full back wages is the normal Rule, as held by the Hon'ble Supreme Court in the case of ***Deepali Gundu Surwase V. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and Others*** reported in ***2013 (10) SCC 324***. In case the Labour Court intends to withheld the back wages, it ought to have rendered a specific finding for such denial. In the instant case, the Labour Court had recorded the statements made by M.W.1, whereby they had expressed willingness to offer employment to the petitioner and thereby, awarded for reinstatement with continuity of service. However, for denial of back wages, there is absolutely no finding rendered. In this background, by applying the principles laid down by the Hon'ble Supreme Court in *Deepali Gundu Surwase's case (supra)*, the petitioner would be entitled for award of full back wages for the period of his non-employment.



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WEB COPY 9. It is now admitted by both the parties that a sum of Rs.1,200/- per month is the last drawn wages of the petitioner herein.

10. In the light of the above findings, the impugned award passed by the first respondent in I.D.No.703 of 2003, dated 08.11.2012, insofar as it denies back wages, is quashed. Consequently, there shall be a direction to the second respondent herein to forthwith disburse the back wages at the rate of Rs.1,200/- per month from 07.04.2003 till 08.11.2012, being the date of award, within a period of 4 weeks from the date of receipt of a copy of this order. All other findings rendered by the Labour Court in the impugned award shall remain intact.

11. Accordingly, the Writ Petition stands allowed. No costs.

11.10.2022

Index:Yes/No
Internet:Yes/No
Speaking order/Non-speaking order
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M.S.RAMESH,J.

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