



WP(MD)No.17144 of 2013

WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 20.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.(MD)No.17144 of 2013

and

M.P(MD)No.2 of 2013

C.Subramaniam (Deceased)

2.S.Lakshmi

3.S.Chockkalingam

4.S.Rathna

... Petitioners

vs.

1.The Management,
Sri Nachammai Cotton Mills,
Chettinadu, Karaikudi,
Sivagangai District.

2.The Presiding Officer,
Labour Court,
Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records in connection with the impugned order passed by the Labour Court, Madurai in I.D.No.105 of 2009, dated 25.06.2012, quash the same in so far as it relates to the



WP(MD)No.17144 of 2013

WEB COPY

denial of back wages to the petitioner from 12.03.2009 to till the date of reinstatement and consequently directing the 1st respondent to reinstate the petitioner and pay all consequential back-wages to the petitioner with effect from the date of award.

For Petitioner : Mr.S.Bharathy Kannan

For R1 : Mr.V.O.S.Kalaiselvam

ORDER

This writ petition has been filed seeking to issue a Writ of Certiorarified Mandamus, calling for the records in connection with the impugned order passed by the Labour Court, Madurai, in I.D.No.105 of 2009, dated 25.06.2012 and quash the same insofar as it relates to the denial of back wages to the petitioner from 12.03.2009, till the date of reinstatement and consequently, direct the first respondent to reinstate the petitioner and pay all consequential back wages to the petitioner with effect from the date of award.

2. The learned counsel appearing for the petitioner submitted that the petitioner C.Subramanian raised an industrial dispute before the Labour Court in I.D.No.105 of 2009 with regard to his non-employment and for other reliefs under



WP(MD)No.17144 of 2013

Section 2(A)(2) of the Industrial Disputes Act. The Labour Court, after full-fledged enquiry, directed the respondent to reinstate C.Subramanian with continuity of service and other benefits without back wages. Challenging the denial of back wages, this writ petition has been filed.

3. The learned counsel for the petitioner would submit that there is no evidence produced by the respondent/Management to show that the deceased C.Subramanian was gainfully employed during the period of his non-employment and that being the case, the denial of back wages is against law.

4. In support of his submission, he relied on the judgment of ***Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalay reported in (2013) 10 SCC 342***, "for the proposition that an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was



WP(MD)No.17144 of 2013

gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service."

5. He would submit that the deceased Subramanian has taken a specific plea that during the time of his non-employment, he was not gainfully employed and therefore, the Labour Court ought to have awarded a relief with back wages.

6. In reply, the learned counsel appearing for the respondent/Management submitted that the deceased C.Subramanian was running the catering service and he has admitted in the cross-examination about running of catering shop, especially, the Coffee shop. This admission is clear evidence of his gainful employment during the period of his non-employment. It is his further submission that the deceased C.Subramanian was not denied the employment. He absented himself voluntarily and in spite of sending several letters and opportunity for him to join duty, he has not availed the opportunity. Even after the disposal of the Industrial Dispute, he was provided with job in Winding Department. He worked for only one day and then filed a petition and therefore, the submission of the learned counsel for the petitioner has no merit and this writ petition is liable to be dismissed.



WP(MD)No.17144 of 2013

WEB COPY 7. Considered the rival submissions and perused the records.

8. It is not in dispute that C.Subramanian was working in Winding Department. After the disposal of I.D.O.P.No.105 of 2009 and filing of this writ petition, he died on 30.09.2020. Therefore, his legal representatives are impleaded as petitioners 2 to 4. Admittedly, the respondent/Management has not challenged the order of reinstatement of deceased Subramanian with continuity of service and other attendant benefits. The deceased/petitioner alone has filed this petition challenging the order of Labour Court denying the back wages and that is prosecuted by his legal representatives.

9. A perusal of the award of the learned Labour Court shows that the deceased person was examined as P.W.1 and Ex.P1 to Ex.P6 were marked. On the side of the Management Ex.R1 to Ex.R13 were marked. Reference to the list of documents filed by both the parties has not shown any materials to show that the deceased Subramanian was employed during the period of non-employment. If he was so employed, what was his income. The learned counsel for the respondent/Management brought to the knowledge of this Court the evidence of



WP(MD)No.17144 of 2013

WEB COPY

deceased Subramanian to show that he was running a coffee shop. There is also an admission that his father was running coffee shop and now, his younger sister is running the shop. The evidence of deceased Subramanian shows that he was running a coffee shop, however, there is no evidence to show that what was the income earned by him by running the coffee shop. The learned Labour Court has not discussed anything about the employment of the deceased Subramanian and whether the income derived from the coffee shop could be construed outcome of gainful employment. The back wages was denied mainly by taking into account the statement of the Management that the deceased Subramanian was gainfully working when he was not working under the respondent/Management.

10. This Court finds that the findings with regard to rejection of back wages is not a reasoned order and therefore, it has to be necessarily set aside. Accordingly, the findings of the Labour Court with regard to the rejection of back wages to the deceased Subramanian is set aside and the matter is remitted back to the Labour Court, Madurai, for conducting fresh enquiry with regard to back wages.



WP(MD)No.17144 of 2013

WEB COPY

11. Thus, this Court confirms the order with regard to reinstatement of the deceased Subramanian with continuity of service and other benefits and set aside the order with regard to denial of backwages. The matter is remitted back to the Labour Court, Madurai for disposal for deciding as the entitlement to seek wages to the deceased Subramanian. The Labour Court, Madurai, is directed to dispose of the case, within a period of three months from the date of receipt of a copy of this order. Pendency of this writ petition is in no way a bar to the respondents from releasing the gratuity amount to the legal heirs of the deceased Subramanian.

12. With the above observations, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

20.06.2022

Index : Yes / No

Internet : Yes / No

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WP(MD)No.17144 of 2013

WEB COPY

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G.CHANDRASEKHARAN, J.

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