



W.P.(MD)No.19679 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.07.2022

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.(MD)No.19679 of 2013

and

M.P.(MD)No.2 of 2013

S.Rajakili

... Petitioner

Vs.

1. The Management,
Sri Nachammai Cotton Mill,
Chettinadu,
Sivagangai District.

2. The Presiding Officer,
Labour Court,
Madurai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying 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.103 of 2009 dated 25.06.2012, quash the same insofar as it relates to the denial of backwages to the petitioner from 27.08.2008 to till date and consequently, directing the first respondent to reinstate the petitioner and pay all consequential backwages to the petitioner with effect from the date of award.



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For Petitioner : Mr.S.Bharathy Kannan
For Respondents : Mr.V.O.S.Kalaiselvam for R1
R2 - Labour Court

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the order passed by the second respondent in I.D.No.103 of 2009, dated 25.06.2012 insofar as it relates to denial of backwages to the petitioner from 27.08.2008 to till date and consequently, direct the first respondent to reinstate the petitioner and pay all consequential backwages to the petitioner with effect from the date of award.

2. The learned counsel for the petitioner submitted that the petitioner, who was a workman from 1995 in the first respondent Mill at Winding Departmen married one Thilagavathi on 22.08.2008. The first respondent / Management did not like the petitioner's marriage. When the petitioner reported to work on 27.08.2008, he was not permitted to work. Hence, he sent a letter, dated 28.08.2008 to B Unit Time Office seeking to



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allow him to work. The first respondent did not give any reply or job. Per contra, the General Manager (Personnel), namely, Srinivasan insisted the petitioner and his wife to separate from each other, otherwise he will not provide work. On 05.10.2008, the petitioner raised dispute before the Labour Officer (Incharge) Ramanathapuram District and the conciliation ended in failure. Therefore, he raised I.D.No.103 of 2009 before the Labour Court, Madurai. The Labour Court directed the respondent / first respondent herein to reinstate the petitioner with continuity of service and other attendant benefits but denied the relief of backwages. Therefore, this petition.

3. The learned counsel for the petitioner further submitted that the petitioner is entitled for backwages when there is a direction for reinstatement as per the decision of the Hon'ble Supreme Court of India in the case of *Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others* reported in (2013) 10 SCC 324, the relevant paragraph is extracted hereunder:



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"33. The propositions which can be culled out from the aforementioned judgments are:

(i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

(ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

(iii) Ordinarily, 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 gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the



person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

(iv) 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.

(v) The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman,



then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

(vi) In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the



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termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works (P) Ltd. v. Employees [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53].

(vii) The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal [(2007) 2 SCC 433 : (2007) 1 SCC (L&S) 651] that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three-Judge Benches [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] , [Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court, (1980) 4 SCC 443 : 1981 SCC (L&S) 16] referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman."



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4. In response, the learned counsel for the first respondent submitted that the petitioner was not terminated by the first respondent. In fact, the petitioner was directed to report to work as per the letter of the first respondent, dated 24.12.2008 and the same was received by the petitioner. Even after the receipt of the letter, the petitioner did not join the duty. Therefore, a show cause notice, dated 03.01.2009 was issued to the petitioner seeking for explanation for his unauthorized absence. After receiving the show cause notice, he did not reply and the oral enquiry was commenced. He took the matter before the Labour Officer. After the conciliation efforts failed, he rushed to the Labour Court. As per the orders of the Labour Court, the first respondent was directed to reinstate the petitioner into service without backwages and with continuity of service. Even in the counter affidavit, it is categorically admitted that the first respondent is prepared to give work to the petitioner, but he has not joined the duty. Therefore, the denial of backwages is just and proper.

5. I have considered the rival submissions made by the learned counsel appearing for the parties and perused the materials placed before this Court.



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6. It is not in dispute that the petitioner was working with the first respondent from 1995. It is also not in dispute that he did not attend the work from 22.08.2008. There was conflicting claims raised by the parties with regard to non-working from 27.08.2008. The petitioner claims that he reported to work on 27.08.2008, but he was not permitted to work. On the other hand, it is the claim of the first respondent that the petitioner did not report to work, despite the letter, dated 24.12.2008.

7. A perusal of oral and documentary evidence shows that Exs.W1 to W5 and Exs.M1 to M3 have been marked before the Labour Court. The petitioner was examined and two persons were examined on the side of the Management. Exs.W3 and W4 are the representations, dated 20.09.2008 and 05.10.2008 respectively. It is seen from Ex.W3, i.e., copy of the representation, dated 20.09.2008 that the petitioner alleged to have reported to work on 27.08.2008, but he was not permitted to work. There are other allegations against the General Manager (Personnel), namely, Srinivasan that he insisted the petitioner to separate from his wife. In Ex.W4-representation also, it is reiterated that he was not permitted to work



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from 27.08.2008 and other allegations in Ex.W3-representation are reproduced.

8. With regard to Exs.W3 and W4, it is the submission of the learned counsel for the first respondent that there is no evidence produced to show that these representations have been sent to the first respondent. In this regard, he relied on the admission of the petitioner during the course of his cross-examination that he did not produce any evidence to show that Exs.W2 to W4 were sent to the first respondent. A perusal of the evidence shows that the petitioner did not produce any evidence to show that he sent Exs.W3 and W4, i.e., representations to the Management. Therefore, the claim of the petitioner through Exs.W3 and W4, he sought work from the first respondent, is not proved.

9. Ex.M1, i.e., letter dated 24.12.2008 and Ex.M2, i.e., show cause notice dated 03.01.2009 have been produced. Through letter dated 24.12.2008, the first respondent informed the petitioner that he was absent from 22.08.2008 and it is the violation of rules of the first respondent and



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was directed to report duty within three days from the date of receipt of the letter. It is seen from the evidence of the petitioner that he admitted receiving this notice. He also submitted that he has not produced any materials to show sending reply. He also admitted the receipt of show cause notice, dated 03.01.2009 and that he had not produced any material to show that he replied to the show cause notice. From the oral and documentary evidence produced, it is established that the first respondent proved through Ex.M1, directed the petitioner to join duty. Even after this opportunity, the petitioner did not join duty. Learned Labour Judge found that the absence of the petitioner from 22.08.2008 is explained by the petitioner, such finding, in the opinion of this Court, is not supported by any evidence. Ultimately, the learned Labour Judge found that the petitioner did not report to work without any permission and therefore, he is not entitled for backwages.

10. As discussed above, the petitioner has not established that he was ready and willing to work in the first respondent Management. There is positive evidence to show that the first respondent sent a letter to the petitioner to report to work. Despite that, the petitioner did not report to



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work. The petitioner has not produced any evidence to show that he reported to work, but he was prevented from working. Even in this Writ Petition, the first respondent filed counter affidavit stating that it is ready to give work to the petitioner as per the order of the Labour Court. The denial of backwages, in the facts and circumstances of this case and in the considered view of this Court, is just and proper and there is no merit to interfere with the finding of the Labour Court.

11. In the result, this Writ Petition is dismissed and the award passed by the Labour Court in I.D.No.103 of 2009 dated 25.06.2012, is hereby confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No

Speaking Order : Yes / No

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To

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G.CHANDRASEKHARAN, J.

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