



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.4045 of 2013

WEB COPY

V.Venkatasubramanian

... Petitioner

vs

1. The Management,
Ayyappan Textiles Ltd.,
Achundannayal Village,
Ramanathapuram District.

2. The Presiding Officer,
The Labour Court, Madurai.

... Respondents

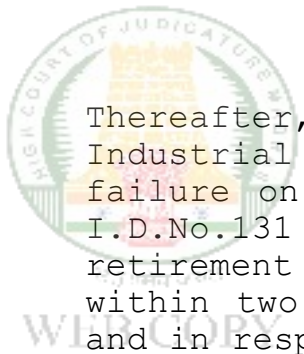
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the award passed by the Labour Court, Madurai in I.D.No.131 of 2004, dated 31.10.2011 and quash the same in so far as it relates to denial of back wages, continuity of service and other monetary benefits to the petitioner is concerned and consequently, direct the first respondent to pay full back wages and necessary monetary benefits.

For Petitioner : Mr.S.M.Mohan Gandhi
For Respondents : Mr.M.E.Ilango for R1
Labour Court for R2

O R D E R

The petitioner has filed this writ petition challenging the award passed by the Labour Court, dated 31.10.2011, in so far as it relates to denial of back wages, continuity of service and other monetary benefits and consequently, to direct the first respondent to pay full back wages and necessary monetary benefits.

2. The brief facts of the case are that the petitioner joined the first respondent Mill in the year 1991. On 02.09.2002, while he was working in the second shift handle machine Nos.6 to 9, there was a dispute between the petitioner and the Management. Thereafter, the petitioner was placed under suspension for ten days. A Charge Memo, dated 14.10.2002 was issued directing the petitioner to explain the absence without any prior permission from 01.10.2002 to 10.10.2002. Thereafter, the petitioner was orally terminated from service. The petitioner raised a dispute under Section 2(k) of the Industrial Dispute Act and the same was withdrawn by the petitioner.



Thereafter, the petitioner raised dispute under Section 2A of the Industrial Dispute Act. The Conciliation proceedings ended in failure on 21.05.2004 and thereafter, the petitioner has preferred I.D.No.131 of 2004 and the respondents are directed to disburse the retirement benefits and other legal dues if any to the petitioner within two months from the date of receipt of a copy of the order and in respect of other aspects the petition was dismissed. Now the petitioner is seeking full backwages and other monetary benefits in this writ petition.

3. Heard Mr.S.M.Mohan Gandhi, learned Counsel appearing for the petitioner and Mr.M.E.Ilango, learned Counsel appearing for the first respondent.

4. The learned Counsel appearing for the petitioner submitted that now the claim petition is filed and the same is pending. The learned Counsel appearing for the respondents relied on the Industrial Dispute order in paragraph 9, findings was given and the same is extracted hereunder:

"It appears from the facts and circumstances that this respondents never refused to give work to the petitioner and the petitioner himself refused to attend the work on the machines 10 to 13 on 02.09.2002. The Management had not dismissed him from service. The petitioner has already attained the age of superannuation on 10.03.2010, it appears that the petitioner himself did not want to resume duty. But it cannot be said that the petitioner had voluntarily abandoned the service. He was having touch with the Management by repeatedly sending leave application to the Management. The purpose will not be served if I dismiss the petition since the petitioner had already retired from service. Hence the question of reinstatement does not arise. Considering the facts and circumstances and conduct of the petitioner, he is not entitled to any back-wages and other benefits from 02.09.2002. It is also true that granting of back wages is not automatic one. The back wages cannot be claimed as a matter of right. The conduct of the petitioner is not proper. Back wages cannot be granted to a workman who had not chosen to resume duty throughout the period of absence. Hence denial of back wages and other benefits is proper considering the facts and circumstances of the case. The petitioner has already attained the age superannuation. Hence the petitioner can be given the retirement benefits instead of dismissing the petition. The respondents is directed to disburse the retirement benefits and other admissible legal dues if



any to the petitioner within the period of two months from the date of receipt of a copy of the order. The petitioner is not entitled to any other relief as asked by the petitioner."

5. This Court is convinced of the reasoning of the Labour Court and this Court is confirming the order of the Labour Court. The Management is directed to pay the terminal benefits that is applicable until 02.09.2002 and disburse within a period of six months from the date of receipt of a copy of this order.

6. With this direction, the Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

jbr

Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Management,
Ayyappan Textiles Ltd.,
Achundannayal Village,
Ramanathapuram District.

2.The Presiding Officer,
The Labour Court, Madurai.

+1 CC to M/s.M.E.ILANGO, Advocate (SR-8187[F] dated 23/02/2022)

Order made in

W.P. (MD)No.4045 of 2013

21.02.2022

SB(CO)

GC(05.04.2022) 3P 4C