



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.09.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

REV.APPLC(MD).No.58 of 2022

1. The Managing Director,
Arasu Rubber Corporation Limited,
Vadaseri,
Kanyakumari District.

2. The Divisional Manager,
Arasu Rubber Corporation Limited,
Manalodai Division,
Perunchani, Ponmanai Post 629 161.
Kanyakumari District.

... Applicants/R-1 & R-2

Vs.

R. Thanagaraj

... Respondent/Writ Petitioner

Prayer: Review Application filed under Order 47 Rule 1 r/w 114 of the Civil Procedure Code, to review the order, dated 31.01.2022 passed in W.P.(MD).No. 2927 of 2015 on the file of this Court.

For Petitioners : Mr.T.Ravichandran

For Respondent : Mr.Niranjan S.Kumar

ORDER

This Review Application in Rev. Appl. (MD).No.58 of 2022 was filed against the order, dated 31.01.2022 passed in W.P.(MD).No. 2927 of 2015.



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2. While passing an order in W.P.(MD).No.2927 of 2015, this Court had passed an order without hearing the respondents and hence this Review petition is entertained.

3. The ground that was canvassed in the review application is that the writ petition is maintainable because the Writ Petitioner has an alternative remedy. The learned counsel appearing for the delinquent submitted that there is no factual dispute between the parties and therefore the writ petition is not maintainable. Moreover, the writ petition was pending from 2015 onwards. The relief the writ petitioner has sought is to reinstate in service, at this juncture if the writ petitioner is directed to seek the alternative remedy, then the petitioner would have to wait for few more years and he may not get reinstatement before his superannuation. Therefore, this Court is of the considered opinion the delinquent is right in stating that there is no factual dispute and the writ petition is maintainable. Otherwise also this Court is inclined to entertain this writ petition for the reason stated supra.

4. The next plea raised by the Learned Counsel appearing for the Review Applicants is that the Writ petitioner had faced criminal



proceedings and was convicted by the Trial Court. As per Standing Order of the Corporation, *in Clause 23,*

“If an employee is convicted in any criminal proceeding, then the employee should be terminated from the service’.

The review applicant may be right in stating that as per the said clause, the delinquent ought to be dismissed from service. But subsequently, the delinquent was acquitted in the appeal filed in CrI.A.No.472 of 2002. The contention of the review applicants is that after acquittal the delinquent is entitled to reinstatement but without backwages. Hence 18(1) settlement was proposed, but the delinquent after perusing the terms of settlement, refused to sign the same and informed that he would come back after consulting the Union, but had not turned up. Hence according to the review applicant, the delinquent had abandoned the service by not signing the settlement and hence now he cannot claim any benefits.

5. But the contention of the delinquent is that as per the terms of 18(1) settlement the review applicant proposed to reinstate the delinquent as fresh entrant. And consequent to this proposal the delinquent was denied service benefits and backwages. Since the terms was not agreeable to the delinquent, he has refused to sign the same.



Therefore, this Court is of the considered opinion that the very condition to appoint the delinquent as fresh entrant is illegal and hence the contention of the review applicants that the delinquent had abandoned the service by not signing is not acceptable.

6. The next contention is that the review applicant submitted that the delinquent is not entitled to service benefits and backwages. The review applicants submitted that the delinquent is not entitled to backwages, since backwages are not automatic and relied upon the Judgment rendered in *the Management of Kaleeswara Vs. The Presiding Officer, Labour, dated 03.09.2002*, wherein, it is held that the delinquent is not entitled to the backwages for the period when the delinquent was convicted. But in the said judgment it has also been held that the employer ought to reinstate the workmen, after acquitted in the appeal and the delinquent will have the right to claim backwages for the period subsequent to the date on which the delinquent brought the acquittal to the notice of the employer and sought reinstatement. Therefore, this Court is of the considered opinion,

- i. That the delinquent is not entitled to backwages for the period from the date of dismissal to the date of reinstatement as the denial of work during that period is not on account of employer's action or omission, but is solely by the reason of the involvement of the employee



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in the criminal proceedings which has resulted in his conviction.

ii. That the delinquent is entitled to backwages for the period from the date of reinstatement as the denial of work during that period is on account of employer's action or omission, since the employer is duty bound to grant reinstatement from the date on which it was brought to the notice of the employer the acquittal and sought reinstatement.

7. In the present case, the delinquent has brought to the notice of the employer the fact of acquittal and sought reinstatement, but the review applicants had denied reinstatement and tried to enter 18(1) settlement by imposing a condition to grant employment as fresh entrant, which is illegal. Hence the review applicant is bound to pay the backwages from the date of 28.10.2010, the date on which the delinquent was acquitted from the criminal proceedings in Crl.A.No.472 of 2002. However, on the basis of "No work No pay", the delinquent may not be entitled to backwages. In order to balance both the principles, this Court denied full backwages to the delinquent and granted only 30% backwages for the period from 2010-2018. Therefore, this Court has rightly held in the writ petition that the delinquent is entitled to get 30% back wages.



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8. As far as the service benefits are considered, since this Court has held the delinquent is entitled to reinstatement, then the delinquent is entitled to full service benefits.

9. The review applicants have not raised any legal ground or shown any error apparent on the face of the record and hence, this Review Application is liable to be dismissed. Accordingly, the Review Application is dismissed. No costs.

07.09.2022

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S.SRIMATHY, J.

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