



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.01.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.2927 of 2015

R.Thangaraj

... Petitioner

vs

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

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

... 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 of the impugned order passed by the second respondent in his proceedings Sa.Mu.Aa.No.2057 of 2002, dated 21.06.2002 and quash the same and consequently, direct the respondents 1 and 2 to reinstate the petitioner as Rubber Tapper in the Respondent Corporation with continuity of service and back wages from, 29.05.2002 and confer all monetary benefits to the petitioner.

For Petitioner : Mr.Niranjana S.Kumar

For Respondents : No appearance

ORDER

The petitioner has challenged the impugned order, dated 21.06.2002 and consequently, direct the respondents to reinstate the petitioner with continuity of service and back wages from 29.05.2002 and confer all monetary benefits to the petitioner.

2.The brief facts of the case are that the petitioner was appointed as Rubber Tapper on daily wages basis from 1991 onwards. Subsequently, the petitioner was transferred and designated as regular employee and his services were regularized. The petitioner was convicted in a Criminal Case in S.C.No.3 of 1996 on the file of the Additional Sessions Judge, Kanyakumari on 08.03.2002 and imposed life sentence. Based on the conviction the petitioner was



temporarily suspended by the second respondent from service on 27.05.2002. An enquiry notice was issued and the petitioner submitted an explanation on 30.05.2002 and the enquiry report was submitted on 20.06.2004. Since the petitioner was convicted in Criminal Case as per Section 23 of the Standing Order of Arasu Rubber Corporation, the petitioner was dismissed from service, vide order, dated 21.06.2002 with effect from 29.05.2002. The petitioner has preferred a writ petition in W.P. (MD) No. 32809 of 2002 and this Court dismissed the petition on 14.08.2002 with direction to file an appeal before the Managing Director. The petitioner has preferred an appeal on 02.07.2002 and the same was dismissed by the first respondent stating that the Criminal appeal against the order of conviction is pending and the petitioner was released on bail during the pendency of the Criminal appeal. The petitioner submitted a representation on 02.09.2002 and the first respondent again rejected, vide order, dated 20.09.2002.

3.The Criminal Appeal No.472 of 2002 was allowed by the Honourable Division Bench of Madurai High Court on 28.10.2010 and the sentence was set aside. The petitioner approached the second respondent in person and requested to permit him to the join duty by cancelling the dismissal order. In spite of continuous request, the second respondent has not taken necessary steps to reinstate the petitioner. Thereafter, the petitioner submitted a representation, dated 13.10.2013 and the petitioner was directed to submit the order passed in the Criminal Appeal. Thereafter, the second respondent, vide proceedings, dated 14.03.2014 instructed the petitioner to approach him in person and the petitioner approached the second respondent on 25.03.2014 and he was permitted to join duty as Rubber Tapper in Manalodai Division. After completion of one week the petitioner requested to issue written order to cancel the earlier dismissal order. The respondent directed the petitioner to enter into the settlement under 18(1) under Industrial Dispute Act, 1947 and refused to give back wages and continuity of service from 29.02.2002. Aggrieved over the same, the petitioner has preferred this writ petition.

4.The respondents have filed a counter affidavit since the petitioner was dismissed and as per Standing Order No.23, the petitioner cannot claim any reinstatement. Thereafter, on acquittal the petitioner was directed to enter the settlement under Section 81 of Industrial Dispute Act. The terms intended to be incorporated in the settlement were that on his retirement, he would not be entitled to any wages, allowances and gratuity for his period of non-employment. Since the petitioner is not inclined, the settlement was not entered. Since the petitioner did not turn up, the second respondent sent a letter, dated 16.08.2011 by Registered post, asking him to join duty. The petitioner came on 23.08.2011 and the second respondent requested the petitioner to join duty by signing



After a gap of several months, the petitioner sent a letter, dated 30.10.2013 requesting for reinstatement. The first respondent sent a letter, dated 09.12.2013 requesting him to furnish the copy of the acquittal order and the same was furnished on 10.01.2014. On 11.02.2014, the second respondent directed the petitioner to enter the settlement in order to reinstate the petitioner. The second respondent sent a letter, dated 05.03.2014, but the petitioner was not inclined to join duty. Under these circumstances the petitioner has filed instant writ petition. The contention of the respondents that on acquittal in appeal, an employee would be entitled to reinstatement but not the back wages for the non-employment period. The respondents are inclined to reinstate the petitioner as per the above principle of law but the petitioner was not inclined to join duty as per the condition of no backwages for a period of non-employment. The petitioner is entitled to raise industrial dispute before the Labour Court and the writ petition is not maintainable. Therefore, the writ petition is liable to be dismissed.

5. Heard Mr. Niranjan S. Kumar, learned Counsel appearing for the petitioner.

6. The petitioner was regularized in the respondent Corporation from the year 1992 onwards and he was put in service until 2002. The petitioner was convicted and the sentence of life imprisonment was imposed. On appeal, the petitioner was acquitted on 28.10.2010. The contention of the respondent that the respondent corporation is incorporated under the Companies Act and the service conditions are based on the Standing Orders. In Standing Order No.23, the petitioner cannot be reinstated into service during the conviction period. On acquittal, the petitioner is entitled to reinstatement, however, the petitioner is not entitled to backwages for non-employment period. The respondent in the counter affidavit has stated that the petitioner is not entitled to wages, allowance and gratuity for a period of his non-employment. The respondents may be right in stating that the petitioner is not entitled to backwages for the non-employment period from 2002 to 2010 until the date of acquittal on "No work No pay" principle. But the respondents cannot deny the service benefits to the petitioner for the non-employment period. However, the petitioner was 54 years old in the year 2015 and as on date the petitioner has attained superannuation. Therefore, the question of reinstatement also would not arise. As rightly pointed out by the petitioner, the petitioner is entitled to reinstatement once the Criminal Court is acquitting the accused. It is also admitted that backwages is not automatic. Under the principle "No Work No Pay", the petitioner will not be entitled to any backwages for the non-employment period but the respondents ought to have reinstated the petitioner from the year 2010 until his superannuation which would be in the year 2018. By not granting reinstatement from 2010 onwards, the petitioner has denied the



Therefore, this Court, in order to meet the ends of justice is directing the respondents to grant all terminal benefits to the petitioner and 30% of back wages, since the respondents have not allowed the petitioner to join duty from 2010 to 2018.

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7. With the above direction, the Writ Petition is disposed of.
No costs.

Sd/-

Assistant Registrar(AD-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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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 Managing Director,
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Kanyakumari District.
2. The Divisional Manager,
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Ponmanai Post - 629 161.
Kanyakumari District.

Order made in
W.P. (MD)No.2927 of 2015
31.01.2022

IMS (CO)
TR(18.03.2022) 4P 3C