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W.P.No.10768 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.07.2023

PRONOUNCED ON : 08.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

W.P.No.10768 of 2011

and

M.P.Nos.1 of 2011, 1 of 2013 and 1 of 2015

The Deputy Manager (Port Operations),
Chennai Harbour,
Food Corporation of India,
District Office,
Chennai.

: Petitioner

-VS-

1.The Presiding Officer,
Central Government Industrial Tribunal
cum Labour Court,
Shastri Bhavan, Chennai-600 006.

2.R.Elumalai (Deceased)

3.Malliga

4.Mohana

5.Uma

6.Jayaseelan

: Respondents

[R3 to R6 substituted as legal heirs of deceased second respondents
vide order dated 21.09.2021 made in W.M.P.No.20995 of 2021]

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records from



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the file of the first respondent herein namely, the Presiding Officer, Central Government Industrial Tribunal cum Labour Court, Shastri Bhavan, Chennai and quash the award dated 29.10.2010 in I.D.No.16 of 2009.

For Petitioner : Mr.M.Imthias
For R1 : Court
For R2 : Died
For R3 to R6 : Mr.D.Gopinathan

ORDER

The Food Corporation of India (Management) is the petitioner herein.

2. The Food Corporation of India (hereinafter referred to as FCI) has filed this writ petition seeking the relief to set aside the award granted by the first respondent in I.D.No.16 of 2009, dated 29.10.2010.

3. The brief facts leading to filing of the writ petition are as under:

3.1. The second respondent was the employee under the FCI, and pending the writ petition, he died and his wife and children are brought on record as R3 to R6. The second respondent raised an industrial dispute and the same was approved by the Central Government Notification dated



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10.11.2008 referring to the Industrial Tribunal for adjudication viz.,

“Whether the action of the Management of FCI in dismissing Mr.R.Elumalai w.e.f. 20.02.1998 vide Management's order dated 23.10.1998 is legal and justified?”

3.2. The case of the second respondent before the Industrial Tribunal is that he has rendered 18 years of service and he went on leave from 20.02.1998 to 06.07.1998. While he went for reporting duty on 07.07.1998 with medical certificate, the same was rejected and he was not permitted to join and a termination order was issued on 23.10.1998 w.e.f. 22.02.1998 and he is not gainfully employed elsewhere and the reason for the leave is only due to illness and medical certificate has been issued and the Standing Rules 19(4) was not followed.

3.3. The writ petitioner has filed a reply statement alleging that the second respondent was absent for 221 days. As per the Rule 19(4) of the Certified Standing Order for Workmen employed at Madras Harbour by Food Corporation of India, it is a violation and hence, he can be removed without further notice and further stated that after his removal from service,



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he received terminal benefits without protest and without challenging the termination and he raised the Industrial Tribunal only after the delay of 9 years.

3.4. The lower Court records reveals the fact that on behalf of the workmen, Ex.W.1 to Ex.W.13 were marked and on behalf of the Management, Standing Order was marked as Ex.M.1.

3.5. On consideration of the evidence adduced by both the parties, the first respondent has rendered a finding that the action of the Management is illegal and justified and ordered for reinstatement with full back wages, continuity of service and all attendant benefits. Hence, the writ petition.

4. Heard the learned counsel on either side.

5. By the impugned proceedings, the second respondent was dismissed from service on 20.02.1998 and the order dated 23.10.1998, the dispute has been raised by the employee/workmen only after the period of 9



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years delay and on 10.11.2008, the Central Government has notified the industrial dispute and the case has been taken on file in the year 2009 as I.D.No.16 of 2009 and the award was passed on 23.10.1998 and the writ petition has been filed on 16.04.2009. However, there was no stay in respect of the reinstatement and accordingly, the second respondent was reinstated on 01.07.2011, retired from service on 31.08.2013 and died on 06.04.2020 and stated supra, his wife and children were brought on record as R3 to R6.

6. After hearing the rival submissions and also taking note of the factual position that during the pendency of the writ petition, the second respondent was reinstated on 01.07.2011 and retired from service on 31.08.2013 and now, the scope of the writ petition is narrowed down whether the second respondent, now the deceased, is entitled for full back wages or not, as ordered by the Industrial Tribunal.

7. In the following catena decisions of the Hon'ble Supreme Court in *Electricity Board V. Jarina Bee (Smt.)* reported in (2003) 6 SCC 141; *G.M.Haryana Roadways Vs. Rudhan Singh* reported in (2005) 5 SCC 591; *U.P. State Brassware Corporation Vs. Uday Narain Pandey* reported in



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(2006) 1 SCC 479; *J.K.Synthetics Ltd., Vs. K.P.Agrawal and Anr.* reported

in (2007) 2 SCC 433; *Metropolitan Transport Corporation Vs.*

V.Venkatesan reported in (2009) 9 SCC 601; *Jagbir Singh Vs. Haryana*

State Agriculture Marketing Board and Anr., reported in (2009) 15 SCC

327; and *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak*

Mahavidyalaya (D.Ed.) and Ors., reported in (2013) 10 SCC 324, the

Hon'ble Supreme Court held that it is necessary for the workman to plead

and prove with the aid of evidence that after his dismissal from service, he

was not gainfully employed anywhere and had no earning to maintain

himself or/and his family. The employer is also entitled to prove it otherwise

against the employee, namely, that the employee was gainfully employed

during the relevant period and hence, not entitled to claim any back wages.

Initial burden is, however, on the employee. In the decision of the Hon'ble

Supreme Court of India in *Exe. Engineer, O & M Divn. Karnataka Elec.*

Board Vs. C.Guddappa and Ors [Civil Appeal No.1754 of 1999 in

I.A.No.3, dated 09.11.2000], the Hon'ble Supreme Court held that the

Tribunal ought to have considered whether the respondent was entitled to

full back wages or not, and the delay in approaching the authorities or the

delay in making reference at his instance or otherwise beyond his control



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should have been examined by the Tribunal.

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8. On factual matrix, I find that there is a delay of 9 years in approaching the Tribunal in raising the industrial dispute and no reason has been assigned except to say that he made a representation to the Management and he has also received gratuity in the year 2007 itself. After perusing the documents filed before this Court and also taking note of the subsequent development that the workman/second respondent is dead and the legal heirs on record, I find that in the absence of any plausible explanation for the long delay of 9 years and also in the absence of any pleadings or evidence regarding whether during the interregnum period from the date of dismissal to the date of reinstatement is not gainfully employed anywhere, the Industrial Tribunal has passed the full back wages and hence, in view of the decisions cited supra, the same is to be interfered with.

9. Taking note of the fact that he already died and his legal heirs were brought on record, this Court is inclined to allow 50% of the back wages only. Hence, this writ petition is allowed to the limited extent that as against the order of reinstatement since he has already reinstated, the said



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prayer has become infructuous and he has already retired from service and with regard to the full back wages is modified into 50% of back wages only and proportionate benefits alone.

10. With these observations, the writ petition is partly allowed to the extent indicated above. The petitioner is further directed to settle the 50% of back wages and attendant benefits in connection thereto within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

08.11.2023

Index: Yes / No
Internet: Yes / No
NCC : Yes/No
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To

The Presiding Officer,
Central Government Industrial Tribunal
cum Labour Court,
Shastri Bhavan, Chennai-600 006



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RMT. TEEKAA RAMAN, J.

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Pre-Delivery Order made in
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