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W.A.No.1417 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 24-04-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

W.A.No.1417 of 2012

The Commissioner,
Vellore Municipality,
Vellore.

...

Appellant

-VS-

1.N.Kondamal

2.The Presiding Officer,
Labour Court,
Sathuvanchery,
Vellore.

...

Respondents

Appeal is filed under Clause 15 of the Letters Patent against the order, dated 06.07.2009, passed in W.P.No.8246 of 2000, on the file of this Court.

For Appellant : Ms.Iswarya

For Respondent 1 : Mr.S.T.Varadarajulu

**JUDGMENT**

(By *S.Vaidyanathan,J.*)

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This appeal has been preferred against the order of the learned single Judge, dated 06.07.2009, passed in W.P.No.8246 of 2000, modifying the award of the Labour Court, dated 07.05.1999, passed in I.D.No.1177 of 1993.

2. The Labour Court, while setting aside the order of the management, directed the appellant Municipality to reinstate the first respondent employee in service with back-wages and continuity of service.

3. The employee joined the service as a Scavenger in the appellant Municipality and she was on medical leave for 15 days from 01.01.1985 to 15.01.1985. After expiry of leave, she did not report for work, which resulted in a Memo, dated 12.10.1985, asking her to report for work. Since she did not report for work, she was dismissed from service with effect from 15.12.1985. The order of dismissal was returned on the ground that the address of the employee could not be found. The employee raised an industrial dispute, wherein, exhibits were marked on both sides, apart from letting in evidence. After expiry of the medical leave, the employee was said to have returned for work and it was stated that she was not allowed to join duty and the repeated visits by the employee were of no avail and that the employee was not served with the termination order, but, however, she was informed verbally that she was dismissed from service.



4. The Labour Court, after analysing the evidence on record and by taking note of the evidence of M.W.1, came to the conclusion that the dismissal of the employee was not correct. M.W.1 had admitted that he was not aware of the exhibits M2 and M3. Ex.M2 is the letter written by the respondent employee to the District Collector, Vellore District, seeking for employment. Since the Labour Court came to the conclusion that the dismissal of the employee was not supported by evidence and that the employee was terminated without proper inquiry, it directed reinstatement with full back-wages and other attendant benefits.

5. The learned single Judge has modified the award of the Labour Court and deprived the back-wages in order to give a quietus to the issue on hand and the relevant paragraph of the order of the learned single Judge is extracted below :

"7. In view of the above, the writ petition is partly allowed without cost modifying the award of the Labour Court, Vellore dated 07.05.1999 made in I.D.No.1177 of 1993 to the following effect :

(i) the 1st respondent is directed to be reinstated in service within a period of one month from the date of receipt of a copy of this order;

(ii) on such reinstatement, the 1st respondent shall not be entitled for back wages for the period during which she was out of employment (i.e.,) 15.12.1985 till the date of reinstatement;

(iii) however, she will be entitled for continuity in service and as a consequence, her past salary shall be calculated notionally for the purpose of fixing her salary in future;



(iv) if the 1st respondent is not reinstated within a period of one month from the date of receipt of a copy of this order, clause No.(ii) and (iii) of this order shall stand automatically cancelled and the 1st respondent shall be entitled for back wages;

(v) since it is brought to the notice of this Court that the petitioner deposited a sum of Rs.76,000/- (Rupees Seventy Six Thousand only) before the Labour Court, Vellore as per the interim direction of this Court, the petitioner is permitted to withdraw the same. On an application made by the petitioner, the Labour Court is directed to refund the amount to the petitioner without any notice to the 1st respondent."

6. Admittedly, the respondent employee has attained the age of superannuation in the year 2015 and is drawing pension. Pursuant to the orders of this Court in the Writ Petition, the employee has been reinstated in service on 11.06.2012. As per the order of the learned single Judge, the employee should have been reinstated within one month, but she has been reinstated only after a period of three years. It has been stated that a computation petition was filed, claiming back-wages for the period from 06.07.2009 to 11.06.2012. The learned single Judge also categorically held that if the employee was not reinstated in service within one one month, she would be entitled to all the benefits.

7. Since much water has flown and that the employee had already retired



after reinstatement in June, 2015, and that she is drawing pension, in order to give a quietus to the matter, we direct the appellant Management to pay a sum of Rs.2.00 lakhs towards back-wages to the employee for the period mentioned in Clause 7 (ii) of the order in the Writ Petition. We make it clear that if the amount of Rs.2.00 lakhs is not paid within four months from the date of receipt of a copy of this order, Clause (iv) of the order will come into operation. In case the amount of Rs.2.00 lakh is paid within the time stipulated supra, the Labour Court can close the Computation Petition, in the light of the order passed herein. The reason for awarding compensation of Rs.2.00 lakhs towards back-wages is in order to shorten the life of the litigation and the employee has already attained the age of superannuation in the year 2015. We also make it very clear that it is open to the employee to file contempt before the Division Bench, in view of the doctrine of merger, as we have confirmed the order of the learned single Judge, in case of non-payment of Rs.2.00 lakhs, as, admittedly, there is disobedience in not reinstating the employee as per the orders of this Court.

8. Writ Appeal is disposed of accordingly. No costs. Consequently, the connected M.P.No.1 of 2012 is closed.

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(S.V.N.,J.) (R.K.M.,J.)
24-04-2023



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To

The Presiding Officer,
Labour Court,
Sathuvanchery,
Vellore.

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W.A.No.1511/2012



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S.VAIDYANATHAN,J.
AND
R.KALAIMATHI,J.

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