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W.P.No.504

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 13.09.2023

ORDER PRONOUNCED ON : 20.11.2023

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THE HON'BLE MRS.JUSTICE N.MALA

W.P.No.50421 of 2006
and M.P.No.1 of 2006

The Management,
Belvidere Estate,
Ondikkadai P.O.,
Yercaud.

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Salem.

2.Vediappan

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records in I.D.No.214/2000 on the file of the Labour Court, Salem the first respondent herein, and to quash the award dated 22.11.2005.

For Petitioner : Mr.M.R.Raghavan

For R1 : Court

For R2 : Mr.K.M.Ramesh, Senior Counsel for
Mr.V.Sivaraman

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ORDER

WEB COPY This Writ Petition is filed to call for the records in I.D.No.214/2000 on the file of the Labour Court, Salem the first respondent herein, and to quash the award dated 22.11.2005.

2.The petitioner is the employer of the second respondents. The second respondent was engaged as a worker in the petitioner's estate. According to the second respondent, as the petitioner terminated the service of the second respondent without any notice and enquiry on 09.08.1999, the second respondent issued a notice on 19.08.1999 calling upon the petitioner to provide him work with other benefits. The petitioner instead of providing the second respondent employment sent a communication asking the second respondent to report for duty at the estate to which, the second respondent replied asking for the copy of its standing orders. The petitioner instead of sending the standing orders terminated the second respondent from service. So the second respondent raised a dispute challenging his non-employment before the Labour Court and further prayed for reinstatement with backwages and other attended benefits. The petitioner contested the case before the Labour Court contending that the second respondent was not a regular employee and that he was engaged only as a casual labour. The petitioner contended that on 18.08.1999, the second respondent had voluntarily



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abandoned duty and therefore the termination of service as alleged by the second respondent was false.

3.The Labour Court on an appreciation of the entire materials on record returned a factual finding that the second respondent was engaged for more than 240 days between 01.02.1997 to July 1999. The Labour Court therefore held that the termination of the service of the second respondent without following the procedure under Section 25 F of the ID Act was illegal. The Labour Court therefore passed the award directing the petitioner to reinstate the second respondent with continuity of service and backwages. Aggrieved by the award passed by the Labour Court, the petitioner/management has filed the above writ petition.

4.At the time of hearing, it was submitted by the learned counsel for the petitioner that as the second respondent was reinstated, the only issue to be decided in the writ petition is whether the second respondent is entitled to backwages or not.

5.The learned counsel for the petitioner submitted that the Labour Court erred in awarding backwages over looking that the award of backwages was not automatic. In the absence of any pleading on gainful non-employment, the Labour Court ought not to



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have awarded backwages. The learned counsel relied on the Judgment of the Hon'ble Supreme Court in the case of ***J.K.Synthetics Ltd., Vs. K.P.Agarwal and another*** reported in ***(2007) 2 Supreme Court Cases 433*** and in the case of ***Allahabad Bank and Others vs. Avtar Bhushan Bhartiya*** reported in ***(2022) SCC Online SC 499*** in support of his said submission.

6.The learned counsel for the second respondent on the other hand submitted that the award of the Labour Court did not call for any interference as the Labour Court on its finding that the termination of the second respondent was illegal was justified in awarding backwages. The learned counsel relied on the Judgment of the Hon'ble Supreme court in the case of ***Raj Kumar Dixit Vs. Vijay Kumar Gauri Shanker, Kanpur Nagar*** reported in ***(2015) 9 Supreme Court Cases 345*** in support of his submission.

7.I have heard both the learned counsels and have perused the materials placed on record.

8.The learned counsel for the petitioner submitted that in the absence of basic pleading on gainful non-employment, the Labour Court was not justified in awarding



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backwages. It is true that the second respondent has not pleaded about his gainful non-employment, in the claim petition. But the petitioner in its counter to the claim petition stated that the second respondent was gainfully employed. The petitioner pleaded that the second respondent was working elsewhere intermittently and therefore had come forward with a false claim of alleged non-employment.

9.The absence of pleading in the present case cannot be held against the second respondent because the second respondent in his proof affidavit clearly stated that he was not gainfully employed during the period of non-employment. Further in spite of the second respondent not pleading gainful non-employment, the petitioner assumed that the plea was raised and denied the same in the counter stating that he was employed intermittently during the non-employment period. In my view, the affidavit filed by the second respondent, chief examination would meet the requirements of law as regards the gainful non-employment. It is true that the initial burden is on the workman to show that he was not gainfully employed. But when the petitioner's specific case was that the second respondent was gainfully employed during the period of non-employment, the burden shifted on the petitioner to prove the same. In the present case the petitioner has failed to prove its contention that the second respondent was gainfully employed.



10.The Judgments referred to by the petitioner in the case of ***J.K.Synthetics Ltd., Vs. K.P.Agarwal and another*** reported in ***(2007) 2 Supreme Court Cases 433*** and in the case of ***Allahabad Bank and Others vs. Avtar Bhushan Bhartiya*** reported in ***(2022) SCC Online SC 499*** are not applicable to the facts of the present case.

11.The Judgment of the Hon'ble Supreme Court relied on by the learned counsel for the second respondent in the case of ***Raj Kumar Dixit Vs. Vijay Kumar Gauri Shanker, Kanpur Nagar*** reported in ***(2015) 9 Supreme Court Cases 345***, applies squarely to the facts of the case in as much as the Labour Court has given a finding that the termination was illegal being in violation of the provisions of Section 25 F of the ID Act. The Judgment of the Hon'ble Supreme Court in the case of ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya*** reported in ***2013 (10) SCC 324*** is noteworthy.

“38.5) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under [Article 226](#) or 136 of the



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Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages."

12.In the light of the aforesaid discussions, I find no merits in the above writ petition and the same is dismissed. However, there shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

20.11.2023

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Index : yes/no
Internet : yes/no
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To

The Presiding Officer,
Labour Court,
Salem.

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N.MALA, J.

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PRE-DELIVERY ORDER IN
W.P.No.50421 of 2006

20.11.2023

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