



W.P.No.30068 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 12.09.2023

DELIVERED ON : 22.09.2023

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.30068 of 2004

M.Ponnazhagan

... Petitioner

-Vs-

1. Presiding Officer,
I Additional Labour Court,
Chennai.

2. M/s Sundar Chemicals Pvt. Ltd.,
represented by its Managing Director,
6-G, Century Plaza, 560-562 Anna Salai,
Teynampet,
Chennai-18.

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus, after calling for the records relating to I.D.797 of 93 before the I Additional Labour Court, Chennai (the first respondent herein) and quash the Award dated 15.10.2003 (Ex.A) passed by the first respondent insofar as it denies the normal relief of reinstatement with back wages and continuity of service and consequently direct the second respondent Management to reinstate the petitioner with backwages and continuity of service with all other attendant benefits.

For Petitioner : Mr.S.Sathishkumar



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for M/s Row and Reddy

R1 : Court
For R2 : Mr.P.Chandrasekar

ORDER

This Writ Petition has been filed as against the award passed by the first respondent in I.D.797 of 1993 dated 15.10.2003, thereby dismissing the Industrial Dispute raised by the petitioner, confirming the order of dismissal.

2. The petitioner had joined the second respondent factory on 01.04.1990 as Lab Technician. However, on 30.05.1992, the second respondent forced the petitioner to resign. When he refused to do so, he was not allowed to enter into the factory of the second respondent. Therefore, he raised an Industrial Dispute before the Conciliation Officer. At that juncture, the petitioner was served with a charge sheet dated 01.06.1992 and he was suspended from service with effect from 01.06.1992.

3. The charge against the petitioner was that on 29.05.1992, when the petitioner was asked to carry out certain Laboratory analysis work by the factory in-charge, he avoided doing it and when he reminded him, the petitioner had physically assaulted him. Therefore, the factory in-charge lodged a



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complaint before the second respondent. On the complaint, preliminary enquiry was conducted, in which the petitioner remained absent. Thereafter, a domestic enquiry was ordered in which, after cross examination of M.W.1, the petitioner was called absent and he was set exparte. On the strength of the Enquiry Officer's report in the domestic enquiry, the petitioner was dismissed from service.

4. Aggrieved by the same, the petitioner raised an Industrial Dispute under Section 2A(2) of the Industrial Dispute Act before the Conciliation Officer. Since the conciliation proceedings failed, he raised an Industrial Dispute before the first respondent challenging the order of dismissal. The Labour Court, by an Award dated 13.12.2003, held that the domestic enquiry has not been properly conducted and set aside the domestic enquiry. Thereafter, the second respondent was given an opportunity to lead evidence. After examination of witnesses, the first respondent passed final award and held that no documentary evidence was produced to prove the charges and set aside the order of dismissal. The first respondent, instead of awarding the relief of reinstatement into service with backwages and continuity of service, in view of the fact that the petitioner is gainfully employed since the date of dismissal, held that he is not entitled for any relief as prayed for. Challenging the same, this



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present writ petition.

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5. The learned counsel for the petitioner would submit that when the first respondent held that the charge had not been established and the dismissal is illegal and void ab initio, ought to have ordered for reinstatement with backwages and continuity of service. Though the Labour Court set aside the order of dismissal passed against the petitioner, no relief has been granted to the petitioner. After dismissal from service, an employee cannot be made to starve. He had to take up some employment elsewhere. Therefore, once the order of dismissal is found to be illegal, the petitioner has to be reinstated into service. In fact, the petitioner was employed only on a salary of Rs.1,050/- with both in ATMA Chemicals and Essen and Co and it came to an end on 25.03.1995. Therefore, he was employed only for a period from 07.09.1992 to 25.03.1995 for a period of 30 months. During that period, he had earned Rs.31,500/- as salary, whereas, the petitioner is entitled for backwages at the rate of Rs.2000/- per month as his last drawn salary.

6. The learned counsel for the second respondent would submit that even according to the petitioner, after dismissal from service, he had joined in a private concern and he had received salary. Therefore, the Labour Court,



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though declared that the order of dismissal is null and void, rightly denied other benefits, since the petitioner was gainfully employed. Further, no person can keep himself idle without going for any employment for his livelihood. The petitioner being a Laboratory Chemist, had good opportunity and joined in a private concern. Therefore, the award passed by the Labour Court cannot be said as perverse.

7. Heard the learned counsel for the petitioner and the learned counsel for the second respondent and perused the materials available on record.

8. As against the order of dismissal from service, the petitioner raised an Industrial Dispute under Section 2A(2) of the Industrial Dispute Act before the Labour Court. By the Preliminary Award dated 13.12.2003, the Labour Court held that the domestic enquiry has not been properly conducted and set aside the domestic enquiry. Thereafter, the second respondent was given an opportunity to lead evidence in order to prove the charge. In order to prove the charge, the second respondent had examined M.W.1 and M.W.2 and marked Exs.M.1 to 13.



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9. Admittedly, the petitioner was recruited by the second respondent to the post of Lab Technician on 01.04.1990. Thereafter, he was made permanent on 19.10.1991. While being so, on 29.05.1992, one Christ Doss lodged a complaint alleging that when he asked for lab report, the petitioner replied that he would do at his own will and when the said Christ Doss was sitting in his seat, the petitioner came there and assaulted him. On the said allegation of misconduct, the petitioner was served with a charge memo and was also suspended from service. However, the second respondent failed to examine the said Christ Doss as witness. The second respondent also failed to mark any document to show that the said Christ Doss sustained any injury and any police complaint lodged before the jurisdiction police. Admittedly, no complaint was lodged as against the petitioner and no criminal action has been initiated as against the petitioner except the departmental action.

10. Further, the petitioner did not participate in the domestic enquiry before the Enquiry Officer. He was set exparte. On the basis of the enquiry report, the disciplinary authority dismissed the petitioner from service. Therefore, the Labour Court had rightly held that the second respondent failed to prove the charge and set aside the order of dismissal. The second respondent Management marked Exs.M3 and 4 and it revealed that the petitioner had



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applied for the post of Production Chemist with experience certificate. It revealed that from September 1992 onwards, he had worked as an Analytic Chemist at ATMA Chemicals Pvt. Ltd., Puttur. Ex.M5 revealed that another experience certificate produced by the petitioner stating that he was working as an Analytical Chemist in ESSEN and Co., Madras-20. Therefore, the petitioner had been gainfully employed and received salary after the order of dismissal.

11. The learned counsel for the petitioner relied upon the Judgment of the Hon'ble Supreme Court of India reported in **1999 SCC (L&S) 596** in the case of ***Dipti Prakash Banerjee Vs Satyendra Nath Bose National Centre for Basic Science, Calcutta and others***, in which the Hon'ble Supreme Court of India held that as to backwages, on facts, the position in the present case is that there is no material to say that the appellant has been gainfully employed. The appellant is, therefore, entitled to reinstatement and backwages.

12. Whereas, in the case on hand, admittedly, the petitioner was employed in a private concern and received salary after dismissal from service. Further, merely because the order of termination was set aside on the ground of lack of opportunity, it is not necessary to direct reinstatement into service with backwages. Therefore, the above Judgment is not helpful to the case on hand.



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13. He also relied upon the Judgment of the Hon'ble Supreme Court of India reported in **2015 9 SCC 345** in the case of **Raj Kumar Dixit Vs Vijay Kumar Gauri Shanker, Kanpur Nagar**, in which the Hon'ble Supreme Court of India cited the Judgment of **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya** reported in **2013 10 SCC 324** and held that termination order passed by the employer is the subject-matter of dispute either before the Tribunal or before the Labour Court and it is for the employer to show that the workman was gainfully employed from the date of the termination till the date of passing of the Award so as to deny him back wages if the termination order is set aside, the award of reinstatement is the normal rule and awarding of the back wages must follow. The same need not be awarded if the workman is either gainfully employed during the period of adjudication or if the employer is facing any financial crunch.

14. In the case on hand, the second respondent categorically proved that the petitioner was gainfully employed immediately after the order of dismissal, by marking Exs.M2 to 5.



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15. Therefore, the Labour Court had rightly denied the reinstatement and backwages and this Court finds no infirmity or illegality in the Award passed by the first respondent in I.D.797 of 1993 dated 15.10.2003. This writ petition is devoid of merits and is liable to be dismissed. Accordingly, this Writ petition stands dismissed. No costs.

22.09.2023

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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G.K.ILANTHIRAIYAN, J.

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To

1. Presiding Officer,
I Additional Labour Court,
Chennai.
2. The Managing Director,
M/s Sundar Chemicals Pvt. Ltd.,
6-G, Century Plaza, 560-562 Anna Salai,
Teynampet,
Chennai-18.

Pre-Delivery order made in
W.P.No.30068 of 2004

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