



W.P.No.21855 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2023

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.No.21855 of 2010

M.Natesan

... Petitioner

vs.

1.The Presiding Officer,
Labour Court,
Salem.

2.The Management,
Karthik Sizing Mill,
Rep. by its Manager,
320, Manickam Palayam,
Veerappan Chattiram,
Erode.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records from the 1st respondent relating to the Award in I.D.No.391/99 dated 03.10.2007 and quash the said award dated 03.10.2007 in so far as it denies the relief of backwages to the extent of 70% and consequently direct the 2nd respondent to pay full backwages and award costs.

For Petitioner : Mr.M.Elumalai for
Mr.S.Ayyathurai



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For R1 : Court

For R2 : Mr.K.Sanjay for
M/s.Raghul Balaji

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ORDER

This Writ Petition is filed to call for the records from the 1st respondent relating to the Award in I.D.No.391/99 dated 03.10.2007 and quash the said award dated 03.10.2007 in so far as it denies the relief of backwages to the extent of 70% and consequently direct the 2nd respondent to pay full backwages and award costs.

2.The petitioner raised a dispute under Section 2-A2 of the Industrial Dispute Act challenging his non-employment on 18.06.1996, as illegal, void and to reinstate him into service with backwages and continuity of service etc.

3.The petitioner joined the service of respondent namely Karthick Sizing Mill on 21.07.1994 as Warper and was drawing a salary of Rs.65/- per



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day on piece rate. On 18.06.1998, when the petitioner reported for work he was orally informed that his services were terminated by the respondent. The petitioner therefore raised the dispute challenging the oral termination as illegal. The second respondent's case was that the petitioner was not a permanent employee, that the establishment was a textile industry and that the petitioner had voluntarily abandoned employment. The respondent therefore stated that the petitioner was not entitled to the relief claimed in the Industrial Dispute. Before the Labour Court, the petitioner examined himself as PW1 and marked Ex.P1 to Ex.P7. The partner of the respondent mill was examined as RW1 and Ex.R1 (Muster roll and the wage register) was marked by the second respondent. The Labour Court on the basis of the materials placed before it directed reinstatement with 30% backwages and continuity of services. Aggrieved by the Award of the Labour Court restricting the backwages to 30% the employee has filed the above Writ Petition.

4.It is submitted by the learned counsel for the petitioner that the respondent filed a writ petition in W.P.No.18320 of 2009, challenging the very same award dated 03.10.2007 in I.D.No.391 of 1999 and the same was dismissed by this Court vide order dated 23.04.2019. According to the



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learned counsel as this Court upheld the finding of the Tribunal that the termination of the petitioner's service was illegal, the impugned order restricting the backwages to 30% is liable to be quashed by this Court.

5.The Labour Court awarded 30% backwages on the premise that the petitioner had failed to discharge the burden cast on him to prove that he was not gainfully employed during the period of non-employment. The Labour Court therefore restricted the backwages to 30% only.

6.In the case of ***P.G.I. Medical Education and Research Vs. Raj Kumar*** reported in ***(2001) 2 SCC 54***, the Apex Court, while setting aside the order of the High Court in overturning the award of the Labour Court which restricted the backwages to 60% held as follows:

“9.The Labour Court being the final court of facts came to a conclusion that payment of 60% wages would comply with the requirement of law. The finding of perversity or being erroneous or not in accordance with law shall have to be recorded with reasons in order to assail the finding of the tribunal or the Labour Court. It



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is not for the High Court to go into the factual aspects of the matter and there is an existing limitation on the High Court to that effect.”

7.It is well settled that award of backwages is not automatic. The burden is on the employee to plead and prove that he was not gainfully employed during the period of non-employment. It is trite that the factual findings cannot be interfered with, unless they are found to be perverse. In the present case, it is seen that there is no pleading by the petitioner that he was not gainfully employed. Even in the affidavit filed in support of the writ petition, the petitioner has not stated anything about gainful non-employment. I, therefore, find no perversity in the Labour Court order on backwages and hence the same is confirmed.

8.In view of the above, this Writ Petition stands dismissed. There shall be no order as to costs.

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Index : Yes / No
Internet : Yes / No
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N.MALA, J.

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