



W.P.No.27788 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON: 28.08.2023

ORDER PRONOUNCED ON : 09.11.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.27788 of 2010

M/s.D.K.Packaging Industries,
Rep. by its Proprietor Mr.Duraibabu,
No.100, SIDCO Industrial Estate,
Ambattur,
Chennai-600 062.

...Petitioner

Vs.

1. The Additional Labour Court III,
City Civil Court Complex,
Chennai-600 104.

2.T.Sampath.

3.M/s. Sri Vaishnavi Iron and Steels,
No.275, Vanagaram,
Athipet,
Ambattur, Chennai-600 058.

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the first respondent in ID.No.484 of 2003, quash the impugned order dated



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05.08.2010 in so far as it relates to direction directing the petitioner to pay 30% backwages with continuous services with all consequential benefits.

For Petitioner : Mr.V.Sundareswaran

For Respondents: R1- Court

R2- Mr.K.Elango

R3- No Appearance

ORDER

Writ Petition is filed by the proprietor of the petitioner packaging industry challenging the order of the Labour Court dated 05.08.2010 passed in ID.No.484 of 2003, in so far as it relates to the direction to pay the workman 30% backwages with continuity of service and all consequential benefits.

2. The respondent joined the petitioner industry as a machine operator in 1994. It was the practice of the petitioner to pay incentive along with salary. The respondent was given a salary of Rs.2,000/- per month in February 2000, which was later increased to Rs.2,300/- per month in March 2000 and further increased to Rs.2,400/- per month in April 2001. Without



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any reason, the salary was reduced to Rs.2,200/- per month from May

2001. In April 2002, the salary was again increased to Rs.2,350/- per month.

According to the respondent, the actual salary payable to him from April 2002 was Rs.2,350/- per month and when he questioned the petitioner about the same, the petitioner refused employment to him. The respondent therefore raised a dispute against the illegal termination and further claimed backwages with continuity of service and all consequential benefits. On failure of conciliation, the dispute was referred to Labour Court in I.D.No.484 of 2003.

3. The petitioner stated that it was the respondent who had abandoned the work, as he found employment with M/s. Sri Vaishnavi Iron and Steels Ltd., hence, there was no question of the petitioner terminating the services of the respondent. It was the further case of the petitioner that the respondent was not entitled to backwages as he was gainfully employed and also conducting money lending business. The petitioner therefore stated that the claim of the respondent was without



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4. Before the Labour Court, the petitioner examined himself as M1 and one other witness was examined on behalf of the petitioner. The respondent marked Ex.W1 to Ex.W12 and the petitioner marked Ex.M1 to Ex.M5.

5. The Labour Court on an examination of the entire materials placed before it, held that the termination of the respondent was illegal and further directed the petitioner to pay 30% backwages along with continuity of service and all other consequential benefits.

6. Aggrieved by the award passed by the Labour Court, in so far as it relates to the payment of backwages with continuity of service with all consequential benefits, the petitioner has filed the above writ petition.

7. The only question to be decided is whether the Labour Court was



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justified in awarding 30% backwages along with continuity of service and other service benefits.

8. It is settled law that the award of backwages is not automatic, though it may be normal to award backwages in a case of illegal termination. The burden to establish the entitlement to backwages is on the employee and it is for him to show that he was not gainfully employed during the period of non-employment. The initial burden to prove gainful non-employment is on the employee. It is also now well settled that even an affidavit stating that the employee was not gainfully employed during the period of non-employment would be sufficient. When the employee pleads that he was not gainfully employed, the burden shifts on the employer to make an assertion and establish that the employee was gainfully employed. In the case on hand, the respondent pleaded in his claim petition that he was not gainfully employed during the period of non-employment. But it is the case of the petitioner that the respondent was employed with M/s.Sri Vaishnavi Iron and Steels Ltd. and he was also



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doing money lending business. In support of the said contention, the petitioner marked Exs.M4 and Ex.M5, which are the invitation for house warming ceremony and the sale deed. The petitioner further examined its employee as MW2 who deposed that the respondent was conducting money lending business and that he had borrowed money from the respondent. The Labour Court rejected the petitioner's plea, stating that mere filing of the sale deed and the invitation of house warming ceremony was not sufficient to prove that the respondent was gainfully employed. On the evidence of MW2, the Labour Court refused to accept the same, as no document was filed in support of MW2's claim that he had borrowed money from the respondent.

9. The Labour Court having considered the evidence in proper perspective, I find no reason to interfere with the factual findings of the Labour Court. It is further pertinent to note here that the Labour Court found that the termination was illegal, as the procedure established by the law was not followed. Therefore, it cannot be said that the Labour Court



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was not justified in directing the payment of 30% backwages along with continuity of service and other benefits. As the petitioner has illegally terminated the services of the respondent and as he also failed to prove that the respondent was gainfully employed, I am of the view that the Award of the Labour Court needs no interference.

In the result the writ petition is dismissed. There shall be no order as to costs.

09.11.2023

Index:Yes/No
Speaking Order:Yes/No
Neutral Citation:Yes/No
dsn



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To

The Additional Labour Court III,
City Civil Court Complex,
Chennai-600 104.



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N.MALA.J.,

dsn

PRE-DELIVERY ORDER IN

W.P.No.27788 of 2010

DELIVERED ON

09.11.2023