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W.P.No.2814 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.06.2023

Delivered on : 19.07.2023

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THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN

W.P.No.2814 of 2013
and
W.M.P.No.1094 of 2019
and
M.P.Nos.1 and 2 of 2013

The Management,
Tractors and Farms Equipment Limited,
No.35, Nungambakkam High Road,
Chennai - 600 034.

... Petitioner

Vs.

1.The Presiding Officer,
Principal Labour Court,
Chennai.

2.C.Arumugam

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records connected with I.D.No.111 of 2008 and the Award dated 26.11.2012 passed therein by the 1st respondent and to quash the same.



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W.P.No.2814 of 2015

For Petitioner : Mr.Sanjay Mohan

For Respondents : Mr.S.Ravi for R2

ORDER

This Writ Petition has been filed challenging the Award of the Labour Court in I.D.No.111 of 2008 dated 26.11.2012. For the sake of convenience, the petitioner and the 2nd respondent will be referred to as the management and the workman.

2.The 2nd respondent/workman joined the services of the management as a Management Trainee on 29.08.2002. His services were confirmed with effect from 02.09.2004. The Management had given several responsibilities to the workman. He was involved in research work and in improvement of their existing tractors and for designing new tractors for meeting the requirements of the new customers. The Management would state that since there was no improvement in the performance of the workman from 2004 to 2007, his increment was not raised. They had initiated a process called



"Performance Management Process" and had evaluated the workman.

Since the workman was not measuring up to the requirements, the management had advised him to improve his performance which according to them, affected the team in which the workman was part of. They would allege that they had given notices to him and despite the same, there was no improvement. Since the performance continued to be tardy, uncommitted and casual, his services were terminated after 30.09.2007.

3. Aggrieved by the order of dismissal, the workman raised a dispute under Section 2A of the Industrial Disputes Act. The matter was referred to conciliation and the conciliation failed. Therefore, the dispute was taken on file before the learned Principal Labour Court, Chennai, in I.D.No.111 of 2008. The workman examined himself as WW1 and marked 12 documents. On the side of the management, MW1 was examined and he filed Ex.M.1 to Ex.M.17.



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4.The Labour Court after analysing the evidence before it came to the conclusion that I.D.No.111 of 2008 has to be allowed and directed reinstatement of the respondent together with backwages, continuity of service and attendant benefits. Challenging the same, this Writ Petition came to be filed.

5.Pending the Writ Petition, the workman moved an application for claiming 17B wages. The said application was allowed. Thereafter, the management came to know that the workman was working in M/s.J.M.FRITECH INDIA and hence, filed W.M.P.Nos.1085, 1087 and 1094 of 2019. In those applications, this Court came to the conclusion that the workman had suppressed the fact that he was working in M/s.J.M.FRITECH INDIA and therefore, he was not entitled to 17B wages and further directed the workman to refund the amount received by him as 17B wages to the tune of Rs.5,53,200/- within a period of four weeks.



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6. When the matter came up before me, I had passed a direction on 08.06.2023 calling upon the workman to comply with the directions given in Para 19 of the said order dated 04.02.2020. In pursuance of the order dated 28.06.2023, the workman handed over a sum of Rs.5,53,200/- to the management. Thereafter, the parties were heard in the Writ Petition.

7. Mr. Sanjay Mohan, learned counsel appearing for the management would submit that as the workman had filed a false affidavit claiming 17B wages, he is not entitled to be heard on the merits of the case. Therefore, would seek the dismissal of the Industrial Dispute and would pray that his Writ Petition be allowed. He would rely upon the Judgments of the Supreme Court in

- (1) ***K.D.Sharma v. Steel Authority of India Limited and others [(2008) 12 Supreme Court Cases 481]***
and
- (2) ***Ramjas Foundation and another v. Union of India and others [(2010) 14 Supreme Court Cases 38].***

According to him, since the workman had filed a false affidavit



claiming 17B wages, he is not entitled for any relief.

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8.Per contra, Mr.Ravi, learned counsel appearing for the workman would submit that there are two reliefs which have been granted by the Court. The first relief is that of reinstatement in service and the second relief being the payment of backwages. The factum that he had been working elsewhere would affect the second relief and would not affect the first relief.

9.I have carefully considered the arguments on either side.

10.This is a Writ seeking issuance of Certiorari. In such a proceeding, only the decision making process of the Labour Court is the issue before me. If I were to conclude that on account of the affidavit filed by the workman claiming 17B wages, he is not entitled to any financial relief, it does not automatically follow that the order of the Labour Court deserves to be set aside. The order of the Labour Court went into the dispute as to whether the termination of the



workman was correct or wrong. The Labour Court found that the petitioner had not been given any charge sheet and he was not called upon to explain as to why he must not be terminated. No enquiry had been conducted before termination and none of the procedures that are laid down by law had been followed. It was under those circumstances that the Court came to the conclusion that there was violation of the principles of natural justice and the decision to terminate the workman was not proper. As rightly pointed out by the workman, the Award of the Labour Court is as follows:

- (1) reinstatement of the petitioner into service
- (2) direction to pay backwages
- (3) continuity of service *and*
- (4) all other attendant benefits.

11.If the arguments of the learned counsel for the petitioner is accepted then it means that this Court is condoning the act of the management in terminating the employee without following the principles of natural justice or the fundamental requirements of



Industrial Law. The Labour Court also came to the conclusion that the so called counseling reports under M-15 and M-16 were not even served on the workman. It was also found that there is no truth in the statement made by the management that the said reports were sent through e-mail correspondences. These are the findings of fact which I am afraid, I cannot interfere with under Article 226 of the Constitution of India. Therefore, taking the facts as it is, I have come to the conclusion that the order of the Labour Court reinstating the workman in service does not suffer from any illegality. That portion of the order of the Labour Court deserves to be upheld and it is accordingly upheld.

12.Now turning to the two authorities referred to by the management, taking the first case in **Ramjas Foundation and another v. Union of India and others [(2010) 14 SCC 38]**, the case has to be analysed in detail. It was a Writ Petition filed challenging the land acquisition proceedings. The claim was that the property is a Waqf property and therefore, the property ought not to have been acquired under the Land Acquisition Act, since it is an exempted property. A



close reading of the Judgment would show that the parties had litigated till the Supreme Court previously, which resulted in a Judgment against them. They had deliberately suppressed the previous round litigation and initiated fresh proceedings.

13.A proceeding under Article 226 of the Constitution of India cannot be equated to the proceedings before the Labour Court. The power under Article 226 is a high prerogative power. It is too well settled that a person who approaches the Court seeking to exercise the jurisdiction under Article 226 must come to the Court with clean hands. In the case before us, it is not the case of the management that the workman had filed a false claim of termination before the Labour Court. As it would be clear from Para 8 onwards of the order passed by this Court on 04.02.2020, the workman had filed a false affidavit before the High Court and therefore, he had invited the consequences of the said order. By the said order, the Court had come to the conclusion that the petitioner cannot enrich himself at the cost of the management and directed repayment of the amount. Accordingly, as



stated above, the amount has also been repaid. Therefore, there is no loss to the management. For the fact that a litigant had wrongly claimed some benefits which has subsequently been set right, I cannot prevent his right to argue the case on merits, especially in an industrial dispute.

14.Further, this is a case where the workman had been dismissed from service without an enquiry. I have to balance the wrongs that had been committed by either party. Two wrongs will not make a right. Therefore, the question of allowing the Writ Petition does not arise. In order to allow the Writ Petition, I have to come to the categorical conclusion that the order of the Labour Court suffers from perversity or illegality. I am not able to see either.

15.As pointed out above, the petitioner had dismissed the workman without even adhering to the principles of natural justice or following the requirements of law. This has been correctly found to be illegal by the Labour Court. What has been illegal as found by the



Labour Court will not become legal by virtue of the workman having received the benefits of 17B wages falsely, pending the Writ proceedings.

16.It is on record that the petitioner was drawing salary less than the amount he was drawing in the rolls of the Management. This would show that he was not gainfully employed. To be gainfully employed, the petitioner should have got more salary than what he was drawing when he was working with the petitioner. I am not going into the details of the issue, as I do not want to go beyond the order passed by Justice R.Subbiah on 04.02.2020. I am constrained to refer to the order because if I accept Mr.Sanjay Mohan's argument, since the Writ Miscellaneous Petition has been allowed against the workman this Writ Petition should also be allowed. The effect would be that since 17B benefits have been taken falsely, a Writ Petition has to be allowed. I am afraid, if I am willing to lay down such a startling position of law.



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17. Turning to the next Judgment relied upon by the learned counsel for the petitioner in **K.D.Sharma v. Steel Authority of India Limited and others [(2008) 12 SCC 481]**, this is also a case where the Writ Petition had been filed seeking for certain benefits. The Court found that the petitioner therein had suppressed the material facts and therefore, was not entitled to any benefits from the Court. It is pertinent to note that the Court itself was dealing with the case of prerogative remedy.

18. Mr. Sanjay Mohan, learned counsel for the petitioner would then point out that Para 21 of **Ramjas Foundation's** case in order to state that the said rule applies to other Courts and Judicial Forums. I am not willing to apply the Judgments which have been laid down defining horizons under Article 226 of the Constitution of India or under Article 32 for the purpose of rejecting an application filed under the Industrial Disputes Act. Furthermore, a careful reading of both the judgments of the Supreme Court shows that though the Court



condemned the petitioners in both the cases but it went on to discuss the merits of the case. This shows that, while the Court insists on parties to be honest before it, still they extend the grace of considering the case on merits even if the parties have dishonestly approached it.

19. Suppression of material fact is a principle which arose in the equitable jurisdiction in England. By virtue of the Indian High Courts Act and the Letters Patent, the Courts in India are not only the Courts of common law but also the Courts of equity. It was in those historical circumstances, the principles of law which applied to Courts of equitable jurisdiction stood extended to the Courts in India.

20. Suppression of material facts for denial of issuance of Writs was a principle which was developed in English Courts in order to non-suit litigants who uttered falsehood to approach the Courts. It does not apply in reverse. The very fact that the workman was employed, though not gainfully, does not set right the wrong committed by the management. The wrong doer in this particular case is the management.



It had not complied with the principles of law that it was required to do as per the law governing the management and the workman. That having not been done, it does not lie in the mouth of the management to state "We have not complied with the law but we will expect the workman to comply with it." Cogitating on this, I recollect the remark of Mr.Justice Mridha of the Delhi High Court, "It is the Court which is on trial not the litigants before it."

21.In the circumstances presented before me, I would apply a principle akin to the doctrine of severability. I am given the duty of amputating the diseased part of the order from the healthy part of the order. The healthy part being setting aside of the order of dismissal and the diseased part requiring amputation is the portion relating to the backwages. I am sure if the management had brought it to the notice of the Trial Court that the petitioner was gainfully employed, it would not have been granted backwages. The law, as I understand it, is that once reinstatement is ordered and the person is not gainfully employed, the backwages automatically follow.



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22. Therefore, taking into consideration the orders passed by this Court on 04.02.2020, I pass the following orders:

(1) This Writ Petition is partly allowed. No costs.

(2) The order of the Labour Court directing reinstatement with continuity in service and other attendant benefits is upheld.

(3) As the petitioner has been found to be guilty of suppressing the fact that he was employed, the portions relating to the backwages is set aside.

Consequently, connected Miscellaneous Petitions are closed.

19.07.2023

Index : Yes / No
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To
The Presiding Officer,
Principal Labour Court,
Chennai.



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W.P.No.2814 of 2013

V. LAKSHMINARAYANAN, J,

mps

Pre-delivery Order in
W.P.No.2814 of 2013 &
W.M.P.No.1094 of 2019
M.P.Nos.1 & 2 of 2013

19.07.2023