



WEB COPY



W.P.No.6683 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.6683 of 2018

The Management
Tec Workshop Interiors India Pvt. Ltd.
Rep. by its General Manager
Lakshmikant Baranwal

... Petitioner

Vs.

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

2.M.Elumalai

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records and quash the award dated 26.07.2017 passed in I.D.No.42 of 2014 by the first respondent, Presiding Officer, I Additional Labour Court, Chennai.

For Petitioner : Mr.C.Manohar Gupta
for M/s.M.Kandasamy
For Respondents : R1 – Labour Court
Mr.V.Ajoy Khose for R2

O R D E R

The petitioner has filed this writ petition seeking issuance of



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Writ of Certiorari to call for the records and to quash the award dated 26.07.2017 passed in I.D.No.42 of 2014 by the Presiding Officer, I Additional Labour Court, Chennai.

2.The learned counsel appearing for the petitioner submitted that the petitioner is a company engaged in the business of interior decoration and the second respondent was engaged as a Driver by the Chief Executive Officer of the company to the car belonging to him. The job of the second respondent was to pick up the Chief Executive Officer in the morning from his house, drop him in office and thereafter drop him back in his home and for mutual benefit, the second respondent was called upon to drive the company vehicle for which, he was paid by vouchers. Whiles, the second respondent on his own did not turn up to work at the residence of the Chief Executive Officer from 26.06.2013 and it caused inconvenience to him and hence, the Chief Executive Officer engaged another driver.

3.The learned counsel appearing for the petitioner further submitted that thereafter the second respondent sent a letter dated 03.08.2013 to the petitioner stating that he was not given increment for two years and he was not covered under the Provident Fund Act



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and that he had requested several times to the Management to cover him under the Provident Fund Act and to give increment, however, his request was not acceded to. Whiles, the Chief Executive Officer of the company orally terminated him from service on 26.06.2013. In the said letter he had also requested for reinstatement.

4.The learned counsel appearing for the petitioner further submitted that thereafter, the second respondent raised industrial dispute in I.D.No.42 of 2014 before the Presiding Officer, I Additional Labour Court, Chennai and the labour Court passed award dated 26.07.2017 directing the petitioner to reinstate the second respondent in service with continuity of service and backwages and other attendant benefits.

5.The learned counsel appearing for the petitioner further submitted that during the pendency of this writ petition, the second respondent was reinstated in service on 03.02.2022 and the petitioner is now adjudicating the issue only with regard to the backwages awarded by the Labour Court. Before the Labour Court, the second respondent did not aver that he is not gainfully employed anywhere during the non employment period. In the absence of any pleadings



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and evidence, the backwages awarded by the Labour Court is not sustainable one.

6.The learned counsel appearing for the second respondent submitted that the second respondent was employed by the petitioner and was deputed to work as driver for the Chief Executive Officer. In the claim petition, the second respondent specifically averred that he is not gainfully employed anywhere during the non employment period. It is for the petitioner management to adduce evidence and to disprove the same, however, the petitioner did not take any steps to disprove that the second respondent is not gainfully employed anywhere during the non employment period. The Labour Court after considering the factual aspects arrived at a conclusion that the second respondent is employee of the Management and not employed as personal car driver of the Chief Executive Officer and rightly passed the award, which warrants no interference.

7.Heard the arguments advanced on either side and perused the materials available on record.

8.Perusal of records disclose that the second respondent was



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engaged by the petitioner for the business of interior decoration and thereafter deputed to work as Driver for the Chief Executive Officer of the company. The second respondent was orally terminated from service by the Chief Executive Officer of the petitioner company on 26.06.2013. Challenging the same, the second respondent raised industrial disputes in I.D.No.42 of 2014 before the Presiding Officer, I Additional Labour Court, Chennai and the labour Court passed award dated 26.07.2017 directing the petitioner to reinstate the second respondent in service with continuity of service and backwages and other attendant benefits, pursuant to which, the second respondent was reinstated in service on 03.02.2022.

9.In view of the subsequent development, this Court is not inclined to interfere with the impugned award with regard to reinstatement. However, coming to the question of backwages, this Court perused the claim petition made by the second respondent before the Labour Court. In the claim petition, the second respondent has specifically averred that he is not gainfully employed anywhere during the non employment period and that he has searched for job, however, he could not secure a job. The petitioner management did not take any steps to adduce evidence and to disprove that the second



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respondent is not gainfully employed anywhere during the non employment period. However, this Court is of the opinion that the Labour Court did not properly adjudicate the issue and awarded full backwages, which needs interference. Hence, this Court is inclined to modify the impugned award with regard to backwages and award 50% backwages from the date of termination till the date of reinstatement.

10. Accordingly, this Court directs the petitioner Management to pay 50% backwages from the date of termination till the date of reinstatement, to the second respondent, within a period of four weeks from the date of receipt of a copy of this order.

11. The writ petition is accordingly disposed of. No costs.

30.08.2023

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

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

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M.DHANDAPANI,J.
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