



W.P.No.36725 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.11.2023

PRONOUNCED ON : 24. 11.2023

CORAM:

THE HON'BLE Dr.JUSTICE D.NAGARJUN

W.P.Nos.36725 of 2015 and 1447 of 2016

C.Chandran ...Petitioner in W.P.No.36725 of 2015

The Management of Karadiyur Estate,
Rep., by its Proprietor Alfred Swaminathan,
Karadiyur Post,
Yercaud-636 602 ...Petitioner in W.P.No.1447 of 2016

vs.

1.Presiding Officer,
Labour Court, Salem.

2. The Management of Karadiyur Estate,
Karadiyur Post,
Yercaud-636 602. ..Respondents in W.P.No.36725 of 2015

1.Presiding Officer,
Labour Court, Salem.

2.C.Chandran ..Respondents in W.P.No.1447 of 2016



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Prayer in W.P.No.36725 of 2015: This Writ petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent pertaining to the common award passed by the first respondent dated 15.05.2014 in I.D.No.68 of 2003 and quash the same in for as denial of 70% backwages to the petitioner herein and consequently direct the second respondent to pay the 70% backwages and other attendant benefits.

Prayer in W.P.No.1447 of 2016: This Writ petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of certiorari calling for the records of the 1st respondent in I.D.No.68 of 2003 and quash its award dated 15.05.2014.

In W.P.No.36725 of 2015:

For Petitioner : M/s.C.S.Monica

For Respondents : M/s.S.Ravindran, Senior Advocate
for Mr.S.Bazeer Ahmed for R2

In W.P.No.1447 of 2016:

For Petitioner : M/s.S.Ravindran, Senior Advocate
for Mr.S.Bazeer Ahmed

For Respondents : M/s.C.S.Monica for R2



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COMMON ORDER

The petitioner has filed this Writ Petition No.36725 of 2015 to quash the order passed by the first respondent insofar as I.D.No.68 of 2003 dated 15.05.2014 and to issue a direction to the respondent to pay 70% backwages and other attendant benefits and the petitioner/Management in W.P.No.1447 of 2016 has filed writ petition to quash the award passed by the first respondent in I.D.NO.68 of 2003.

2. Since two writ petitions are filed questioning the common award passed in I.D.No.68 of 2003 dated 15.05.2014, these writ petitions are being disposed of by way of common order.

3. For the sake of convenience, during the course of discussion the parties are been referred to as mentioned in W.P.No.1447 of 2016 i.e., the petitioner is the management where the second respondent is workman.

4. The petitioner is the proprietor of Karadiyur Estate and grows



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coffee seeds. Apart from regular employees who are engaged throughout the year, based on exigencies, the petitioner also engages casual workmen on daily basis to whom wages will be paid weekly. The second respondent is one of the casual workmen. The second respondent and other workmen were not given work everyday and whenever there is a work, their services will be utilized and whenever there was no work, the work will not be given to the casual workers.

5. According to the learned counsel for the second respondent, on 10.09.1992, the petitioner has orally terminated the second respondent and other workmen from service. Whereas, according to the petitioner the workers were not terminated, they were only informed that there is no work.

6. The respondent workmen has raised an industrial dispute in I.D.No.68 of 2003 for reinstatement with backwages, continuity of service and other attendant benefits and the same was allowed as per the award dated 15.05.2014.



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7. The petitioner has challenged the award on the ground that finding of the Labour Court that the second respondent was terminated is erroneous as the second respondent has failed to produce any material before the Tribunal to show that the petitioner has terminated the second respondent. However, it is submitted by the learned counsel for the second respondent that denial of work amounts to termination of employee. The Labour Court, has concluded that the second respondent and other workmen were terminated and thereby directed to reinstatement of the second respondent and others workmen along with back wages of 30%.

8. Learned counsel for the petitioner submitted that the second respondent has sent a representation to the petitioner mentioning that the workmen were terminated by the petitioner. However the representation of the respondent No.2 will not substitute the evidence required to prove that the second respondent and other workmen were terminated, by the petitioner.



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9. Insofar as the taking back of the second respondent and other workmen by the petitioner is concerned, the learned Senior Counsel Mr.S.Ravindran has submitted that petitioner has not terminated the respondent No.2 and since there was no work in the petitioner's estate, they could not provide the work and that they are ready to take services of the second respondent and other workmen, at any time whenever there is a work. Therefore, precisely learned Senior Counsel for the petitioner has submitted that the petitioner has no objection to take the second respondent and other workmen back into the work thereby the petitioner is prepared to implement part of the award.

10. Insofar as the second limb of the award that the petitioner is directed to pay the 30% backwages is concerned. In order to order for back wages, a finding has to be recorded basing on the evidence that the petitioner has terminated the second respondent and other workmen. Not only that the second respondent and other work men must mention in the petition placed before the Labour Court that the second respondent was not gainfully employed subsequent to alleged termination only then the Labour Court can consider grant of backwages. There is no averment or



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evidence placed before the Tribunal that the second respondent that he was not gainfully employed

11. Learned counsel for the petitioner has in support of his contention has cited a judgment *Management of Regional Chief Engineer, Public Health and Engineering Department versus Their Workmern*, reported in 2019(18) SCC 814, Hon'ble Apex Court had held as follows:

“12. In some cases, the Court may decline to award the back wages in its entirety whereas in some cases, it may award partial depending upon the facts of each case by exercising its judicial discretion in the light of the facts and evidence. The questions, how the back wages are required to be decided, what are the factors to be taken into consideration awarding back wages, on whom the initial burden lies, etc. were elaborately discussed in several cases by this Court wherein the law on these questions has been settled. Indeed, it is no longer res integra. These cases are, *M.P. SEB v. Jarina Bee* [*M.P. SEB v. Jarina Bee*, (2003) 6 SCC 141 : 2003 SCC (L&S) 833] , *Haryana Roadways v. Rudhan Singh* [*Haryana Roadways v. Rudhan Singh*, (2005) 5 SCC 591 : 2005 SCC (L&S) 716] , *U.P. State Brassware*



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Corpn. Ltd.v.Uday Narain Pandey[*U.P. State Brassware Corpn. Ltd.v.Uday Narain Pandey*, (2006) 1 SCC 479 : 2006 SCC (L&S) 250] ,*J.K. Synthetics Ltd.v.K.P. Agrawal*[*J.K. Synthetics Ltd.v.K.P. Agrawal*, (2007) 2 SCC 433 : (2007) 1 SCC (L&S) 651] ,*Metropolitan Transport Corpn.v.V. Venkatesan*[*Metropolitan Transport Corpn.v.V. Venkatesan*, (2009) 9 SCC 601 : (2009) 2 SCC (L&S) 719] ,*Jagbir Singhv.Haryana State Agriculture Mktg. Board*[*Jagbir Singhv.Haryana State Agriculture Mktg. Board*, (2009) 15 SCC 327 : (2010) 1 SCC (L&S) 545] and *Deepali Gundu Surwasev.Kranti Junior Adhyapak Mahavidyalaya*[*Deepali Gundu Surwasev.Kranti Junior Adhyapak Mahavidyalaya*, (2013) 10 SCC 324 : (2014) 2 SCC (L&S) 184] .

13.The Court is, therefore, required to keep in consideration several factors, which are set out in the aforementioned cases, and then to record a finding as to whether it is a fit case for award of the back wages and, if so, to what extent.”

12. Further in ***P.Karupaiah versus General Manager, Thiruvalluvar Transport Corporation Limited***, reported in 2018 (12) SCC 663, the Hon'ble Apex Court had held as follows:



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“11.Indeed, the employee in order to claim the relief of back wages along with the relief of reinstatement is required to prove with the aid of evidence that from the date of his dismissal order till the date of his rejoining, he was not gainfully employed anywhere. The employer too has a right to adduce evidence to show otherwise that an employee concerned was gainfully employed during the relevant period and hence not entitled to claim any relief of back wages.

12.On proving such facts to the satisfaction of the Court, the back wages are accordingly awarded either in full or part or may even be declined as the case may be while passing the order of reinstatement. The courts have also applied in appropriate cases the principle of “no work no pay” while declining to award back wages and confining the relief only to the extent of grant of reinstatement along with grant of some consequential reliefs by awarding some benefits notionally, if any, in exercise of discretionary powers depending upon the facts of each case.”



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13. Further, back wages cannot be granted randomly. In the case on hand, the first respondent Labour Court has granted 30% backwages and there is no clarity as to on what basis or on what formula or on what approach the first respondent/ Labour Court has granted 30% of backwages.

14. In view of the above, finding of the first respondent/ Labour Court that the petitioner has orally terminated the second respondent and other work men, cannot be accepted and consequently, the finding of the first respondent/ Labour Court, directing the petitioner to pay 30% backwages is not sustainable.

15. In the result, W.P.No.1447 of 2016 is disposed of in part, confirming the impugned orders of first respondent insofar as directing the petitioner to reinstate the second respondent. Consequently, W.P.No.36725 of 2015 seeking for a direction to the second respondent to pay 70% of backwages and other attendant benefits is dismissed.



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Index : Yes / No
Internet : Yes/ No
Speaking/Non-speaking Order

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To

- 1.The Presiding Officer,
Labour Court, Salem.
2. The Management of Karadiyur Estate,
Karadiyur Post,
Yercaud-636 602.

Dr.D.NAGARJUN, J.
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