



W.P.No.23706 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.23706 of 2016

And

W.M.P.Nos.20310 of 2016 and 2892 of 2017

The Management of Aktchaya Industry,
Rep. its Proprietor
S.M.Srinivasan

... Petitioner

Vs.

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

2.K.Raghupathy

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the first respondent in I.D.No.60 of 2010 and quash the Award dated 17.05.2016.

For Petitioner : Mr.S.Ravindran
Senior Counsel
for M/s.S.Bazeer Ahamed

For Respondents : Mr.K.M.Ramesh for R2
Senior Counsel
for M/s.S.Apunu



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ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari calling for the records of the first respondent in I.D.No.60 of 2010 and quash the Award dated 17.05.2016.

2.The facts of the case is that the petitioner is a small scale industry engaged in the manufacture of high precision and speciality fasteners and the petitioner was allowing the workmen to leave the services if they so wish, without taking any letter from them. Whiles, on 22.12.2008, the second respondent who was an ex-employee of the petitioner lodged dispute before the Labour Officer alleging that he was not paid salary during September, 2007 to November, 2007 and that the petitioner suddenly sent him out of the work place on 03.12.2007 and since the conciliation ended in failure during April, 2009, the second respondent approached the first respondent and the dispute was adjudicated in I.D.No.60 of 2010, pursuant to which, the first respondent passed the impugned Award directing the petitioner to reinstate the second respondent with continuity of service, backwages and other attendant benefits from 05.12.2007. Challenging the same, the petitioner has filed this writ petition.



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3.The learned Senior Counsel appearing for the petitioner submitted that, the second respondent entered the service of the petitioner in the year 2004 and left the service during the year 2008. The petitioner never terminated the second respondent from service and the petitioner was ready to reinstate the second respondent in service and after passing of the award, the petitioner sent letter dated 08.07.2016 to the second respondent to report duty, however, the second respondent failed to report duty and that cannot be fastened as against the petitioner.

4.The learned Senior Counsel appearing for the petitioner further submitted that, the Hon'ble Apex Court as well as this Court have in a catena of judgments held that a person is not entitled for backwages for the period when he is not in employment and hence, the second respondent is not entitled for any backwages.

5.The learned Senior Counsel appearing for the second respondent submitted that the second respondent entered the service of the petitioner in the year 2004 and he was orally terminated from service during the year 2008. Thereafter, he raised industrial dispute



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and the first respondent after elaborate consideration rightly passed the impugned award and the award cannot be interfered with, unless the award is perverse or arbitrary. He further submitted that after passing of the award, the second respondent reported duty during the year 2016 and continuously worked till the year 2020 and during the year 2020, the petitioner Industry was closed and hence, the second respondent left the service.

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

7.The facts in the present case is not in dispute. Admittedly, the the second respondent entered the service of the petitioner during the year 2004. The petitioner claim that the second respondent left the service during the year 2008 and the second respondent claim that he was orally terminated from service during the year 2008. Thereafter, after the impugned award was passed, the petitioner sent letter dated 08.07.2016 to the second respondent to report duty and the second respondent reported duty during the year 2016 and has continuously worked till the year 2020 and since the petitioner Industry was closed



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during the year 2020, the second respondent left the service. Further, the second respondent was not in service from the year 2008 to 2016.

8.The Hon'ble Division Bench of this Court has elaborately discussed similar issue in the case of the **Chief General Manager, State Bank Of India, Local Head Office, No.6, College Road, Chennai Vs. The Central Government Industrial Tribunal cum Labour Court, No.6, Haddows Road Shastri Bhavan, Chennai – 6 and another** in **W.A.No.1749 of 2015** on 25.01.2016 and has held as follows:

"6.The question as to whether violation of Section 25-F of the I.D.Act would entail automatic reinstatement with backwages came into consideration in catena of decisions. Lately, in Vice-Chancellor, Lucknow University, Lucknow, U.P. Vs. Akhilesh Kumar Khare and another [(2015) SCC Online SC 797], the Supreme Court has examined the issue afresh in the light of the various decisions rendered earlier and held as under:

"16. In considering the violation of Section 25F of the Industrial Disputes Act, 1947 in Incharge Officer & Anr. vs. Shankar Shetty (2010) 9 SCC 126 and after referring to the various decisions, this Court held that the relief by way of back wages is not automatic and compensation instead of reinstatement has been held to meet the ends of



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justice and it reads as under:-

"2. Should an order of reinstatement automatically follow in a case where the engagement of a daily wager has been brought to end in violation of Section 25-F of the Industrial Disputes Act, 1947 (for short the ID Act)? The course of the decisions of this Court in recent years has been uniform on the above question.

3. In Jagbir Singh v. Haryana State Agriculture Mktg. Board, (2009) 15 SCC 327, delivering the judgment of this Court, one of us (R.M. Lodha, J.) noticed some of the recent decisions of this Court, namely, U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey, (2006) 1 SCC 479, Uttaranchal Forest Development Corpn. v. M.C. Joshi, (2007) 9 SCC 353, State of M.P. v. Lalit Kumar Verma (2007) 1 SCC 575, M.P. Admn. v. Tribhuban (2007) 9 SCC 748, Sita Ram v. Moti Lal Nehru Farmers Training Institute (2008) 5 SCC 75, Jaipur Development Authority v. Ramsahai (2006) 11 SCC 684, GDA v. Ashok Kumar (2008) 4 SCC 261 and Mahboob Deepak v. Nagar Panchayat, Gajraula (2008) 1 SCC 575 and stated as follows: (Jagbir Singh case (2009) 15 SCC 327, SCC pp. 330 & 335, paras 7 & 14)



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"7.It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.

[Emphasis added]

* * *

14. It would be, thus, seen that by a catena of decisions in recent time, this Court has clearly laid down that an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of



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termination, particularly, daily wagers has not been found to be proper by this Court and instead compensation has been awarded. This Court has distinguished between a daily wager who does not hold a post and a permanent employee.

4. Jagbir Singh (2009) 15 SCC 327 has been applied very recently in Telegraph Deptt. v. Santosh Kumar Seal (2010) 6 SCC 773, wherein this Court stated: (SCC p. 777, para 11)

"11. In view of the aforesaid legal position and the fact that the workmen were engaged as daily wagers about 25 years back and they worked hardly for 2 or 3 years, relief of reinstatement and back wages to them cannot be said to be justified and instead monetary compensation would subserve the ends of justice."

9. Considering the facts and circumstances of the case, this Court is inclined to award some compensation to the second respondent.

10. This Court's view is also supported by the decision of the Hon'ble Supreme Court reported in **(2012) 1 Supreme Court Cases 558 (Bharat Sanchar Nigam Limited Vs. Man Singh)**, the relevant



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portion of which reads as follows:

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"5.In view of the aforementioned legal position and the fact that the respondent workmen were engaged as "daily wagers" and they had merely worked for more than 240 days, in our considered view, relief of reinstatement cannot be said to be justified and instead, monetary compensation would meet the ends of justice.

6.Accordingly, the impugned judgment passed by the High Court as also the award dated 27-5-2005 passed by the Labour Court are set aside. We direct the appellant, Bharat Sanchar Nigam Limited to pay Rs.2 lakhs to each of the respondents in full and final settlement of their claim, within six weeks from today. In case the payment is not made within the aforementioned stipulated time, the amount shall carry interest at the rate of 12% per annum."

11.Applying the ratio laid down in the decision of the Hon'ble Supreme Court reported in ***(2012) 1 Supreme Court Cases 558 (Bharat Sanchar Nigam Limited Vs. Man Singh)***, this Court is



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inclined to award a sum of Rs.2 Lakhs (Rupees Two Lakhs Only) as compensation to the second respondent. Accordingly, the petitioner is directed to deposit a sum of Rs.2,00,000/- (Rupees Two Lakhs Only), in full and final settlement, to the credit of I.D.No.60 of 2010 on the file of the first respondent, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the second respondent is at liberty to withdraw the said amount.

12.The writ petition is accordingly disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

05.07.2023

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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.

M.DHANDAPANI,J.
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