



W.P.No.6401 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.6401 of 2013

The Management of Southern Railway,
Represented by its Deputy Chief Personnel Officer,
Engineering, Headquarters Office,
Personnel Branch,
Chennai 600 003

... Petitioner

Vs.

1.The Presiding Officer,
The Central Government Industrial Tribunal
cum Labour Corut, Chennai
2.A.Nandakumar

... Respondents

PRAYER : Writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the entire records of the first respondent in CP.No.1 of 2012 including the order dated 06.12.2012 and quash the same.

For Petitioner : Mr.V.Radhakrishnan,
Senior Counsel
for
Mr.M.Vijay Anand,
Additional Standing Counsel
for Railways DT



W.P.No.6401 of 2013

WEB COPY

For Respondents

R1 : Court

For R2 : Mr.K.Venkataramani,
Senior Counsel
for Mr.S.Srinivasan

ORDER

This writ petition has been filed challenging the award passed by the first respondent in CP.No.1 of 2012 dated 06.12.2012 thereby ordered to pay a sum of Rs.12,79,212/- as backwages for the period from May 1997 to March 2011.

2. The second respondent was originally employed under the petitioner as Bungalow Peon to the Chief Signal and Telecommunication Engineer / Construction, Chennai with effect from 12.04.1991. While being so, he was issued show cause notice dated 31.10.1991 alleging that he was absented unauthorisedly for 74 days. On receipt of the same, he submitted explanation on 06.11.1991. However, his explanation was not satisfactory and as such, he was terminated from service with effect from 04.12.1991. Aggrieved by the same, the second respondent raised



W.P.No.6401 of 2013

Industrial Dispute in ID.No.8 of 1994. It was allowed and directed the petitioner to reinstate him in service with continuity of service, backwages and all other attendant benefits by award dated 13.03.1995. However, it was not implemented by the petitioner. Therefore, the second respondent filed claim petition in CP.No.34 of 1997 under Section 33 (c) of Industrial Disputes Act (hereinafter called as 'ID Act') before the Labour Court claiming arrears of salary for the period from December 1991 to April 1997. In the meanwhile, the petitioner challenged the award dated 13.03.1995 in WP.No.5040 of 1999 before this Court. Ultimately, the writ petition was dismissed by this Court by order dated 15.10.2008. No appeal was preferred by the petitioner and the award became final.

2.1 Though the petitioner submitted repeated representations to reinstate him into service, it was not considered by the petitioner. At last, he was re-engaged as Substitute Trackman by the petitioner by order dated 28.03.2011. The petitioner was not engaged on the same post and seniority was also not maintained and he was not paid any arrears of



W.P.No.6401 of 2013

salary as awarded by the Labour Court. In the claim petition filed by the second respondent, it was ordered and he was paid a sum of Rs.1,25,490/- as his backwages on 12.10.2011 for the period from December 1991 to April 1997. Therefore, the petitioner was not paid backwages for the remaining period i.e. from May 1997 till his reinstatement into service i.e. March 2011. Therefore, the petitioner filed claim petition under Section 33(2)(c) of ID Act, claiming backwages for the period from May 1997 to March 2011 with interest and it was allowed, against which the present writ petition has been filed by the management.

3. Mr.V.Radhakrishnan, the learned Senior Counsel appearing for the petitioner submitted that the petitioner was absented unauthorisedly for the period of 74 days. Therefore, he was issued show cause notice and subsequently he was terminated from service from 04.12.1991. The second respondent raised Industrial Dispute and by an exparte award, he was directed to be reinstated into service with continuity of service, backwages and all other attendant benefits. It was



W.P.No.6401 of 2013

challenged before this Court and the same was also dismissed.

Thereafter, the petitioner was reinstated into service. In the meanwhile, the petitioner filed claim petition for backwages and the same was allowed and accordingly, the petitioner was paid arrears of salary to the tune of Rs.1,25,490/-. Again the petitioner filed claim petition claiming arrears of salary for the period from May 1997 to March 2011 to the tune of Rs.12,79,212/-.

3.1 He further submitted that in the claim petition, he categorically mentioned that till his reinstatement into service, he was not gainfully employed. Before this Court also, he filed counter affidavit, in which he categorically mentioned that he was not gainfully employed during the non employment period. On the oral instruction by this Court, Vigilance Enquiry was ordered with regards to his employment during the period of non employment. The Vigilance Department conducted detailed enquiry and submitted its report. As per the report, the petitioner was employed as Driver in the Office of the Executive Engineer, Chennai Central Division No.V, Central Public Works Department, Rajaji



W.P.No.6401 of 2013

Bhavan, Besant Nagar, Chennai. Therefore he was gainfully employed.

He was also allotted Type 2 Quarters at quarters No.3 Palavanthangal, Chennai. It was clearly suppressed and obtained order from the Labour Court. As the petitioner could not able to trace out his gainful employment during the non employment period, it could not be proved before the Labour Court. However, before this Court, on permission of this Court, Vigilance Enquiry was conducted, in which the above details were furnished by the Vigilance Branch. In fact, the second respondent was also enquired by the Vigilance Committee and he categorically admitted his employment during his non employment period. Therefore, the learned Senior Counsel also insisted to take cognizance under Section 195(1)(b) of Cr.P.C. r/w Section 340 of Cr.P.C.

3.2 He also submitted that the second respondent made claim petition after period of 14 years from the date of the award. The award was passed on 13.03.1995, whereas the petitioner made claim petition only on 06.02.2012. Therefore, the second respondent made stale claim and the huge delay was not properly explained by the second respondent.



W.P.No.6401 of 2013

In support of his contention, he relied upon the judgment in the case of ***S.K.Kapur Vs. New Delhi Municipal Council*** reported in (2004) 10 ***SCC 679***, wherein the Hon'ble Supreme Court of India held that although bar of limitation could not be pleaded, according to the learned counsel for the appellant, in making an application under Section 33-C(2), it is difficult for us to say that there was no delay and laches on the part of the appellant in making a claim and the learned Single Judge of the High Court was right in holding that the writ petition suffered from delay and laches.

4. The second respondent filed counter and Mr.K.Venkataramani, the learned Senior Counsel appearing for the second respondent submitted that the petitioner failed to obey the order passed by the Tribunal as well as this Court. The Industrial Tribunal passed award on 13.03.1995 and directed the petitioner to reinstate the second respondent into service with continuity of service and to pay backwages and grant all other attendant benefits. The petitioner did not comply the award. After four years, the said award was challenged before



W.P.No.6401 of 2013

WEB COPY

this Court in WP.No.5040 of 1999. Ultimately, it was dismissed by this Court on 15.10.2008. Even then, the petitioner failed to reinstate the second respondent into service in compliance of the order passed by this Court. After repeated requests by the second respondent, he was re-engaged as Substitute Trackman by order dated 28.03.2011. But his seniority was not kept in tact as directed by the Labour Court. That apart, he was not paid any backwages. Therefore, the second respondent was constrained to approach the Chief Labour Commissioner and as per the order, the second respondent was paid a sum of Rs.1,25,490/- on 14.10.2011 as backwages for the period from December 1991 to April 1997. Therefore, the petitioner filed claim petition claiming arrears of salary from the month of April 1997 to March 2011 immediately after his reinstatement i.e. on 06.02.2012. Therefore, there was absolutely no delay on the part of the second respondent to claim his arrears of salary.

4.1 He further submitted that insofar as filing false affidavit is concerned, he is being poor employee and has family consisting aged parents, wife and two children, he has to maintain his family. In order to



W.P.No.6401 of 2013

survive, he has to go for employment. Accordingly, the second respondent had gone for temporary employment in the Office of the Executive Engineer, Chennai Central Division No.V, CPWD, Rajaji Bhavan, Besant Nagar, Chennai. as Driver. He had worked as daily wagee, that too for Rs.50/- and Rs.125/- per day. Even according to the Vigilance Report, he had worked for 5 days in the month of September 1993. Thereafter, he was engaged only from 31.05.1997 to 30.08.1997. During that period, he received daily wages. Thereafter, he was engaged only from 01.01.1998 till 30.06.1998. Thereafter, he was engaged from 31.08.2001 to 29.01.2002 and he was paid daily wages. Finally, he was engaged only from 01.05.2002 to 30.06.2002. Thereafter, he was not engaged by anybody and though he stayed in the quarters, it does not mean that he was permanently employed by the Central Public Works Department and he was gainfully employed.

4.2 He further submitted that gainful employment means that he would have received salary which was lastly drawn from the employer. That apart, in order to prosecute a person under Section 195(1)(b) of



W.P.No.6401 of 2013

WEB COPY

Cr.P.C., offence is alleged to have been committed inside the court by producing false documents. Whereas the petitioner filed affidavit stating that he was not gainfully employed. Therefore, it does not amount to perjury and does not require any penal action as against the second respondent. In support of his contention, he relied upon the judgment rendered by the Hon'ble Supreme Court of India in the case of ***Niranjan Cinema Vs. Prakash Chandra Dubey*** in Appeal (Civil) No.3960 of 2006.

5. Heard, Mr.V.Radhakrishnan, the learned Senior Counsel appearing for the petitioner and Mr.K.Venkataramani, the learned Senior Counsel appearing for the second respondent.

6. The second respondent filed claim petition claiming arrears of backwages for the period from May 1997 to March 2011. The petitioner, while in service as Bungalow Peon, was served with show cause notice for the charge memo alleging that he was absented from service unauthorisedly for the period of 74 days. He submitted his



W.P.No.6401 of 2013

explanation and without satisfying with the same, he was removed from service. It was challenged before the Industrial Tribunal and the Tribunal concluded that he was terminated from service without any enquiry and without giving any sufficient opportunity to him. On the said grounds, the order of removal from service was set aside by the Industrial Tribunal and directed the petitioner to reinstate him into service with continuity of service and backwages and also other attendant benefits, if any.

7. As rightly pointed out by the learned Senior Counsel appearing for the second respondent, it was challenged only after four years by the petitioner before this Court in WP.No.5040 of 1999 and it was dismissed by order dated 15.10.2008. Even thereafter, the petitioner failed to obey the order passed by the Tribunal as well as the order passed by this Court. Therefore, the second respondent was constrained to approach the Chief Labour Officer and thereafter the second respondent was paid backwages till April 1997. In fact, only after filing the claim petition by the second respondent in CP.No.34 of 1997 under Section 33(c)(2) of Industrial Disputes Act, the petitioner filed writ



W.P.No.6401 of 2013

petition before this Court challenging the award passed by the Industrial Tribunal in ID.No.8 of 1994. The second respondent was reinstated into service, that too in the post of Substitute Trackman by order dated 04.02.2011. It is pertinent to note that the second respondent was not paid any arrears of backwages and continuity of service since he was re-engaged as Substitute Trackman. Originally, he was employed as Bungalow Peon. Therefore, once again the petitioner was constrained to approach the Labour Court under Section 33(c)(2) of Industrial Disputes Act in CP.No.1 of 2012. It was allowed and the petitioner was directed to pay a sum of Rs.12,79,212/- in favour of the second respondent. Therefore, this Court finds no infirmity or illegality in the order passed by the Labour Court.

8. The only contention raised by the learned Senior Counsel appearing for the petitioner is that while pending the writ petition, as orally instructed by this Court, the petitioner conducted enquiry through Vigilance Department. On the enquiry, the Vigilance Department found that the second respondent was employed as Driver in the Office of the



W.P.No.6401 of 2013

WEB COPY

Executive Engineer, Chennai Central Division No.V, Central Public Works Department, Rajaji Bhavan, Besant Nagar, Chennai. Therefore, he was gainfully employed and he was also allotted quarters to stay with his family. In the counter affidavit as well as the affidavit filed in support of the vacate stay petition, he categorically mentioned that he was not gainfully employed, therefore it would amount to perjury and he seeks appropriate action as against the second respondent for filing false affidavit before this Court.

9. On perusal of the Vigilance Report submitted before this Court, the second respondent was temporarily engaged as Daily Wage Driver by the Office of the Executive Engineer, Chennai Central Division No.V, Central Public Works Department, Rajaji Bhavan, Besant Nagar, Chennai. The Vigilance Report also produced the period of engagement of Casual Workers including total number of days worked till 30.10.2007 as follows:

From	To	No. of days
24.09.1993	29.09.1993 (except 26.09.1993)	5
31.05.1997	30.06.1997	30



W.P.No.6401 of 2013

From	To	No. of days
01.08.1997	30.08.1997	30
01.01.1998	31.01.1998	31
01.02.1998	28.02.1998	28
01.03.1998	31.03.1998	31
01.04.1998	30.04.1998	28
01.05.1998	31.05.1998	31
01.06.1998	30.06.1998	30
31.12.2001	05.01.2002	21
15.01.2002	29.01.2002	
01.05.2002	31.05.2002	31
01.06.2002	30.06.2002	30

10. He was paid only daily wages of Rs.50/- and Rs.125/- per day. Further, he was engaged only on leave vacancy. It is also seen from the above that the petitioner was not continuously engaged by the said Office and he was engaged only on leave vacancy. Allegedly he had worked for minimum months and he had received only minimum salary. He also deposed before the Vigilance Committee that though the Labour Court passed award in the year 1995 and he was also reinstated into service, he was not paid any backwages. In fact, after filing the claim petition only, the petitioner filed writ petition challenging the award. The said writ petition was dismissed after nine years i.e. on 15.10.2008. Even then, the second respondent was not reinstated into service. Only in the



W.P.No.6401 of 2013

year 2011, he was reinstated, that too in the post of Substitute Trackman in the low pay scale. He was not granted any backwages, continuity of service and other attendant benefits. Therefore, he was constrained to go for daily wages for his livelihood. He had aged parents, wife and two children. In this regard, the learned Senior Counsel appearing for the second respondent relied upon the judgment in the case of ***Capt.M.Paul Anthony Vs. Bharat Gold Mines Ltd*** reported in (1999) 3 SCC 679, wherein the Hon'ble Supreme Court of India held as follows:

On joining Govt. service, a person does not mortgage or barter away his basic rights as a human being, including his fundamental rights, in favour of the Govt. The Govt., only because it has the power to appoint does not become the master of the body and soul of the employee. The Govt. by providing job opportunities to its citizens only fulfils its obligations under the Constitution, including the Directive Principles of the State Policy. The employee, on taking up an employment only agrees to subject himself to the regulatory measures concerning his service. His association with the Government or any other employer, like Instrumentalities of the Govt. or Statutory or Autonomous Corporations etc., is regulated by the terms of contract of service or Service Rules made



W.P.No.6401 of 2013

by the Central or the State Govt. under the Proviso to [Article 309](#) of the Constitution or other Statutory Rules including Certified Standing Orders. The fundamental rights, including the Right to Life under [Article 21](#) of the Constitution or the basic human rights are not surrendered by the employee.

11. Thus it is clear that on joining Government service, a person does not mortgage or barter away his basic rights as a human being, including his fundamental rights, in favour of the Government. When the second respondent was denied reinstatement into service and other benefits as directed by the Labour Court, he is being dutiful husband and son, has to maintain his family. That apart, he has to go for employment for his livelihood for his survival. That apart, he was engaged on daily wages, that too on temporary basis. He was engaged only for minimum period and he was paid daily wages, that would not amount to gainful employment. Gainful employment means he should have received more than the salary which was drawn by him during his employment. Therefore, though the second respondent stated in his affidavit that he was not gainfully employed, he had not suppressed the fact that he had worked as daily wagee in Central Public Works Department. Therefore,



W.P.No.6401 of 2013

the said temporary employment during the non employment period would not amount to gainful employment which had been rendered by him to meet out his basic necessities of food and shelter. During the enquiry by the Vigilance Department, he had explained the genuine facts in existence which had pressurised him to go for the said work on daily wages. Therefore, it would not amount to any perjury. That apart, the petitioner did not file any fabricated document in order to gain something before this Court. Therefore, Section 195 r/w 340 of Cr.P.C. is not attracted as against the petitioner to take any penal action against him.

12. In view of the above, this Court finds no infirmity or illegality in the order passed by the first respondent. Accordingly, this writ petition is dismissed. While pending writ petition, interim order was granted on condition that the petitioner shall deposit the entire award amount and accordingly, the petitioner deposited the entire amount. The second respondent was permitted to withdraw Rs.3,00,000/- and also permitted to withdraw accrued interest once in three months. Therefore, now the second respondent is permitted to withdraw the entire amount

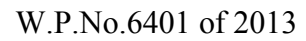


W.P.No.6401 of 2013

which was already deposited by the petitioner to the credit of CP.No.1 of 2022 on the file of the Labour Court, Chennai. Further, the petitioner is directed to comply with the award passed in ID.No.8 of 1994 dated 13.03.1995 strictly in accordance with law within a period of twelve weeks from the date of receipt of copy of this order, insofar as other benefits are concerned. There shall be no order as to costs.

19.09.2023

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
lok



1. The Presiding Officer,
The Central Government Industrial Tribunal
cum Labour Corut, Chennai
2. The Government Advocate,
High Court, Madras.



WEB COPY



W.P.No.6401 of 2013

G.K.ILANTHIRAIYAN, J.

lok

W.P.No.6401 of 2013

19.09.2023