



WEB COPY

W.A. No.194



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2023

CORAM:

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

and

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. No. 1943 of 2023 & C.M.P. 16628 of 2023

The Area Manager
Food Corporation of India
District Office
Post Box No.2911
Tatabad
Coimbatore 641 012

Appellant

v

K. Rajendran (deceased)

1 R.Rani

2 R. Ganesan

3 Manoharan

4 The Presiding Officer
Central Government Industrial Tribunal-cum-Labour Court
Shastri Bhavan
Chennai

Respondents

Writ Appeal filed under Clause 15 of the Letters Patent challenging the order dated 08.02.2023 passed in W.P. No.4438 of 2017.

For appellant

Mr. M. Imthias

For RR 1- 3

Mr. R. Ganesh Babu

R4

Court



JUDGMENT

(delivered by S. VAIDYANATHAN, J.)

WEB COPY To avoid prolixity, the parties will be adverted to as per their rank in this writ appeal.

2 The facts leading to the filing of this writ appeal could be succinctly stated thus:

2.1 At the outset, it needs to be pointed out that during the pendency of the writ petition, the workman breathed his last.

2.2 Be that as it may, the case of the workman was that he was denied entry to the appellant Corporation on 16.11.2012 to discharge his work, which is tantamount to termination and the industrial dispute raised by him in I.D. No. 39 of 2014 on the file of the fourth respondent Tribunal, questioning the same, was awarded on 19.03.2015.

2.3 The fourth respondent Tribunal, taking into account, the evidence of M.W.1, came to the conclusion that the workman who joined the services of the appellant Corporation was denied work effective 16.11.2012, and directed the appellant Corporation to reinstate the workman with continuity of service and other attendant benefits, however, sans backwages. The said award was not put to question by the appellant Corporation and the workman was reinstated in service on 12.06.2015 after the passing of the award.



2.4 Aggrieved by the denial of backwages to him, the workman preferred a writ petition being W.P. No.4438 of 2017 before a Single Bench. The factum that the workman was reinstated in service on 12.06.2015 after the award is not controverted and as already stated, the workman died during the pendency of the writ petition and his legal heirs got substituted in the writ petition *vide* order dated 25.01.2023.

2.5 The Single Bench held that once the termination is held to be bad, the workman is entitled to full backwages and holding so, directed the appellant Corporation to pay monetary benefits to the legal heirs of the workman for the non-employment period from 16.11.2012 to 12.06.2015 within a period of six weeks.

2.6 Thereagainst, the Management has preferred the instant writ appeal.

3 Heard Mr. M. Imthias, learned counsel for the appellant Corporation and Mr.R.Ganesh Babu, learned counsel for the contesting respondents 1 to 3.

4 The contention of the appellant Corporation is that the workman was reinstated in service and he had joined sans protest; the workman had raised the industrial dispute two years after his termination; when the workman has acquiesced of his rights by joining the services sans protest, assailing the award with a delay of two years should not have been entertained by the fourth respondent Tribunal.



5 Pertinent it is to state that though, in case, reinstatement is awarded by the Labour Court, the normal rule may be grant of full backwages, grant of full backwages is not automatic as per a catena of judgments of the Supreme Court. Suffice it to advert to the judgment of a 2 Judge Bench of the Supreme Court in **J.K. Synthetics Ltd. vs. K.P.Agrawal and another [(2007) 2 SCC 433]** which has been subsequently followed in **M.L. Singla v Punjab National Bank [(2018) 18 SCC 21]**.

6 However, taking into account the fact that the workman is no more and the finding of the fourth respondent Tribunal that the act of the appellant Corporation is bad, denial of full backwages by the fourth respondent Tribunal may not be proper. Likewise, grant of full backwages as ordered by the Single Bench also requires interference.

7 Thus, considering the totality of the aforesaid circumstances, we are of the view that the legal heirs of the workman, viz., respondents 1 to 3, shall be paid 35% backwages for the period of the workman's non-employment between 16.11.2012 and 12.06.2015 within a period of four months from the date of receipt of a copy of this judgment.



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This writ appeal stands disposed of in the above terms, sans costs.

Connected C.M.P. is closed.

(S.V.N., J.) (K.R.S., J.)
31.07.2023

cad

To

The Presiding Officer
Central Government Industrial Tribunal-cum-Labour Court
Shastri Bhavan
Chennai



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