



W.P.Nos.42886 & 42887 of 2016 and 16932 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.Nos.42886 & 42887 of 2016 and 16932 of 2019
and
WMP.Nos.36783 of 2016, 19378 of 2019 & 8673 of 2020

The Management of Devendra Exports Pvt. Ltd.,
No.35/b2, II-Main Road,
Industrial Estate, Ambattur,
Chennai – 600 058. ...Petitioner in W.P.Nos.42886 & 42887 of
2016

S.Ramamurthy ...Petitioner in W.P.No 16932 of 2019

Vs.

1. The Presiding Officer,
I-Additional Labour Court,
Additional City Civil Court Building,
High Court, Chennai - 104.
2. S.Ramamurthi ...Respondents in W.P.Nos.42886 & 42887 of
2016
3. The Management of Devendra Exports Pvt. Ltd.,
No.35/B2, II-Main Road,
Industrial Estate, Ambattur,
Chennai – 600 058. ...Respondent in W.P.No 16932 of



W.P.Nos.42886 & 42887 of 2016 and 16932 of 2019

WEB COPY

Prayer in W.P.No.42886 of 2016: Petition filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari to call for the records in I.D.No.334 of 1999 on the file of the first respondent and quash the order dated 29.11.2010.

Prayer in W.P.No.42887 of 2016: Petition filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari to call for the records in I.A.No.360 of 2014 in I.D.No.334 of 1999 and quash the order dated 03.02.2016 and the award dated 28.04.2016 in I.D.No.334 of 1999 on the file of the first respondent.

Prayer in W.P.No.16932 of 2019: Petition filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari to call for the award of the I Additional Labour Court, Chennai dated 28.04.2016 passed in I.D.No.334 of 1999, quash the award in respect of disallowing 50% back wages to the petitioner and direct the respondent to pay full back wages to the petitioner.

In all W.P's.:

For Petitioner : Mr.D.Abdullah
in W.P.Nos.42886 & 42887 of 2016
: Mr.P.N.George Graham
for M/s. Devadason and Sagar
in W.P.No.16932 of 2019

For Respondents : Mr.P.N.George Graham, for R2
in W.P.Nos.42886 & 42887 of 2016
: Mr.J.Pothiraj, for sole respondent
in W.P.No.16932 of 2019

COMMON ORDER

Since the issue involved in all these Writ petitions are interconnected,



W.P.Nos.42886 & 42887 of 2016 and 16932 of 2019

they are disposed of by way of this common order.

WEB COPY

2. For brevity, the petitioner in W.P.Nos.42886 & 42887 of 2016 and the sole respondent in W.P.No.16932 of 2019 is hereinafter referred to as management and the petitioner in W.P.No.16932 of 2019 and the 2nd respondent in W.P.Nos.42886 & 42887 of 2016 is hereinafter referred to as the workman.

3. The facts leading to filing of these cases are as follows :

The workman joined the services of the management in the year 1988. Whiles, on 02.6.1998, the workman was alleged to have misbehaved with the then supervisor, which led to issuance of a charge memo dated 08.06.1998, pursuant to which, a domestic enquiry was ordered. Thereafter, pursuant to the inquiry report, the workman was dismissed from service by order dated 12.10.1998. Aggrieved by the said dismissal, the workman filed an industrial dispute before the I Additional Labour Court, Chennai, in which, he raised a preliminary issue stating that the domestic inquiry was not conducted in a proper manner and the Enquiry Officer has not provided him sufficient opportunity during the domestic inquiry proceedings. After



W.P.Nos.42886 & 42887 of 2016 and 16932 of 2019

contest, the I Additional Labour Court, Chennai by order dated 29.11.2010, concluded that the management had not let in any oral evidence to support their case as to conducting the domestic inquiry fairly and properly and that the workman was not given an opportunity to cross examine the witnesses of the management. Challenging the same, the management has come up with W.P.No.42886 of 2016. Further, during the pendency of the industrial dispute, the workman filed I.A.No.360 of 2014 requesting the Labour Court to eschew one document namely Ex.M.5 - a compact disc. In that, the management filed a counter stating that the workman was gainfully employed elsewhere and that the admissibility of the said document could be determined only at the time of passing the award. However, by order dated 03.02.2016, the I Additional Labour Court, Chennai concluded that Ex.M.5 was inadmissible and that it would not be taken into consideration at the time of passing the final order in the industrial dispute, unless the contents of the document were proved by the management during the course of trial in accordance with Section 65B of the Indian Evidence Act. Subsequently, the final award dated 28.04.2016 came to be passed, ordering for reinstatement of the workman with continuity of service and 50% back



W.P.Nos.42886 & 42887 of 2016 and 16932 of 2019

wages from the date of dismissal till the date of reinstatement. Challenging both the orders dated 03.02.2016 and 28.04.2016, the management filed W.P.No.42887 of 2016. On the other hand, challenging the award of the I Additional Labour Court, Chennai dated 28.04.2016 passed in I.D.No.334 of 1999, in respect of disallowing 50% back wages, the workman has filed W.P.No.16932 of 2019.

4. Though very many grounds have been raised, the learned counsel for the management submitted that, pursuant to the award passed by the labour court ordering for reinstatement, the workman was reinstated back into service as early as on 01.10.2016 and he subsequently retired from service in the year 2020. Hence, the only issue arises for consideration in these Writ petitions is the 50% back wages awarded by the labour court. Though the workman claim that he was not gainfully employed during the non employment period, however, the same was strongly denied by the management and had also marked Ex.M5, a compact disc to show that, the workman was running a lathe unit in the name and style of SR industries. However, the labour court had failed to consider the same only on the



W.P.Nos.42886 & 42887 of 2016 and 16932 of 2019

ground that, the management did not obtain necessary certificate as mandated under Section 65B of the Evidence Act, which is not sustainable.

He further relied upon the order of this Court dated 14.09.2021 made in W.P.No.25287 of 2017 and, therefore, the awards are liable to be interfered with and the matter may be remanded to the Labour Court for fresh consideration specifically for consideration of the Ex.M5 marked by the management before awarding any back wages in favour of the workman. Accordingly, he prayed for appropriate orders.

5. Learned counsel appearing for the workman submitted that, the workman was appointed as unskilled workman in the management in the year 1988 and thereafter, he was promoted as semi-skilled grade B machine operator. The grievance of the workman was that though the other co-workers were promoted to further grade in the year 1996, the workman was not given such a grade. While so, for the reasons best known to it, the management issued a charge memo dated 08.6.1998 as against the workman, for which though he submitted his explanation on 13.6.1998, however without considering the same, the management ordered for



W.P.Nos.42886 & 42887 of 2016 and 16932 of 2019

domestic enquiry. Though the workman made efforts to change the Enquiry Officer, since he acted in a biased manner, the management refused to do the same and subsequently, the workman was dismissed from service by order dated 12.10.1998. Challenging the said dismissal, the workman raised an industrial dispute before the I Additional Labour Court, Chennai, and after contest, the I Additional Labour Court, Chennai held that though the management was given an opportunity to establish the alleged misconduct, as the domestic inquiry was concluded to be defective, they had not proved the charges and thereby directed the management to reinstate the workman with continuity of service and 50% back wages from the date of dismissal till the date of reinstatement, which is perfectly in order and the same does not warrants interference of this Court.

6. Heard learned counsel on either side and perused the material documents placed on record.

7. Admittedly, the workman joined the services of the management in the year 1988 and for certain alleged misconduct, he was subsequently dismissed from service, challenging which, the workman filed the industrial dispute before the I Additional Labour Court, Chennai, in which, the



W.P.Nos.42886 & 42887 of 2016 and 16932 of 2019

workman raised a preliminary issue stating that the domestic inquiry was not conducted in a proper manner and after contest, the Labour Court, vide order dated 29.11.2010, concluded that the management had not let in any oral evidence to support their case as to conducting the domestic inquiry fairly and properly and that the workman was not given an opportunity to cross examine the witnesses of the management. Further, during the pendency of the dispute, the workman filed I.A.No.360 of 2014 to eschew the Ex.M.5, compact disc to show that the workman was gainfully employed and the Labour Court by order dated 03.02.2016 concluded that Ex.M.5 was inadmissible and subsequently passed final award on 28.04.2016, directing the management to reinstate the workman with continuity of service and 50% back wages from the date of dismissal till the date of reinstatement.

8. It was brought to the notice of this Court that, pursuant to the award passed by the labour court ordering for reinstatement, the workman was reinstated back into service on 01.10.2016 and was subsequently retired from service in the year 2020. Hence, this Court is not inclined to interfere



W.P.Nos.42886 & 42887 of 2016 and 16932 of 2019

with the reinstatement ordered by the Labour Court.

WEB COPY

9. However, the major contention of the learned counsel for the management is that though the management marked Ex.M5, a compact disc to show that, the workman was running a lathe unit in the name and style of SR industries during the non-employment period, the labour court had failed to consider the same only on the ground that, the management did not obtain necessary certificate as mandated under Section 65B of the Evidence Act, which is not sustainable as per the decision of this Court dated 14.09.2021 made in W.P.No.25287 of 2017.

10. A perusal of the said decision relied upon by the learned counsel for the management reveal that, the strict sense of Indian Evidence Act will not apply to Labour Laws and the necessary certificate as mandated under Section 65B of the Indian Evidence Act is not required for Labour court proceedings.

11. Hence, only to the extent of awarding 50% back wages, the impugned award dated 28.04.2016 made in I.D.No.334 of 1999 is set aside and the matter is remanded to the I Additional Labour Court, Chennai to



W.P.Nos.42886 & 42887 of 2016 and 16932 of 2019

decide whether the workman was gainfully employed during the non employment period by verifying Ex.M5, the compact disc marked by the management before awarding back wages. The Labour Court shall hear the parties and conclude the proceedings within a period of twelve weeks from the date of receipt of a copy of this order, without adjourning the matter beyond seven working days at any point of time.

12. With the above observations and directions, these Writ petitions stand disposed of. No costs. Consequently, the connected Miscellaneous petitions stands closed.

27.07.2023

skt

Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No

To

The Presiding Officer,
First Additional Labour Court,
Additional City Civil Court Building,
High Court, Chennai-104.

10/11



WEB COPY



W.P.Nos.42886 & 42887 of 2016 and 16932 of 2019

M.DHANDAPANI, J.

skt

W.P.Nos.42886 & 42887 of 2016 and 16932 of 2019
and
WMP.Nos.36783 of 2016, 19378 of 2019 & 8673 of 2020

27.07.2023