



W.P.Nos.20111 & 23586 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2023

CORAM :

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

W.P.Nos.20111 & 23586 of 2022
and
W.M.P.Nos.22552 & 28519 of 2022

P.Keerthi

... Petitioner in W.P.No.20111 of
2022 & Respondent in W.P.No.23586 of 2022

Vs.

The Manager,
M/s.PS.Apparels Unit-II,
Rep. by its Head H.R.,
E.Rajasekaran,
141, Vandalooore Road,
Pudupakkam – 603 103.

... Respondent in W.P.No.20111 of 2022 &
Petitioner in W.P.No.23586 of 2022

Prayer in W.P.No.20111 of 2022 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records made in I.D.No.590 of 2018 dated 11.05.2022 on the file of Labour Court, Kancheepuram and quash the portion of Award refusing to grant 50% back wages to the petitioner and direct the respondent to pay 100% of back wages and attendant benefits after reinstating the petitioner in to services as per Award in I.D.No.590 of 2018 dated 11.05.2022 on the file of Labour Court, Kancheepuram.



W.P.Nos.20111 & 23586 of 2022

Prayer in W.P.No.23586 of 2022 : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the Labour Court, Kancheepuram relating to the Award dated 11.05.2022 passed I.D.No.590 of 2018 and to quash the same.

W.P.No.20111 of 2022

For Petitioner : Mr.S.Parthasarathy
for M/s.A.Sankarasubbu

For Respondent : Mr.J.Rajkumar
for M/s.J.Muthukumaran

W.P.No.20111 of 2022

For Petitioner : Mr.J.Rajkumar
for M/s.J.Muthukumaran

For Respondents : Mr.S.Parthasarathy
for M/s.A.Sankarasubbu

COMMON ORDER

Since the issue involved in both the writ petitions are one and the same, with the consent of the learned counsel appearing for the parties, these writ petitions are heard together and disposed of by this common order.



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2. On 08.06.1998, the petitioner in W.P.No.20111 of 2022, namely P.Keerthi/workman was appointed as a Machine Operator in M/s/.P.S.Apparels, who is the respondent in W.P.No.20111 of 2022. Thereafter, he was transferred to M/s.Paridham Exports of Chrompet, Chennai vide letter dated 28.09.1999. However, he failed to report for duty at Chrompet Unit and he joined duty at Chrompet on 29.09.1999 and worked there till 04.11.1999. Thereafter, he did not report for duty and absented himself from 05.11.1999 onwards. In spite of a letter dated 06.11.1999 sent by the management, he failed to join duty at Chrompet Unit. However, he raised an industrial dispute on 30.11.1999 before the Labour Court in I.D.No.590 of 2018 by making false allegation and stating that when he reported for duty on 06.11.1999, he was not permitted to rejoin duty and was asked to go to the Head Office and when he went to the Head Office, he was asked to submit his resignation letter from the job. The Labour Court, Kanchipuram passed an award dated 11.05.2022 directing the reinstatement of the workman with 50% back wages and monetary benefits. Challenging the same, the above writ petitions are filed.



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3. The learned counsel appearing for the management submitted that, the management had neither retrenched the workman nor terminated his service. He also submits that, the workman was transferred to Chrompet Unit of the management vide transfer order dated 28.09.1999 pursuant to which, he joined duty on 29.09.1999 and worked till 04.11.1999. However, he continuously absented himself from 05.11.1999, thereafter, he never attended the duty. Thereby, the management has sent a letter to workman to join duty on 06.11.1999, thereafter, with false allegations, the workman raised a dispute, which is not sustainable.

4. It is further contended that, when the workman not averred anything about his gainful employment during the non-employment period, the Labour Court passed an award for reinstatement with 50% back wages, is not sustainable. Further, when the management has directed the workman to join duty at Chrompet Unit, however, the workman on his own has not attended the duty and thereafter, raising a dispute claiming reinstatement with back wages, is not sustainable. Accordingly, he prays for appropriate orders.



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5. The learned counsel appearing for the workman submitted that, though the management transferred the workman vide order dated 28.09.1999, thereafter, the workman attended the duty on 29.09.1999 and worked till 04.11.1999, however, thereafter, on 06.11.1999, when he reported for duty, he was not allowed to join duty, thereby, he raised a dispute. Considering all the above facts, the Labour Court passed an award for reinstatement with 50% back wages. However, the Labour Court failed to consider that the workman had specifically averred in his claim petition that he is entitled for full back wages which was not awarded which requires interference.

6. Heard the learned counsel appearing for the management as well as workman and perused the materials available on record.

7. A perusal of the materials available on record reveal that upon transfer, the workmen had reported for duty on 29.9.2011 and had been under engagement till 4.11.09. It is the case of the workmen that when he reported for duty on 6.11.09, the respondent did not allow him to join duty, which necessitated the workman to raise a dispute. However, the fact remains, which is not disputed by the Management nor by the workman that



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there was no order of dismissal or retrenchment of the workman by the Management. No materials have been placed by the workman to show that he has not been allowed to join duty. Further, the Management had submitted that it has not retrenched the workman and he had neither been dismissed from service. However, the fact remains that during the period when the workman was not under employment, no disciplinary action had been taken against the workman for his continued absence and that the respondent is ready and willing to accommodate the workman. However, the Management claims that the period during which the workman was not under employment, he is not entitled to any backwages. Though the Management has raised the said contention, however, no material has been placed before this Court to show that during the period of unemployment of the workman with the Management, the workman was gainfully employed. It is for the Management to establish the gainful employment of the workman and it is not for the workman to establish otherwise. In such view of the matter, the Labour Court had rightly not entertained the claim of the Management that no backwages should be provided. The Labour Court, considering the fact that the workman would have survived during the period of employment by doing some menial jobs, had thought it fit to



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award 50% backwages, which cannot be said to be unreasonable or unjustified. Therefore, this Court is of the considered view that, the order passed by the Labour Court does not suffer any illegality.

8. It appears that the management has deposited the entire award amount to the credit of I.D.No.590 of 2018 as per the direction issued by this Court.

9. In view of the reasons aforesaid, both the writ petitions are dismissed. The management is directed to reinstate the workman with continuity of service and the workman is permitted to withdraw the amount already deposited by the management to the credit of I.D.No.590 of 2018. If any other amount is entitled from the management, liberty is granted to the petitioner to work out the remedy in the manner known to law. No costs. Consequently, the connected miscellaneous petitions are closed.

19.09.2023

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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M.DHANDAPANI, J.

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To

The Labour Court, Kancheepuram.

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19.09.2023