



WEB COPY



W.P.Nos.6098 & 10776 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P.Nos.6098 & 10776 of 2016

and

W.M.P.Nos.5425 & 10946 of 2016 & 1924 of 2023

1.The Registrar,
Indira Gandhi National Open University,
Maidan Garhi,
New Delhi – 110 068.

2.The Regional Director,
Indira Gandhi National Open University,
Regional Centre, G.R.Complex,
III Floor, 407-408, Anna Salai,
Nandanam,
Chennai – 600 035.

... Petitioners in WP.No.6098 of 2016 &
R2 & R3 in WP.No.10776 of 2016

Vs

1.The Presiding Officer,
Central Government Industrial Tribunal-cum-Labour Court,
Chennai.

... R1 in both WPs

2.V.Thennarasu

... R2 in W.P.No.6098 of 2016 &
Petitioner in W.P.No.10776 of 2016



W.P.Nos.6098 & 10776 of 2016

Prayer: Writ Petitions filed under Article 226 of The Constitution of India praying for the issuance of

(i) a Writ of Certiorari, to call for the records relating to the order dated 09.10.2015 passed in I.D.No.104 of 2014 on the file of the first respondent and quash the same (WP.No.6098 of 2016); and

(ii) a Writ of Certiorarified Mandamus, to call for the concerned records from the first respondent, quash the award of the first respondent Tribunal dated 09.10.2015 in I.D.No.104 of 2014 in so far as denying 50% of the back wages, denying the relief of continuity of service and attendant benefits and in respect of the finding that Section 25F of the Industrial Disputes Act, 1947 is not violated and consequently direct the second and third respondents to pay full back wages, continuity of service and all other attendant benefits to the petitioner (WP.No.10776 of 2016).

For University : Mr.AR.L.Sundaresan, ASG
assisted by

Mr.P.Navaneethakrishnan

For Workman : Mr.Balan Haridas

COMMON ORDER

The first writ petition has been filed by the university seeking to quash the award dated 09.10.2015 in I.D.No.104 of 2014 on the file of the first respondent. The second writ petition has been filed by the workman seeking to quash the same award in so far as denying 50% of the back wages, continuity



W.P.Nos.6098 & 10776 of 2016

of service and attendant benefits is concerned and also in respect of the finding that Section 25F of the Industrial Disputes Act, 1947 (in short 'the Act') was not violated and consequently direct the university to pay full back wages, continuity of service and all other attendant benefits to the workman.

2. The parties are common and the challenge made by them is one and the same. Therefore, these writ petitions are taken up for joint disposal. For brevity, the petitioners in W.P.No.6098 of 2016 and the respondents 2 and 3 in WP.No.10776 of 2016 are hereinafter referred to as 'University' and first respondent in both the writ petitions are hereinafter referred to as 'Labour Court' and the second respondent in W.P.No.6098 of 2016 and petitioner in W.P.No.10776 of 2016 is hereinafter referred to as 'Workman'.

3. The workman was working in the university as a daily wager whenever there was a requirement for extra labourers at the Regional Centre. The University has a network of 40 regional centres which are independent from each other and confined to its jurisdiction for implementing all its



W.P.Nos.6098 & 10776 of 2016

activities specified by the Head quarters. After January 2013, the services of the daily wage employees were not engaged by the university. The workman also did not succeed in the entrance test conducted by the university for recruiting candidates to the post of Junior Assistant-cum-Typist from 1996. At that stage, the workman initiated conciliation proceedings before the Assistant Labour Commissioner (Central), Chennai. It ended in failure. Therefore, the workman raised the industrial dispute before the Labour Court seeking reinstatement with full back wages, continuity of service and other attendant benefits. By the impugned award, the Labour Court directed the university to reinstate the workman with 50% back wages. Challenging the same, the university has filed W.P.No.6098 of 2016 before this Court. The workman also filed a writ petition in W.P.No.10776 of 2016 challenging the portion of award refusing to grant 50% backwages, continuity of service and other attendant benefits to the workman.

4. The learned Additional Solicitor General appearing for the University submitted that, it is the duty of the workman to establish before the Labour



W.P.Nos.6098 & 10776 of 2016

Court that there is a continuous employment of 240 days in a calendar year.

However, in the present case, the workman established only 226 days, thereby, the Labour Court arrived at a conclusion that there is no violation of Section 25F of the Act and refused to grant relief in favour of the workman in terms of Section 25F of the Act. However, the Labour Court had miserably failed to consider Section 25G of the Act. Though the workman averred in his claim statement that many of his juniors are still working, however, the workman not established before the Labour Court that his juniors are retained and the workman alone was terminated contrary to Section 25 of the Act. It is averred by the university that no seniority list was maintained by them. In the absence of regular employment of the workman, the university was not expected to maintain the seniority list of the employees engaged on daily wages, however, without considering the same, the Labour Court arrived at a conclusion that there is a violation of Section 25G of the Act, which is not sustainable and the same is perverse. Accordingly, he prays for allowing W.P.No.6098 of 2016 and dismissing W.P.No.10776 of 2016.



W.P.Nos.6098 & 10776 of 2016

5. Per contra, the learned counsel appearing for the workman submitted that the workman was working as a Junior Assistant-cum-Typist in the university from 1996 onwards. He was working in the Chennai Regional Centre till November 2007 and thereafter, in December 2007, he was deputed to Madurai Regional Centre for one year and to Vijayawada Regional Centre for about three years. He was brought back to Chennai Regional Centre in May 2011. According to the workman, he was paid the wages on monthly basis. His services were orally terminated on 28.06.2013. The workman worked for more than 240 days continuously in a calendar year. However, in violation of Section 25F of the Act, his services were terminated. Though the workman sent a representation dated 15.07.2013 to the university seeking reinstatement, the university had not reinstated him nor gave any reply. Therefore, the workman raised the industrial dispute.

6. Further, he submitted that, before the Tribunal, in order to establish that the workman continuously worked for 240 days, he marked Ex.W.1 to Ex.W.50. All those documents clearly demonstrates that the workman was in



W.P.Nos.6098 & 10776 of 2016

continuous employment for 226 days. Further, it is for the university to disprove the same, since the workman was continuously employed with the university from the year 1996 to 2013. However, the Labour Court had mechanically arrived at a conclusion that the workman was employed only for a period of 226 days in a calendar year. Hence, there is no violation of Section 25F of the Act.

7. It is further submitted that, as per Section 25G of the Act, where any workman in an industrial establishment is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman. In the present case, the workman averred in his claim statement that all the juniors were retained, however, the workman alone was retrenched in the year 2013, which is contrary to Section 25G of the Act. The said fact was established before the Labour Court, thereby, the Labour Court



W.P.Nos.6098 & 10776 of 2016

awarded reinstatement. However, the Labour Court had awarded only 50% backwages in favour of the workman without considering the fact that he was not gainfully employed anywhere during the non-employment period, which is not sustainable. Hence, he submitted that the workman is entitled for 100% backwages. Accordingly, he prays for allowing W.P.No.10776 of 2016 and dismissing W.P.No.6098 of 2016.

8. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

9. Admittedly, the workman was employed as a Junior Assistant-cum-Typist from 1996 onwards in the various centres run by the university. Thereafter, in the year 2013, the workman was orally terminated by the university, thereby, the workman raised I.D.No.104 of 2014 before the Labour Court.



W.P.Nos.6098 & 10776 of 2016

10. Though the university denied that the workmen was not in continuous employment for 240 days in a calendar year, however, the university admitted that he was working as a Junior Assistant in various centres from the year 1996, whereas the university claimed that they have a network of 40 regional centres which are independent from each other and confined to its own jurisdiction for implementing all its activities. However, in order to prove the same, no document has been marked before the Labour Court. Further, the university themselves admitted that the workman was continuously employed for 226 days in a calendar year. Hence, there is no violation under Section 25F of the Act and by considering the said fact elaborately, the Labour Court arrived at a conclusion that there is no violation of Section 25F of the Act. However, in paragraph No.4 of the claim statement, the workman averred that his juniors are still working with the university. Therefore, the termination of the workman is a violation of Section 25G of the Act. It is pertinent to note that there is no written order passed by the university and he was orally terminated by the university, which is contrary to Section 25G of the Act, that was successfully challenged before the Labour



W.P.Nos.6098 & 10776 of 2016

Court. Further, the averment made in paragraph No.4 of the claim statement was not disputed by the university. Though the University claimed that no person junior to the workman was in service, however, the said fact has not been proved by the University, as even according to the University, no records for the employment of the daily wage workman like the present workman is maintained. Such being the case, there is definitely infraction of Section 25-G of the Act. Hence, the Labour Court fairly arrived at a conclusion that there is a violation of Section 25G of the Act and ordered for reinstatement with 50% backwages, which is perfectly in order and the same cannot be interfered with. However, with regard to the further claim of 50% backwages, the workman has not adduced any evidence before the Labour Court with regard to him not being gainfully employed, thereby, based on the available materials, the Labour Court has awarded 50% backwages, which is *per se* sustainable and the same also cannot be interfered with.

11. It appears that the university has paid the wages under Section 17B of the Act to the workman as per the order of this Court dated 27.06.2016 in



W.P.Nos.6098 & 10776 of 2016

W.M.P.No.10947 of 2016. Hence, this Court directs the university to reinstate the workman, if not already reinstated and to pay the 50% backwages after deducting the wages which had already been paid under Section of the 17B of the Act to the workman within a period of four (4) weeks from the date of receipt of a copy of this order.

12. Accordingly, both the writ petitions are dismissed with the above direction. No costs. Consequently, the connected miscellaneous petitions are also dismissed.

19.09.2023

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

To

1.The Presiding Officer,
Central Government Industrial Tribunal-cum-Labour Court,
Chennai.

11/12



WEB COPY



W.P.Nos.6098 & 10776 of 2016

M.DHANDAPANI,J.,

sp

2.The Registrar,
Indira Gandhi National Open University,
Maidan Garhi,
New Delhi – 110 068.

3.The Regional Director,
Indira Gandhi National Open University,
Regional Centre, G.R.Complex,
III Floor, 407-408, Anna Salai,
Nandanam,
Chennai – 600 035.

W.P.Nos.6098 & 10776 of 2016

19.09.2023