



WEB COPY



WP.No.20293 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.20293 of 2023
and W.M.P.No.19644 of 2023

The Management
BBTC, Thay Mudi Estate
Mudis Group,
Valparai,
Coimbatore
Rep by its Manager

...Petitioner

Vs

The General Secretary,
Anaimalai Workers Union,
9/36, New Marker,
Valparai, Coimbatore

...Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of certiorari calling for the records of the Additional Labour Court, Coimbatore in I.D.No.82 of 2020 and quash its award dated 06.09.2022.

For Petitioner : Mr.Anand Gopalan,
for T.S.Gopalan and Co

For Respondent : Mr.K.M.Ramesh, Senior Counsel
for V.Subramani



WP.No.20293 of 2023

management issued a warning letter calling upon her to report for duty, however, the workman had failed to turn up for duty.

3. While so, the respondent union raised a dispute before the Asst.Commissioner of Labour, seeking to engage the workmen into service which ended up in failure. Based on the failure report of the conciliation officer, the Government vide G.O.No.575 dated 12.01.2020 referred the issue to the Labour Court, Coimbatore wherein, the Labour Court has ordered reinstatement with 25% backwages and all attendant benefits on the ground that no materials have been placed by the management as to the allocation of work and no disciplinary action was taken on the workman. Challenging the same, the petitioner management has filed this Writ Petition.

4. Learned counsel for the petitioner management on instructions would submit that the workman was never terminated from service as alleged by her. In fact, the petitioner management called upon the workman to report for duty, however, she refused to report for duty thereby raised a dispute before the Labour Court alleging denial employment which is not sustainable. He further submitted that the petitioner management is ready to



WP.No.20293 of 2023

reinstate the workman into service with continuity of service along with terminal benefits except backwages since the workman has not made any averment with regard to gainful employment during the period in which she was not under employment.

5. On the above contention, this Court heard the learned Senior Counsel appearing for the workman and perused the materials available on record.

6. In view of the stand taken by the management that the management is ready to reinstate the workman, however, is only aggrieved by the award of backwages, as the workman has not proved that he was not gainfully employed during the said period. A perusal of the impugned award reveals that no averments have been made by the 2nd respondent/workman with regard to him not being in gainful employment during the period of dismissal. In the absence of any pleading in the claim petition relating to gainful employment during the non-employment period, the workman is not entitled for any backwages. However, the workman would be entitled to



WP.No.20293 of 2023

continuity of service for the purpose of computation of terminal benefits.

WEB COPY

7. However, in view of the fair submission made by the learned counsel for the petitioner management, this Court is inclined to modify the award passed by the Labour Court in I.D.No.82 of 2020 as follows:-

(i) The award passed by the Labour Court with regard to reinstatement in favour of the respondent/workman is confirmed ;

(ii) The petitioner management is directed to reinstate the workman into service and pay the entire terminal benefits with continuity of service to the respondent/workman.

(iii) However, the respondent is not entitled for any back wages.

8. This Writ Petition stands disposed of with the aforesaid modification and direction. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition stands closed.

20.09.2023

Index : Yes (or) No

Neutral Citation : Yes (or) No

NHS

M.DHANDAPANI, J

NHS



WP.No.20293 of 2023

To
WEB COPY

The General Secretary,
Anaimalai Workers Union,
9/36, New Marker,
Valparai, Coimbatore

W.P.No.20293 of 2023
and W.M.P.No.19644 of 2023

20.09.2023