



WEB COPY



W.P.No.4438 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.4438 of 2017

1.K. Rajendran (Deceased)

2.R. Rani

3.R. Ganesan

4.R. Manoharan

... Petitioners

[P2 to P4 substituted as LR's of deceased sole petitioner vide order dated 25.01.2023 made in WMP.No.34367 of 2022 in WP.No.4438 of 2017 by MSRJ]

Vs.

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

2.The Presiding Officer,
Central Government Industrial Tribunal Cum
Labour Court,
Shastri Bhavan,
Chennai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent in connection with the award pronounced in I.D.No.39 of 2014 dated 19.03.2015 and quash the same insofar as denial of



W.P.No.4438 of 2017

back wages and other attendant benefits to the petitioner and direct the first respondent management to reinstate the petitioner in service with full back wages, continuity of service with all other attendant benefits.

For Petitioners : Mr.M.Silambarasan
for Mr.R. Ganesh Raru

For Respondents : Mr.M. Imthias,
Mr.M. Vijayakumar,
Mr.I. Andul Basith [R1]
R2 - Tribunal

ORDER

It was the claim of the late employee (1st petitioner) that from 16.11.2012, he was prevented from doing any work in the first respondent/Corporation, which amounted to termination of his service. In this connection, when he had raised an Industrial Dispute before the Central Government Industrial Tribunal (CGIT) in I.D.No.39 of 2014, the CGIT had found that when the late employee was not found in the workplace on 16.11.2012, a Memo was issued to him, seeking explanation for his absence on 13.03.2013, which was after the dispute raised by the late employee on 12.02.2013. The CGIT had also found that in view of the admission of the Management's witness - MW1 that the late employee was not allotted any



W.P.No.4438 of 2017

WEB COPY

work though he joined duty on 09.11.2012, it was held that he was denied work after 16.11.2012. On this ground, the CGIT had come to the conclusion that the non-employment of the late employee was an act of termination of his service. In this background, a direction was issued to the first respondent/Corporation, to reinstate the late employee in service with continuity of service and other attendant benefits. However, the back wages was denied. The Management has not challenged the findings rendered by the CGIT in its award dated 19.03.2015. Further, the late employee has now challenged the denial of back wages in the present Writ Petition.

2. The learned counsel for the petitioner submitted that the denial of back wages by the CGIT is unjustified since it was found that the first respondent had terminated his services.

3. On the other hand, the learned counsel for the first respondent/Corporation submitted that after the award was passed, they had reinstated the petitioner back into services on 12.06.2015. With regard to the claim for back wages is concerned, the learned counsel submitted that



W.P.No.4438 of 2017

WEB COPY

the CGIT had given sufficient reasons in the award with regard to the disentitlement of the late employee to claim back wages in the background of the case. He further submitted that there is a delay of two years in claiming the back wages and therefore, the Writ Petition requires to be dismissed in the light of the decision of the learned Single Judge of this Court in the case of '**Shahul Hameed Vs. The Chief Manager, Pandyan Grama Bank & another**' passed in '**WP.(MD).No.7499 of 2015**' dated **18.01.2021**.

4. It is a settled proposition of law that in labour cases, whenever a Labour Court or Tribunal awards an order of reinstatement, the payment of full back wages should accompany the same. Such a proposition has been laid down by the Hon'ble Supreme Court in the case of '**Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and others**' reported in '**2013 (10) SCC 324**'. The relevant portion of the order reads thus:-

..... “38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.4. The cases in which the Labour Court/Industrial



W.P.No.4438 of 2017

Tribunal exercises power under [Section 11-A](#) of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.”

5. In the instant case, the Labour Court had merely observed that the back wages were denied in the background of the case. When the entire award was considered, it is seen that the background of the case reveals that the first respondent had denied the work to the late employee, even though he had joined duty on 09.11.2012. Such a finding was based on the statement of the Management's witnesses - MW1. In this background, the CGIT had come to the conclusion that the denial of work would amount to termination of service. No other reason is found in the background of the case to deny the back wages, to which the late employee is legally entitled to. This apart, the findings rendered by the CGIT has not been challenged



W.P.No.4438 of 2017

by the Management and now, they are estopped from placing reliance on the facts of the case relating to the late employee's absence.

6. Insofar as the two years delay in challenging the award of the CGIT before this Court, the petitioner placed reliance at paragraph 24 in ***Shahul Hameed's case (supra)***, which reads as follows:-

..... “24. Considering the nature of the charges that are held to be proved and also the period back wages was sought to be made and the conduct of the party, in not challenging the original order of reinstatement without back wages coupled with a fact that he has rejoined the office authority without any reserving any right to claim back wages at the time of the joining of reinstatement order and on a cumulative analysis of all the three points above, I find that the petitioner is not entitled for claiming for back wages both on facts and on law....”

7. The aforesaid order does not lay down a law to the effect that when the Writ Petition is filed by challenging the award after a delay of two years, the same is liable to be dismissed. On the other hand, the observations made in paragraph 24, relates to the fact involved in that



W.P.No.4438 of 2017

WEB COPY

particular case and the findings rendered by the learned Single Judge to that case alone. Such a judgment will not have a binding effect to act as a precedents to support the stand taken by the petitioner in this regard. Thus, the ground that the Writ Petition requires to be dismissed on the ground of delay, cannot be sustained.

8. Pending the Writ Petition, the original petitioner had expired and is now substituted by his legal heirs.

9. For all the foregoing reasons, the impugned award dated 19.03.2015 passed in I.D.No.39 of 2014, insofar as it denies the payment of back wages is concerned, is set aside. Consequently, there shall be a direction to the first respondent herein, to forthwith pass orders, disbursing the entire back wages payable to the late employee in favour of his legal heirs from 16.11.2012 to 12.06.2015, within a period of six (6) weeks from the date of receipt of a copy of this order.



WEB COPY



W.P.No.4438 of 2017

M.S.RAMESH,J.

Sni

10. Accordingly, the Writ Petition stands allowed. No costs.

08.02.2023

Speaking/Non-speaking Order

Neutral Citation: Yes/No

Index: Yes/No

Internet: Yes/No

Sni

To

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

2.The Presiding Officer,
Central Government Industrial Tribunal Cum
Labour COurt,
Shastri Bhavan,
Chennai.

W.P.No.4438 of 2017