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W.P.No.28489 of 2019 and W.M.P. Nos. 28208 of 2019 & 8066 and 8067 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.No.28489 of 2019 and
W.M.P. Nos. 28208 of 2019 & 8066 & 8067 of 2020

The Management of
M/s. Enrica Enterprises Private Limited
Post Box No.5, By pass Road,
Poonamallee, Chennai 600 056

... Petitioner

Vs.

G. Manikandan

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records pertaining to the orders dated 12.12.2018 in I.D. No.259 of 2017 on the file of the I Additional Labour Court, Chennai, and to quash the same.

For Petitioner : Mr. Anand Gopalan
for Mr.G. Anandakrishnan
For Respondent : Mr.R. Chakkaravarthy

ORDER

Challenging the orders dated 12.12.2018 passed in I.D. No.259 of 2017 by the Presiding Officer, I Additional Labour Court, Chennai,



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M/s.Enrica Enterprises Private Limited has filed the present Writ Petition.

2. The respondent was appointed as a Trainee Chemist Operator in the Writ Petitioner Management on 05.07.2007 and he was made permanent on 20.07.2009. The Management terminated the services of the respondent vide its notice dated 25.01.2017. Since the conciliation ended in failure the respondent filed an Application under Section 2(A)(2) of the Industrial Disputes Act (hereinafter referred to as "the ID Act") to set aside the order of termination passed by the Management in I.D. No.259/2017 before the I Additional Labour Court, Chennai. The present Writ Petitioner filed a detailed counter before the Labour Court and the Labour Court after analysing the evidence on record allowed the application filed by the respondent vide its order dated 12.12.2018 and directed the petitioner Management to reinstate the respondent with continuity of service and back wages and all other attendant benefits from the date of termination of service till the date of his reinstatement. Aggrieved by the said orders, the present Writ Petition is filed by the Management.



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3. Mr. Anand Gopalan, learned counsel for the petitioner

would contend that since the TASMAC did not place orders for the period from September 2016 to March 2017, they had to terminate 81 staff out of which 80 staff resigned from the post during January 2017. The present respondent alone did not resign his post. His further contention is that once the TASMAC started placing orders with them from March 2017, they gave employment to all the staff members who were previously employed with them and resigned, and the present respondent alone filed a petition under Section 2(A)(2) of the Act requesting the Court to set aside the order of termination passed against him. His contention is that the respondent did not plead and prove that he was not gainfully employed elsewhere. In this regard he relied on the decision of the Hon'ble Supreme Court, in case of ***Kendriya Vidyalaya Sangathan and Another Vs. S.C. Sharma***, reported in (2005) 2 ***Supreme Court Cases 363***, wherein it has been held thus:

16. Applying the above principle, the inevitable conclusion is that the respondent was not entitled to full back wages which according to the High Court was a natural consequence. That part of the High Court order is set aside. When the question of determining the entitlement of a person to back wages is concerned, the employee has to



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show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employers can bring on record materials to rebut the claim. In the instant case, the respondent had neither pleaded nor placed any material in that regard."

Reliance was also placed on the decision of the Apex Court, in the case of ***Rajasthan State Road Transport Corporation, Jaipur Vs. Phool Chand***, reported in ***(2018) 18 Supreme Court Cases 299***, wherein it has been held thus.

"11. In our considered opinion, the Courts below completely failed to see that the back wages could not be awarded by the Court as of right to the workman consequent upon setting aside of his dismissal/termination order. In other words, a workman has no right to claim back wages from his employer as of right only because the Court has set aside his dismissal order in his favour and directed his reinstatement in service.

12. It is necessary for the workman in such cases to plead and prove with the aid of evidence that after his dismissal from the service, he was not gainfully employed anywhere and had no earning to maintain himself or/and his family. The employer is also entitled to prove it otherwise against



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the employee, namely, that the employee was gainfully employed during the relevant period and hence not entitled to claim any back wages. Initial burden is, However, on the employee."

He would contend that payment of back wages is not automatic and in the circumstances he prayed for setting aside the Award passed by the Tribunal.

4. Per contra, Mr.R. Chakkaravarthy, learned counsel for the respondent would contend that the respondent was not paid one month wages as envisaged under Section 25F (a) (b) and (c) of the ID Act and therefore the termination of the respondent itself is bad in law. He would therefore contend that when the termination is illegal and invalid, the respondent is entitled to get full back wages and prayed for dismissal of the present Writ Petition.

5. It is relevant to mention here that in the case of ***Deepali Gundu Surwase V. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and Others*** reported in ***2013 (10) SCC 324***, the Hon'ble Supreme Court had held that in cases of wrongful termination, reinstatement with continuity of service and back wages is the normal rule. The



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relevant portion of the order reads thus:-

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“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 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.”*

5.1. Likewise, in ***Raj Kumar Dixit Vs. Vijay Kumar Gauri Shanker, Kanpur Nagar*** reported in ***2015 (9) SCC 345***, the Hon'ble Supreme Court had held that, once the termination is held to be bad in law, compensation in lieu of reinstatement is impermissible and that such a workman will be entitled for all the benefits. The relevant portion of the order reads as follows:-

19. Awarding compensation to an amount of Rs. 2 lakhs to the workman by the High Court in lieu of reinstatement of the appellant-workman along with 50% back wages is once



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again contrary to the well settled principles of law as has been laid down by this Court in a catena of cases, particularly, the case of Punjab Land Development and Reclamation Corporation. Ltd. v. Presiding Officer, Labour Court,[1] wherein the Constitution Bench held that the order of termination simpliciter has to be held bad in law for non- compliance of the mandatory requirements provided under the Act and further held that the order of termination will be rendered void-ab-initio in law and therefore, the workman is entitled for all benefits for which he is legally entitled to in law.

20. The High Court has exceeded in its jurisdiction in setting aside the Award passed by the Labour Court in awarding reinstatement of the appellant- workman in his post along with 50% back wages which is erroneous in law as the High Court has not noticed the fact that the appropriate Government has referred the dispute to the Labour Court for its adjudication on the points of dispute referred to it. Since, there was non-compliance of the mandatory requirements as provided under the provisions of the Act by the respondent- firm at the time of passing an order of termination against the appellant workman, therefore, the same has been held to be bad in law and as such it should have awarded full back wages to the workman from the date of termination till the date of



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passing the Award unless the employer proves that the workman was gainfully employed during the aforesaid period which fact is neither pleaded nor proved before the Labour Court.

5.2. However, In the decision of the Hon'ble Supreme Court in ***Jagbir Singh vs Haryana State Agriculture Marketing Board and Another reported in (2009) 15 SCC 327***, it has been held thus :

"It is true that earlier view of the Supreme Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in long line of cases, the Supreme Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure.

7. The factors which are relevant for determining the same, inter alia, are:

- (i) whether in making the appointment, the statutory rules, if any, had been complied with;*
- (ii) the period he had worked;*
- (iii) whether there existed any vacancy; and*



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(iv) *whether he obtained some other employment on the date of termination or passing of the award.*

8. *The respondent is a local authority. The terms and conditions of employment of the employees are governed by a statute and statutory rules. No appointment can be made by a local authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in Articles 14 and 16 of the Constitution of India would be a nullity.*

9. *Due to some exigency of work, although recruitment on daily wages or on an ad hoc basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularised.*

10. *Applying the legal principles, as noticed hereinbefore, the relief granted in favour of the appellant by the Labour Court is wholly unsustainable. The same also appears to be somewhat unintelligible.*

11. *The High Court, on the other hand, did not consider the effect of non-compliance with the provisions of [Section 6-N](#) of the U.P. Industrial Disputes Act, 1947. The appellant was entitled to compensation, notice and notice pay.*



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12. It is now well settled by a catena of decisions of this Court that in a situation of this nature instead and in place of directing reinstatement with full back wages, the workmen should be granted adequate monetary compensation. (See M.P. Admn. v. Tribhuban [(2007) 9 SCC 748].)

13. In this view of the matter, we are of the opinion that as the appellant had worked only for a short period, the interest of justice will be subserved if the High Court's judgment is modified by directing payment of a sum of Rs.50,000 (Rupees fifty thousand only) by way of damages to the appellant by the respondent. Such payment should be made within eight weeks from this date, failing which the same will carry interest at the rate of 9% per annum."

5.3. In such circumstances, we have to go into the facts of the present case. It is admitted by the respondent employee that the TASMACH did not place orders to the Writ Petitioner Management from September 2016 to March 2017. Once the orders were placed by the TASMACH from March 2017, the respondent employee was reinstated into service and this was admitted by him during the course of cross examination. Since the TASMACH did not place orders to the Writ Petitioner Management, they were constrained to retrench several staff. However, they did not follow the relevant provisions envisaged under



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Section 25 of the Act and therefore, the termination of service of the employee is totally bad in law.

5.4. It is pertinent to mention here that the respondent employee did not plead that he was not gainfully employed elsewhere during the relevant period and it was not also proved by him by adducing acceptable evidence. The Industrial Tribunal did not take this into consideration while directing the Management to reinstate the employee with full back wages. It is settled law that the initial burden is on the employee to prove that he was not gainfully employed elsewhere. However, the learned counsel for the writ petitioner would contend that the Management is ready to pay 50% of the backwages to the respondent employee.

6. In the circumstances, the Award passed by the Labour Court is partly set aside only with regard to the full payment of back wages. Since the respondent is already reinstated into service and he is continuously working for the petitioner Management, the petitioner Management is directed to pay 50% of the backwages from the date of termination till the date of reinstatement of the respondent/employee. It is



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represented by the learned counsel for the respondent that already 50% of the wages was deposited by the petitioner Management. The same may be withdrawn by the respondent/employee by filing an appropriate application before the concerned Court.

7. With the above observations, the Writ Petition is disposed of. No costs. Consequently connected Writ Miscellaneous Petitions are closed.

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Index : yes/no
Speaking /Non speaking Order



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R.HEMALATHA, J.

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