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W.A.No.2789 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 10-07-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.No.2789 of 2022

The Management,
Iyyappa Enterprises

...

Appellant

-VS-

1.D.Rajendran

2.The Presiding Officer,
III Additional Labour Court,
Chennai – 600 104.

...

Respondents

Appeal is filed under Clause 15 of the Letters Patent against the order, dated 11.10.2022, passed in W.P.No.15527 of 2014 on the file of this Court.

For Appellant : Ms.S.Pavithrashini

For Respondent 1 : Mr.D.Bharathy



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JUDGMENT
(By *S.Vaidyanathan,J.*)

This appeal has been preferred by the appellant-Management, challenging the order of the learned single Judge, dated 11.10.2022, passed in W.P.No.15527 of 2014, in granting back-wages at the rate of Rs.1,200/- per month from 07.04.2003 till 08.11.2012, which should be extended within a period of four weeks from the date of receipt of a copy of the said order.

2. First respondent-employee, who joined the services of the Management, caused an incident of assault on a co-worker, namely, Moorthy, and, thereafter, abandoned the services. As the appellant-employer could not trace the address of the employee, even though a criminal complaint was filed, they did not proceed further. The employee raised an industrial dispute, stating that he had been retrenched from service and that the action of the employer was bad.

3. Before the Labour Court, the Management filed a counter, stating that the employee, after causing an assault on a co-worker, abandoned the services and that they are inclined to establish the charges, by letting in evidence, as could be seen from Paragraph 8 of the Counter Statement, which is extracted below :

"8. With regard to the contentions of the Petitioner in Para 6, the Respondent management expressly reserves the right to lead evidence inter alia on the happenings on 4/4/2003 at the appropriate stage of trial before this Hon'ble Court for a) violent behaviour in the work spot and b)



absconding from service."

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4. On behalf of Management, two witnesses have been examined and employee also let in evidence and examined two workers. The Labour Court came to the conclusion, that, through Exs.R-3 and R-4, charges had been proved and that there was an assault on the co-employee. However, the Labour Court held that the employee would not be entitled to any relief of back-wages. The Labour Court also held that the employer had not produced any documents to show that the Communication, dated 07.04.2023, dismissing the employee, was sent to the employee. In fact, in the exhibits produced before the Labour Court, the said document was also not filed. During the inquiry, the employer stated that they were willing to provide employment to the employee based on the conclusion of the Labour Court that the employee would be entitled to be reinstated without back-wages, but without continuity of service. That is, for the first time, the Labour Court imposed the punishment of denial of back-wages, as no inquiry was conducted against the employee for misconduct, more so after having found that the charges had been proved.

5. Aggrieved over the award of the Labour Court, Writ Petition was filed by the employee, contending that he was entitled to back-wages. The learned single Judge, referring to the decision of the Apex Court in *Deepali Gundu Sarwase v. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and Others*, 2013 (10) SCC 324, held that



the Labour Court, when intended to withhold back-wages, must have rendered a specific finding for such denial. It was also held by the learned single Judge that there was no such statement recorded by the Labour Court and, instead, it recorded the statement made by M.W.1, who expressed his willingness to offer employment to the employee, and thereby awarded reinstatement with continuity of service. The learned single Judge further held, that, for denial of back-wages, there was absolutely no finding recorded by the Labour Court.

6. In the instant case, the employee proceeded on the ground that he had been divested of his duties as he was dismissed from service by an order, dated 07.04.2003, which was not filed before the Labour Court. It is not doubt true that once the non-employment or termination/dismissal is held to be bad, the normal rule is, payment of back-wages. However, recently, the Supreme Court, in a decision rendered on 05.07.2023 in *Ramesh Chand v. Management of Delhi Transport Corporation* in Civil Appeal No.4208 of 2023, in Paragraph 9, has categorically held that even if a Court passes an order of reinstatement in service, an order of payment of back-wages is not automatic, and it all depends on the facts and circumstances of the case.

7. In the case on hand, the employee had not pleaded that he was without employment ever since the date of his non-employment. In the absence of such a plea, the finding of the Labour Court that the employee would not be entitled to back-wages, based on the finding of fact, is perfectly in order. Therefore, the order of the learned



single Judge in directing back-wages at the rate of Rs.1,200/- per month from 07.04.2003 till 08.11.2012, in the present set of facts, is interfered with, as the employee had not pleaded that he was not gainfully employed during that time, more so the employee had not established the fact that the address given by him was available with the employer and that the employer was in default in sending notices or sending any communication to him, after the order of dismissal. The fact that the employer was able to send the Communication, dated 07.04.2003, to the employee clearly shows that the employer was aware of the address of the employee and, for the reasons best known to them, they had not produced the same before the Labour Court. However, on account of the absence of pleading by the employee with regard to his gainful employment, we deny back-wages. The burden initially lies on the employee to prove that he is not gainfully employed during the particular period by making an averment and, thereafter only, the burden shifts on to the employer. Also, the assault on co-employee is a finding of fact, which this Court cannot interfere with.

8. For all the above reasons, this Writ Appeal stands allowed. No costs.

Consequently, the connected C.M.P.No.22653 of 2022 is closed.

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(S.V.N.,J.) (K.R.S.,J.)
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The Presiding Officer,
III Additional Labour Court,
Chennai – 600 104.

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AND
K.RAJASEKAR,J.

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