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W.A.No.1155/2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 06-06-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.No.1155 of 2023

1.The Superintendent,
Railway Mail Service,
RMS 'M' Division,
Chennai-600 008.

2.The Sub Record Officer,
RMS 'M' Division,
Gandhinagar,
Vellore-632 006.

...

Appellants

-VS-

1.Ms.R.Vidhya

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

...

Respondents

Appeal is filed under Clause 15 of the Letters Patent against the order, dated 16.08.2022, passed in W.M.P.No.20698 of 2017 in W.P.No.24359 of 2016, on the file of this Court.

For Appellants : Mr.M.Karthikeyan



JUDGMENT
(By S.Vaidyanathan,J.)

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This appeal has been preferred against the interim order, dated 16.08.2022, passed in W.M.P.No.20698 of 2017 in W.P.No.24359 of 2016, directing the Railways to pay the last drawn wages to the first respondent employee during the pendency of the Writ Petition.

2. The Labour Court has passed the Award as follows :

"15. The claim of the petitioners is not only for reinstatement but also for permanency. As stated, this is not a subject matter of order of reference and cannot be considered. The only question is whether the petitioners can be reinstated in the same position in which they were.

16. In all the identity cards produced, the petitioners are described as outsiders Sorting Assistants. All the petitioners have stated that they were not given any appointment order. It was not based on any recruitment rules they were taken. However, there is a fact that they were ousted from work even when work was available with the respondents. This is clear from the evidence given by MW1. He has stated during his cross examination that even now outsiders are engaged. That shows that work is still available with the Respondents. So the Respondents are in a position to take back the petitioners as Outsiders Sorting Assistants itself. The claim of the petitioners for back wages could not be entertained since they were working on daily wages but paid on monthly basis. If the petitioners are not willing to be reinstated in the same position they are to be compensated as contemplated under Section – 25F of the Industrial Act. Almost all the petitioners have joined during the same period. The compensation payable is fixed as Rs.2.00 lakhs for each of the petitioners. At the option of the petitioners, the respondents are either to engage the petitioners in the same position or to pay compensation of Rs.2.00 lakhs within two months of publication of the award.

17. Accordingly the respondents are directed to re-engage the petitioners or pay compensation @ Rs.2.00 Lakhs to each of the petitioners at their option within two months of the publication of the award. "



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3. Learned counsel for the appellants has not filed the entire award of the Labour Court-cum-Tribunal. Registry of this Court ought not to have numbered the Miscellaneous Petition without the basic order that has been questioned by the party concerned.

4. For the sake of convenience, Section 17-B of the Industrial Disputes Act, 1947, in short, "the Act", is extracted below :

"17B. Payment of full wages to workman pending proceedings in higher courts.- Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be."

5. The main contention of the appellants is that the Management has not filed counter to the miscellaneous petition and that the impugned order has been passed by the learned single Judge.



6. In the present appeal, there is no ground to the effect that the respondent employee is gainfully employed and hence she would not be entitled to last drawn wages. The appellants have also not produced any document with regard to the gainful employment of the respondent employee, whereas, the respondent employee has filed an application being W.M.P.No.20698 of 2017 in W.P.No.24359 of 2016, wherein, in Paragraph No.6, she has categorically stated as follows :

6. I state that I am suffering without employment from the date of illegal termination of work. I am not able get any employment elsewhere. Due to the continuous and prolonged non-employment, I am suffering and struggling for livelihood along with my family members. I do hereby state and declare that I am not gainfully employed and I always ready and willing to report for work as per the Award.

7. When the respondent employee has fulfilled the criteria laid down under Section 17-B of the Act, she would be entitled to last draw wages till the disposal of the Writ Petition or till the date of death before superannuation or till the date of superannuation in case the Writ Petition is not disposed of. Hence, we are of the view that there is no error in the order of the learned single Judge in directing the Management to pay the last drawn wages in terms of Section 17-B of the Act mentioned supra with effect from 13.07.2016. In case the employee is reinstated, she will be entitled to be paid on par with her counterparts.



8. Writ Appeal is, accordingly, dismissed. No costs. Consequently, the connected C.M.P.No.11707 of 2023 is closed.

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Speaking / Non-speaking Order
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(S.V.N.,J.) (K.R.S.,J.)
06-06-2023

To

The Presiding Officer,
Central Government Industrial Tribunal-
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