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W.A. No. 30 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE J. SATHYA NARAYANA PRASAD

W.A. No. 30 of 2023

G.K. Basker

..Appellant

Vs.

1. The Hindustan Institute of
Engineering Technology rep.
By its Registrar,
No.40, G.S.T. Road,
St. Thomas Mount,
Chennai – 600 016.

2. Presiding Officer,
Principal Labour Court,
Chennai.

..Respondents

Prayer: Writ Appeal as against the order dated 08.07.2019 in W.P. No.
869 of 2011.



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For Appellant :: Mr.S.T. Varadarajulu
For Respondents :: Mr.Anand for
 M/s.T.S.Gopalan & Co
 for R1

J U D G M E N T

S. VAIDYANATHAN,J.

AND

J. SATHYA NARAYANA PRASAD,J.

Not satisfied with the order dated 08.07.2019 passed in W.P. No. 869 of 2011 whereby the award of the Labour Court dated 30.06.2010 passed in I.D. No. 368 of 1990 granting reinstatement without backwages and all other attendant benefits was set aside and instead, compensation of Rs.2 lakhs was ordered to be given to the appellant as full and final settlement, the present appeal has been filed.

2. The appellant/employee had joined the service of the 1st respondent institute as a Clerical Assistant on 07.01.1983. With effect from 05.05.1989, the appellant was suspended for instigating the students to



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agitate against the 1st respondent institute on 28.04.1989. It was stated that the employee was using abusive language in the midst of students and he was asked to submit an explanation. Not satisfied with the explanation, enquiry was conducted and the appellant was dismissed from service on 09.06.1989. Aggrieved by the dismissal, a dispute was raised, which after failure of conciliation, was taken up by the Labour Court as I.D. No. 368 of 1990 wherein the appellant/employee examined himself as P.W.1 apart from marking 14 exhibits. On the side of the 1st respondent, one P.V. Ravindran was examined as M.W.1 and 10 exhibits were marked.

3. The Labour Court, after considering the preliminary issue that the domestic enquiry conducted was not fair and proper, taking note of the evidence let in before it, came to the conclusion that the enquiry conducted was not fair and proper and before the Labour Court, the 1st respondent/Management didnot take a plea that they must be given an opportunity to let in evidence afresh, in case the domestic enquiry is set aside and the Labour Court interfered with the order of dismissal from service. In this context, it would not be out of place to refer to the judgment



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of the Hon'ble Apex Court in ***Shankar Chakravarthi V. Britannia Biscuit***

Co.Ltd. And Another reported in ***1979 2 LLJ 194***, wherein it was held that in case, the employer did not take a plea that he should be given an opportunity to let in evidence if the domestic enquiry is held to be not fair and proper, there is no need for the Labour Court to remind the employer and setting aside the original order would be perfect in the eyes of law.

4. Before the Labour Court, the Management had established that the appellant was employed as a Security Guard in M/s. Perigreen Security Pvt.Ltd and drawing a sum of Rs.4500/- and the said fact was not denied by the appellant/workman. However, the Labour Court has interfered with the order of dismissal dated 09.06.1989 setting aside the same and directed the 1st respondent Management to reinstate the appellant without backwages and all other attendant benefits. Aggrieved by the same, the 1st respondent institute filed a writ petition and the learned Single Judge, after taking note of the fact that the appellant/employee was gainfully employed, set aside the award of the Labour Court and instead ordered compensation of Rs.2 lakhs to be paid as full and final settlement, as stated supra.



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5. Though it has been contended by Mr.S.T.Varadarajulu, learned counsel for the appellant that the employee cannot remain idle during the period of non-employment, in all fairness, the employee should have stated before the Labour Court that he was employed on a meagre sum and the amount received by him can be considered towards backwages. Such a stand was not putforth before the Labour Court and it was the employer, who had stated about the details of gainful employment and thereby discharged the burden of proving gainful employment of the employee before the Labour Court.

6. After the order passed by the learned Single Judge, the employee has issued a notice to the employer to comply with the orders of this Court failing which contempt proceedings would be initiated. The employer has complied with the award of the Labour Court as modified by this Court by order dated 08.07.2019 and paid compensation of Rs.2 lakhs, which the employee has received without any protest.



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7. Though Mr.S.T. Varadarajulu, learned counsel for the appellant would agree that the amount has been received, he would submit that he has to get instructions whether it was received under protest or not. However, a reading of the receipt produced before this Court by the employer would make it very clear that the employee has not reserved any right to question that portion of the order in the writ petition modifying the award of the Labour Court into one of compensation. The contention of the learned counsel for the appellant may be acceptable if there was an endorsement made by the employee that the amount is received under protest in the light of the judgment of the Hon'ble Apex Court in ***The Management of Chandra Textiles Private Limited, Coimbatore V. N Palaniswami & Others*** reported in ***1987 1 LLJ 458*** wherein the Court has considered the principle of approbation and reprobation. Since the appellant/employee has accepted the amount without protest on 21.10.2019 and filed the writ appeal only on 13.12.2019, we are of the view that the contention of Mr.S.T.Varadarajulu, learned counsel for the appellant that the amount has been received under protest cannot be accepted.



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8. Hence, we are of the view that the appeal is liable to be dismissed and it is accordingly dismissed. No costs.

9. In case, the employee has not been paid gratuity and other terminal benefits, if any, for the actual service rendered, it shall be paid within a period of 15 days from the date of receipt of a copy of this order with interest @ 10% per annum. However, the interest on gratuity amount shall not exceed the actual gratuity amount in terms of Section 8 of the Payment of Gratuity Act, 1972.

nv

(S.V.N.J.) (J.S.N.P.J.)
01.02.2023

To

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By its Registrar,
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