



W.A.No.923 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

Writ Appeal No.923 of 2021
and CMP.No.14113 of 2021

The Management,
G.C.No.2304,
Elappakkam Primary Agricultural Co-operative Bank,
Elappakkam,
Madhuranthagam,
Chengalpet District.

.. Appellant

Vs.

1. T.Kulothungan
2. The I Additional Labour Court,
Chennai.

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 13.06.2018 in WP.No.20112 of 2004 passed by the Single Judge of this Court.

For appellant : Ms.B.N.Sivagamasundari

For respondents

for R1 : Served - No Appearance

for R2 : Court

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JUDGMENT

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(The Judgment of the Court was delivered by S.VAIDYANATHAN, J)

The present appeal has been preferred as against the order of the learned Single Judge in WP.No.20112 of 2004, dated 13.06.2018 modifying the award of the Labour Court dated 10.03.2004 in I.D.No.439 of 1996.

2. Heard the learned counsel appearing for the appellant. Notice to the first respondent was served, but there is no representation for him.

3. Contending that the employee/first respondent was dismissed from service on 26.02.1998, the Industrial Dispute was raised by him. On failure of conciliation, the matter was adjudicated before the I Additional Labour Court, Chennai in I.D.No.439 of 1996, wherein the Labour Court after analysing the documents produced by the parties held that the dismissal from service on 26.02.1998 was bad and that the employee would be entitled for reinstatement in service with continuity of service with full back wages and all other attendant benefits.

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4. Questioning the said award, the Management had approached this

Court by way of a Writ Petition stating that the Industrial Dispute has been raised with a delay of 8 years. It is an admitted fact that the employee was offered employment after dismissal order. It is the submission of the Management by relying upon the exhibit filed by the petitioner as Ex.W6 that the dismissal order would be ceased to exist, if he would have reported for work.

5. Before the Lower Court, a documentary evidence was filed by the Management in Exs.M18 and M19 to show that the employee was asked to report for work. But the employee has not evinced any interest to report work, but litigated that there is no order of dismissal in the eye of law on the date when the Industrial Dispute was raised by him in the year 1986. The learned Single Judge has modified the award into one of 20% back wages instead of granting entire relief.

6. By going through the award and the pleadings of the workman, more so, the exhibits filed by him would make it very clear that the



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employee has been asked to report for work, but he had failed to do so. The first offer of reappointment was on 07.09.1988 immediately within a period of 7 months from the date of dismissal from service. Even assuming that non-employment is held to be not justified, the employee would be entitled to wages only for a period of 7 months and not beyond that.

7. More so, in the present case on hand, there were several communications written by the Management and the fresh orders of appointment have been given at different places. The respondent/employee did not accept the same and had not reported for work. In principle, we find force in the contention of the Management that there was no cessation of employment on the date when the dispute was raised, apart from the fact that there was a delay on the part of the employee.

8. However, considering the fact that 20% of the amount awarded by the learned Single Judge is very meagre and also the fact that even as per the version of the Management the amount to be paid is not going to exceed Rs.16,000/-, we direct the Management to pay the amount of Rs.16,000/-



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together with interest at 9% per annum from the date of order of the learned Single Judge till deposit. As the employee had worked only for 82 days, he is entitled to Rs.16,000/- (Rupees Sixteen Thousand only) along with other terminal benefits, if any in accordance with law.

9. The appellant/employer is directed to deposit the amount along with interest before the I Additional Labour Court, Chennai to the credit of I.D.No.439 of 1996 within a period of two months from the date of receipt of a copy of this judgment and upon such deposit, it is open to the employee to make necessary application before the Labour Court and receive the amount. Once the amount is remitted, the same shall be kept in a fixed deposit till the amount is received by the employee.

10. With the above observations, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

(S.V.N.J.,) (R.K.M.J.,)
08.02.2023

Speaking Order: Yes / No
pvs

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To
The I Additional Labour Court,
Chennai.



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