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records from the third respondent pertaining to the award dated 8/10/2014 passed in I.D.No.639 of 2005 and to set aside the portion of the Award depriving the reinstatement and awarding compensation in view of reinstatement and consequently direct the first respondent to reinstate the petitioner into the service with backwages and continuity of service with all other attendant service benefits.

For petitioners ... Mr.T.P.Sekar

For respondents ... For R.1 – No appearance

For R.2- Mr.K.Murthy

ORDER

This writ petition is filed seeking to quash the Award dated 8/10/2014 passed in I.D.No.639 of 2005, wherein the petitioner was deprived of reinstatement and was awarded compensation in lieu of reinstatement.

2. The facts in brief as per the records are that the petitioner was appointed as a Fitter at first respondent Management in the Processing Division on 5/5/1995 with a monthly salary of Rs.2,560/-. The first respondent Industry has entered into an agreement with the Union under Section 12 (3) of the Industrial Disputes Act on 13/10/2000. However,



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the terms of the said agreement have not been complied with. The petitioner being Secretary of the Union has initiated legal proceedings and filed a petition under Section 33 (c) of the Act, claiming benefits, including the arrears of salary in accordance with 12 (3) agreement. Aggrieved by the same, allegations were made against him with eleven charges. An Enquiry Officer was appointed and on conclusion of enquiry, report was submitted stating that all the charges except the charges 6 to 8 are proved against the petitioner. Basing on the said report, the petitioner was terminated from service with effect from 30/4/2003.

3. The petitioner has raised an Industrial Dispute before the Assistant Commissioner of Labour Conciliation – II, Chennai, aggrieved by the order of termination dated 21/12/2004, a failure report has been filed on 29/3/2005 by the Assistant Commissioner of Labour, as the first respondent has not cooperated with the conciliation proceedings.

4. The petitioner has preferred an Industrial Dispute before the third respondent I Additional Labour Court, Chennai, in I.D.No.639 of 2005.

A preliminary issue has been framed to determine as to whether



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domestic enquiry conducted by the first respondent Management was fair and proper and whether the principles of natural justice have been followed. The petitioner was examined as W.W.1 and got marked 7 exhibits. On behalf of the first respondent, Mr.Anil Bhadari was examined as M.W.1 and six documents were marked. On completion of enquiry, an Award has been passed by the labour Court, setting aside the order of termination dated 30/4/2003, however, declined to reinstate the petitioner by holding that the first respondent Company was seized by the second respondent/IDBI Bank Limited and directed the first respondent to give one month notice and salary within fifteen days. Aggrieved by the said order of the Tribunal in respect of not directing the petitioner to be reinstated by the first respondent, this writ petition is filed.

5. The first respondent has not filed counter affidavit. However, counter filed before the labour Court is part of the records.

6. Heard Mr.T.P.Sekar, learned counsel for the petitioner and Mr.K.Murthy, learned counsel for the second respondent. There is no representation on behalf of the first respondent.



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7. The short point that arises for consideration is whether the labour Court is justified in not directing the first respondent to reinstate the petitioner, having found that termination of the petitioner is irregular.

8. As a normal Rule, once termination found to be irregular, the person who was terminated should have been directed to be reinstated unless specific reasons are explained.

9. The learned counsel appearing for the petitioner has cited the following judgments:-

(i). THE POST MASTER GENERAL CHENNAI CITY REGION, CHENNAI & OTHERS Vs. M.PANDIYAN & ANOTHER (CDJ 2023 MHC 5034)

(ii). P. HARI Vs. THE MANAGEMENT, BHARAT TEXTILES & PROOFING INDUSTRIES LIMITED, GUMMIDIPOONDI TALUK (I.D.No.446 OF 2017)



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10. In the case on hand, the claim of the petitioner is that he was illegally terminated, thereby, he has raised Industrial Dispute No.639 of 2005 and the said petition was allowed holding that the termination of the petitioner by the first respondent is illegal and therefore, the petitioner should have been in normal course reinstated. However, the labour Court while setting aside the termination order passed by the Management against the petitioner dated 30/4/2003 has not ordered for reinstatement, since the factory of the first respondent was seized by the second respondent.

11. On a careful perusal of the Award of the labour Court which is questioned before this Court, it is clear that the loan borrowed by the first respondent from the second respondent has not been paid, thereby, second respondent has seized the factory of the first respondent. The petitioner can be ordered to be reinstated only when the first respondent is running an Industrial unit. If at all the first respondent is not running the industrial unit and if the said unit has been seized by the second respondent, there will not be any opportunity to the first respondent to reinstate the petitioner and thereby, the labour Court has justified in not ordering the reinstatement of the petitioner.



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12. The learned counsel appearing for the petitioner has filed 'No Dues' Certificate issued by the second respondent IDBI Bank to the effect that the term loan of Rs.480 lakhs sanctioned under the Project Finance Scheme (Loan Agreement dated May 31, 1994, was fully repaid by the first respondent under One Time Settlement and that an amount of Rs.260 lakhs were paid to the second respondent and there were no dues in respect of loan by the first respondent to IDBI Bank.

13. According to the learned counsel for the petitioner though order was passed by the labour Court, on 8/10/2014, it was not informed to the labour Court about the repayment of loan amount by the first respondent to the second respondent Bank and that release of Industrial unit of the first respondent by the second respondent thereby, the labour Court has passed the order not to reinstate the petitioner. Once seizure was withdrawn on account of repayment of loan, petitioner should be directed to be reinstated. The entire loan amount was paid in 2007, however, this fact was not brought to the labour Court either by the petitioner or by R.1.



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14. The learned counsel appearing for the petitioner has cited a decision reported in (CDJ 2023 MHC 5034), ***THE POST MASTER GENERAL, CHENNAI CITY REGION, CHENNAI & OTHERS Vs. M.PANDIYAN & ANOTHER***, the relevant portion of the said judgment is as follows:-

“19. Therefore, in 1960s and 70s reinstatement of service and payment of full back wages on dismissal order having been found invalid would follow as a matter of course. But there is a change in the legal approach now. In general, the workman who is terminated from service and willing to get back wages is expected to plead and make statement before the Court of first instance that whether he is gainfully employed or not. On the other hand, in such a case, the employer has to plead, by cogent evidence to prove that the workman was gainfully employed and he was getting wages equivalent to the wages he was drawing prior to the termination from service. These principles are based on Section 101 of the Evidence Act. The settled law is that one



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who pleads has to prove. In fact, it is possible to prove the positive fact. If the workman states that he is not gainfully employed, then the onus lies on the employer who has to plead and prove that the employee was gainfully employed.

20. So we are of the considered opinion that the concurrent findings of both labour Court and this Court to the effect that the order of removal of service of the workman is bad in law owing to insufficiency of evidence is affirmed and the workman is ordered to be reinstated with 50% back wages and other attendant benefits.”

15. Basing on the above, it is to be examined as to whether the petitioner has pleaded before the labour Court that he was not gainfully employed. The petitioner has filed written arguments before the labour Court. On going through the same, nothing is found specifically by the petitioner to the effect that he was not gainfully employed, subsequent to his termination even though he has claimed reinstatement with backwages.



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16. In the impugned order, the labour Court did not go into the aspect as to whether the petitioner was gainfully employed and whether backwages can be ordered or not. Therefore, considering the principle that unless the petitioner makes out a specific case that he was not gainfully employed, this Court is not inclined to consider the grant of backwages.

17. In view of the above, **writ petition is allowed**, directing the first respondent to reinstate the petitioner to the same position, where he was working at the time of termination and grant service benefits with continuity of service without monetary benefit. No costs.

23/1/2024

Index: Yes/No

Neutral Citation: Yes/No



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1. The Presiding Officer
I Additional Labour Court
Chennai.

Dr.D.NAGARJUN,J



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mvs.

Pre-delivery order made in
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23/1/2024