



W.P.No.9531 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED : 21.11.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.9531 of 2006

Sri Bhagavathy Fancy Stores,
Represented by its Proprietor
Kamalesh H.Metha (deceased)

1. Pratik K.Mehta
2. Vivek K.Mehta .. Petitioners

(Petitioners substituted in the place of deceased
Kamalesh H.Metha, as per order, dated 11.11.2024
in W.P.No.9531 of 2006)

Versus

1. The Presiding Officer,
1st Additional Labour Court,
Chennai.
2. G.Murugan .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India,
pleased to issue a Writ of Certiorari after calling for the concerned records
relating to the award, dated 02.12.2003 in I.D.No.546 of 2001 passed by the
first respondent and quash the same.

For Petitioners : Mr.M.Gnanasekar

For Respondents : R1 - Court



WEB COPY



W.P.No.9531 of 2006

: R2 - G.Murugan, Party-in-person

ORDER

This Writ Petition is filed challenging the award of the I Additional Labour Court, Chennai made in I.D.No.546 of 2001, dated 02.12.2003.

2. The brief facts leading to the filing of this Writ Petition are that the second respondent/workman joined the service of the management on 16.07.1999 and started working as sales boy for a monthly salary of Rs.1,250/- besides other allowances. On 30.10.2000, he was orally directed to leave the work after deducting the advance of Rs.300/-. He was not even informed about the reason for his termination. Therefore, he raised a dispute, but, no solution was arrived at in the conciliation. Therefore, the petitioner made a claim before the first respondent.

3. The management remained *ex parte* before the first respondent and the second respondent examined himself as W.W.1 and upon considering his evidence, the first respondent found that the non-employment of the second respondent as unjustified and directed the petitioner management to



W.P.No.9531 of 2006

WEB COPY

reinstate the second respondent with continuity of service with full back-wages. The said award is now challenged by the management.

4. The award is challenged on the ground that the master and servant relationship is not at all proved and the award is perverse. It can be seen that the award is passed after due notice to the management and the management failed to appear and resist the claim. When the workman entered the box and examined himself as W.W.1, the award cannot be said to be perverse and as such, the primary attack on the award cannot be countenanced.

5. *Mr.M.Gnanasekar*, learned Counsel for the petitioners would submit that the management is a proprietorship concern and the proprietor had passed away long back and it is only the legal heirs who are representing him and the second respondent only worked for a short duration i.e., for a period of 17 months and now, the litigation is ongoing for the past 24 years. Therefore, that should be taken into account for the purpose of considering the back-wages.



W.P.No.9531 of 2006

WEB COPY

6. The second respondent/workman is appearing as party-in-person before this Court.

7. The workman made a calculation of the wages which comes to Rs.3,60,000/-, the bonus at Rs.30,000/-, compensation at Rs.15,000/- and the interest at Rs.56,700/-, in all totaling to Rs.4,61,700/-. He would submit that already, a sum of Rs.56,000/- was deposited which he was permitted to be withdrawn and as on date, he will be entitled for a total benefit of Rs.4,05,700/-. At this distant point of time, there is no question of reinstating the workman, especially, the original proprietor himself died pending the Writ Petition. This Writ Petition is pending from the year 2006.

8. Considering the overall facts and circumstances of the case, and considering the period of work and the period of dispute in this regard, I am of the view that instead of approving the award of the I Additional Labour Court for reinstatement with back-wages, the workman can be awarded atleast 50% of the due and the same would be the amount of just compensation in this case considering the formula laid down by the Hon'ble Supreme Court of India in ***O.P.Bhandari Vs. Indian Tourism Development***



W.P.No.9531 of 2006

WEB COPY

Corporation Ltd., and Ors.¹, and also the subsequent judgments, wherein, towards the loss of future employment also, the Court considered and in toto, I am of the view that instead of the original relief of reinstating the back-wages, a sum of Rs.2,00,000/- shall be paid to the workman as compensation. The said amount shall be paid within a period of four weeks from the date of receipt of a copy of this order. Failing which, the said amount shall be paid with further interest at the rate of 9% per annum from today.

9. In view thereof, this Writ Petition is partly allowed on the following terms:-

(i) The impugned award, dated 02.12.2003 in I.D.No.546 of 2001 passed by the first respondent is partly modified inasmuch as the relief granted to the workman i.e., instead of reinstatement with back-wages, apart from the above sum of Rs.56,000/- which was already deposited, another sum of Rs.2,00,000/- shall be paid to the respondent workman as compensation within a period of four weeks from the date of receipt of a copy of this order;

¹ AIR 1987 SC 111



W.P.No.9531 of 2006

WEB COPY

(ii) If the amount is not paid within a period of four weeks, then, the said amount shall be paid along with further interest at the rate of 9% per annum from today;

(iii) There shall be no order as to costs.

21.11.2024

Neutral Citation : yes
grs

To

The Presiding Officer,
1st Additional Labour Court,
Chennai.



WEB COPY



W.P.No.9531 of 2006

D.BHARATHA CHAKRAVARTHY, J.

grs

W.P.No.9531 of 2006

21.11.2024