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WA.No.1762 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2024

CORAM

**THE HONOURABLE MRS. JUSTICE J. NISHA BANU
&
THE HONOURABLE MR.JUSTICE P.DHANABAL**

W.A.No.1762 of 2024

G. Manikandan

Vs.

.... Appellant

The Management of
M/s.Enrica Enterprises Private Limited,
Post Box No.5, By Pass Road,
Poonamallee, Chennai 600 056
represented by its Director
Mr.R.Raghuram

.... Respondent

Writ Appeal filed under clause 15 of the Letters Patent Act to set aside
the order of the learned Single Judge passed in W.P.No.28489 of 2019, dated
07.11.2023, regarding denial of 50% back wages.

For Appellant : Mr.R.Chakkaravarthy

For Respondent : Notice Served, none appeared



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JUDGMENT

[Judgment of the Court was delivered by J. Nisha Banu, J.]

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The appeal has been filed by appellant/employee challenging the denial of 50% of backwages to him from the date of termination till the date of his reinstatement by the order passed in W.P.No. 28489 of 2019, while the Labour Court has awarded full payment of back wages.

2. The brief facts of the case of the appellant are as follows:

The appellant was appointed as a trainee chemist operator on 05.07.2007 in the respondent company which is engaged in the Indian Made Foreign Liquor Manufacture and subsequently he was appointed as a permanent employee from 20.07.2009. While working as such, he was terminated by the respondent management by a termination notice dated 25.01.2017. The appellant filed Claim Petition before the Labour Court. The Labour Court passed an award dated 12.12.2018, setting aside the termination order and directed the respondent to reinstate the appellant with continuity of service with backwages and all other attendant benefits from the date of termination till the date of reinstatement. The respondent Management filed a writ petition in W.P.No.28489 of 2019 challenging the award passed by the Labour Court. The Writ Court disposed of the writ petition by partly setting aside the award only with regard to full payment of backwages and directing the Management to pay



50% backwages from the date of termination till the date of reinstatement of the respondent. Challenging the denial of 50% of backwages, the appellant has preferred the Appeal.

3 (i) Learned counsel for the appellant would state that the appellant was terminated from service by way of termination notice dated 25.01.2017 without giving any show cause notice or any other prior notice. The appellant was terminated even without following any mandatory procedures of law and Section 25F of I.D. Act and without following the principles of natural justice. He filed Industrial Dispute in I.D.No.259 of 2017. Pending the said I.D., he was given fresh employment from 01.03.2018 and he joined in the above fresh employment without prejudice of his rights in the pending I.D.No.259 of 2017. Subsequently, an award was passed in favour of the appellant directing the respondent Management to reinstate the appellant with continuity of service and directed to pay backwages and all other attendant benefits from the date of termination of service to the date of reinstatement.

(ii) Learned counsel would further state that the appellant's termination is illegal and not followed due process of law. Other workers who resigned their job also received gratuity, 3 months additional salary, arrears of bonus and other benefits and they were reappointed from 09.03.2017 and given 5 times



increments and now they are receiving the double the amount when compared to appellant's salary. The writ court failed to note that the respondent had given fresh employment to the appellant only from 01.03.2018 and not given any increment till date. The full backwages was only from the period of termination till the date of reinstatement.

(iii) Learned counsel would further state that the non-pleading of not gainfully employed elsewhere by the appellant will not affect the appellant's statutory right of getting full backwages, when the termination itself was found illegal. Therefore, the respondent has to comply with the mandatory requirements provided under section 25F, 25N and 25H of the Act. It is well settled that in case of wrongful termination, reinstatement with continuity of service and backwages is the normal rule as held by the Hon'ble Apex Court in *Deepali Gundu Surwase V. Kranti Jnior Adhyapak Mahavidyalaya* and others reported in *2013 (1) SCC 324*. Therefore, he would pray to allow the writ appeal.

4. Heard the learned counsel for the appellant/employee and perused the materials available on record. Though notice was served on the respondent, there is no representation for the respondent either in person or through counsel.

5. The only issue to be decided in this appeal is whether the appellant is



entitled to full backwages or 50% backwages.

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6. Admittedly, the appellant was terminated from service by way of termination notice dated 25.01.2017 without giving any show cause notice or any other prior notice and without following the principles of natural justice. Therefore, the appellant raised Industrial Dispute in I.D.No.259 of 2017. Pending the said I.D., he was given fresh employment from 01.03.2018 and he joined in the above fresh employment without prejudice to his rights in the pending I.D.No.259 of 2017. Subsequently, an award was passed in favour of the appellant directing the respondent Management to reinstate the appellant with continuity of service and directed to pay backwages and all other attendant benefits from the date of termination of service to the date of reinstatement. The writ court has given a finding that the employee did not plead that he was not gainfully employed elsewhere during the relevant period and it was not proved by acceptable evidence and therefore, set aside the award only in respect of payment of full backwages and directed to pay 50% backwages while confirming the award in all other aspects.

7. It is to be noted that non-pleading of not gainfully employed elsewhere will not affect the appellant's statutory rights in getting full backwages as the termination of the appellant itself was found illegal. Further, this Court in the



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case of *A.Surendra Kumar vs. The Labour Court, Coimbatore and others*

reported in *MANU/TN/2944/2022*, by relying upon the decisions rendered by the Hon'ble Apex Court in the cases of *Deepali Gundu Surwase V.Kranti Junior Adhyapak Mahavidyalaya (D.ED) and others (MANU/SC/0942/2013)* and *Raj Kumar Dixit Vs. Vijay Kumar Gauri Shanker, Kanpur Nagar (MANU/SC/0603/2015)* has held that once the termination is held to be illegal, the employee would be entitled for payment of full back wages.

8. In the present case, the termination was made without complying with Sections 25F, 25N and 25H of the I.D.Act. The appellant was terminated from service on 25.01.2017. The other employees, who resigned their job were given all benefits and were reappointed from 09.03.2017. However, the appellant who was not willing to resign the job, was terminated from service and thereafter given fresh employment only on 01.03.2018 pending industrial dispute proceedings and he was also not given any increment till date. It is the grievance of the appellant that while other staff members were given 5 increments subsequently and receiving double the amount comparing to the appellant's salary, the respondent management has not given him any increment till date. The learned Judge had reduced the backwages as 50% mechanically without appreciation of law and facts.



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9. Therefore, taking into account that the appellant's termination as illegal as per the principles laid down by the Hon'ble Supreme Court *Deepali Gundu Surwase V.Kranti Junior Adhyapak Mahavidyalaya (D.ED) and others (MANU/SC/0942/2013)*, we are of the view that the appellant/employee is entitled for full payment of back wages from the date of termination till the date of his reinstatement. The order passed by the learned Single Judge only with regard to payment of 50% of back wages is hereby set aside. The respondent/management is directed to pay full back wages to the appellant from the date of termination till the date of reinstatement. Accordingly, the Writ Appeal is allowed. No costs.

[J.N.B.,J.] [P.D.B.,J.]
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Index: yes/no
Internet:yes/no
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J. NISHA BANU, J.



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**&
P. DHANABAL, J.**

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