



W.P. Nos.6057 of 2006 and 14850 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-12-2024

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THE HONOURABLE MR JUSTICE D.BHARATHA CHAKRAVARTHY

W.P. Nos.6057 of 2006 and 14850 of 2016

& W.M.P.No.12981 of 2016

W.P.No.6057 of 2006:

1.The Management of Tamilnadu Water
Supply and Drainage Board
31, Kamarajar Salai
Chepauk, Chennai – 600 005.

2.The Management of Water and
Sewerage Board,
Tiruvallur – 601 001.

PETITIONER(S)

Vs.

1.M.Kumar
2.1st Additional Labour Court,
Chennai – 600 104.

RESPONDENT(S)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of certiorari to call for the records made in impugned award I.D.No.181 of 1997 dated 18.08.2004 on the file of the 1st Additional Labour



W.P. Nos.6057 of 2006 and 14850 of 2016

Court, Chennai, the 2nd respondent herein.

For Petitioner(s):

Mr.S.Ravindran, Senior Counsel
for Mr.Sudharshana Sunder

For Respondent(s):

Mr.S.Ravi for R1
For R2 – Labour Court

W.P.No.14850 of 2016:

1.The Managing Director,
Tamilnadu Water Supply and Drainage Board
31, Kamarajar Salai
Chepauk, Chennai – 600 005.

2.The Management of Water and
Sewerage Board,
Tiruvallur – 601 001.

PETITIONER(S)

Vs.

1.M.Kumar
2.1st Additional Labour Court,
Chennai – 600 104.

RESPONDENT(S)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of certiorari to call for the records of the 2nd respondent made in order dated 08.03.2016 in I.A.No.384 of 2015 in C.P.No.8 of 2006 on the file of the I Additional Labour Court, Chennai.

For Petitioner(s):

Ms.Mekhala



W.P. Nos.6057 of 2006 and 14850 of 2016

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For Respondent(s):

Mr.S.Ravi for R1

For R2 – Labour Court

COMMON ORDER

These two Writ Petitions are connected to each other and as such are taken up and disposed of by this common order.

2. The brief facts leading to the filing of these Writ Petitions are that the Workman – *M.Kumar* claimed to be working as a Watchman in the petitioner – Management from 1982. It is his claim that in the year 1990, he was terminated from service. No procedure as per the Section 25 (F) of the Industrial Disputes Act (in short referred to as 'the Act') was followed. No domestic enquiry was also conducted. Therefore, he raised a dispute with reference to his non-employment and upon failure of conciliation, he filed a claim petition under Section 2(A) (2) of the ID Act, which was taken on file as I.D.No.181 of 1997.

3. The claim was resisted by the Management on the ground that there was no record to show that the Workman was working as a Watchman in the



W.P. Nos.6057 of 2006 and 14850 of 2016

Gummidipoondi Sub Division, during the relevant period. On the strength of the said averments, before the Labour Court, the Workman examined himself as W.W.1 and exhibits W.1 to W.11 were marked. On behalf of the Management, one Arunachalam was examined and exhibit M.1, the copy of the nominal muster roll was marked.

4. The Labour Court after the appreciation of the evidence, found that the said *Kumar* was very much a Workman, who was working as Watchman from 1982 to 1990 and thus, after finding that his non-employment was not as per the provisions of the ID Act, ordered reinstatement with continuity of service and back wages. Aggrieved by the same, the petitioner – Management has filed W.P.No.6057 of 2006.

5. When the matter was listed for hearing, the same was allowed to be dismissed for default and thereafter when the petitioner filed an application for restoring the same, it was restored, on condition to deposit a sum of Rs.1,11,540/- which was subsequently deposited and was also permitted to be



W.P. Nos.6057 of 2006 and 14850 of 2016

withdrawn by the Workman and the matter was pending. While so, the Workman had filed C.P.No.8 of 2006, in which also originally, the Management was set as *exparte*. The entire benefits were also computed by an order dated 23.08.2010. Thereafter, I.A.No.384 of 2015 was filed by the petitioner -Management to set aside the *exparte* order passed in the computation petition. The same was dismissed. Aggrieved by the same, the Management has filed W.P.No.14850 of 2016.

6. While entertaining the said Writ Petition, conditional order was passed directing the Management to deposit a sum of Rs.3.5 lakhs. Aggrieved by the same, the Management preferred W.A.No.706 of 2016 in which the amount was reduced as Rs.2.5 lakhs. Accordingly, the Management has deposited and the same is lying to the credit of E.P.No.102 of 2015. Under these circumstances, both these Writ Petitions are taken up for hearing.

7. *Mr.S.Ravindran*, learned Senior Counsel appearing on behalf of the Management would firstly submit that the Labour Court, did not consider the



W.P. Nos.6057 of 2006 and 14850 of 2016

fact that there was a huge delay on the part of the Workman even to raise the dispute. When the Workman had only produced records in respect of intermittent period, the Labour Court ought not to have found as if he was continuously working. The learned Senior Counsel would primarily argue on the point of back wages. By relying the Judgment of the Supreme Court of India in ***Management of Regional Chief Engineer, Public Health and Engineering Department, Ranchi Vs. Their Workman, represented by District Secretary***¹, he would submit that there must be a pleading as to the fact that he was not gainfully employed elsewhere. Further, he would submit that the period of service and the period of litigation and the time taken by the Workman, i.e., seven years to raise an industrial dispute have not been considered by the Labour Court.

8. Per *contra*, the learned counsel for the Workman would submit that it is the case of the Management that the said *Kumar* was not at all a Workman and once the Workman has produced ample evidence in the form of Exhibits W.1 to W.11, evidencing his employment, the Labour Court is right in awarding reinstatement with back wages. For no fault of the Workman, he was not

¹ (2019) 18 SCC 814



W.P. Nos.6057 of 2006 and 14850 of 2016

employed. Therefore, the full back wages has rightly been awarded.

9. I have considered the rival submissions made on either side and perused the material records of the case.

10. In as much as the award of the Labour Court ordering reinstatement of the Workman is concerned, I am of the view that the Workman has produced evidence that he was working as Watchman and that he was non employed with effect from 02.07.1990 and in the absence of any domestic enquiry or payment of compensation under Section 25 (F) of the Act, no exception whatsoever can be taken in respect of the finding of the Labour Court, in as much as it orders reinstatement of the Workman. But the reinstatement is no more in question as the Workman is said to have attained the age of superannuation by September 2015.

11. As far as the back wages is concerned, as rightly pointed out by the learned Senior Counsel appearing on behalf of the Management, it is not



W.P. Nos.6057 of 2006 and 14850 of 2016

automatic that the Court will have to take into consideration, the factors, that is the pleading of the Workman with reference to an alternative employment, the period of service, the period of litigation and the overall facts and circumstances of the case.

12. The Labour Court was right in forming an opinion that the Workman was wrongly non-employed, however, while considering the relief that has to be given to the Workman, it can be seen firstly, that the Workman has also reached the age of superannuation long back in September 2023. Under the petitioner – Management, he worked on a non muster roll basis. His non-employment was from the year 1990 and after making representation to the Chief Minister's Cell, the dispute was started in the year 1997. Therefore, considering the overall circumstances, that is, the period of service was only from 1982 to 1990 and the rest of the period is only in litigation, I am of the view that this is a fit case where this Court can order compensation in lieu of reinstatement with back wages. Considering the question of compensation, already the Workman was permitted to withdraw Rs.1,11,540/-. The Management has deposited another



W.P. Nos.6057 of 2006 and 14850 of 2016

sum of Rs.2,50,000/- pursuant to the direction of this Court dated 22.01.2018 passed in W.A.No.706 of 2016.

13. Therefore, instead of reinstatement with back wages, considering the huge efflux of time, the Workman should be granted the relief immediately. This Court feels that the total compensation shall be the said sum of Rs.1,11,540/- and the sum of Rs.2,50,000/-, in all totalling Rs.3,61,540/-. Since the Workman has already withdrawn a sum of Rs.1,11,540/-, he is entitled to withdraw the remaining sum of Rs.2,50,000/- along with accrued interest if any.

14. In view thereof, these Writ Petitions are partly allowed on the following terms,

(i) The award of the Labour Court dated 18.08.2004 in I.D.No.181 of 1997 would be valid in as much as it finds the non-employment of the petitioner as illegal;

(ii) As far as the relief granted to the Workman, the award is set aside, instead of reinstatement with back wages and continuity of service, a total sum



W.P. Nos.6057 of 2006 and 14850 of 2016

of Rs.3,61,540/- is awarded as compensation. Of the said sum, the Workman has already withdrawn a sum of Rs.1,11,540/-, the balance amount of Rs.2,50,000/- lying to the credit of the E.P.No.102 of 2015 along with accrued interest, if any, shall be paid out to the Workman, without insisting on any formal application, only upon filing a memo along with a copy of this order;

(iii) the compensation now determined by this Court shall be received by the Workman as full quit towards all his claims;

(iv) Since the Award of the Labour Court itself modified by this Court, the order of the Labour Court in C.P.No.8 of 2006 shall stand automatically set aside and nothing further requires to be adjudicated in W.P.No.14850 of 2016;

(v) No costs. Consequently, the connected miscellaneous petition is closed.

09-12-2024

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Neutral citation : No

To

The 1st Additional Labour Court,
Chennai.

Page 10 of 11



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W.P. Nos.6057 of 2006 and 14850 of 2016

D.BHARATHA CHAKRAVARTHY, J.

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W.P. Nos.6057 of 2006 and 14850 of 2016

09.12.2024

Page 11 of 11