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Cont. P.No. 1171 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE **D.BHARATHA CHAKRAVARTHY**

Cont.P.No.1171 of 2022

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|----|----------------------|-----------------|
| 1. | P. Loganathan (died) | |
| 2. | L. Thangaraj | |
| 3. | Bharathi | ... Petitioners |
| | | |
| | | Vs |
| 1. | R. Selvasekaran | |
| 2. | Arulperumjothi | ... Respondents |

Prayer: Contempt Petition filed under Section 11 of Contempt of Courts Act, 1971 praying to punish the respondents for willfully disobeying the order passed in W.P.No. 28549 of 2014, dated 22.07.2021.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.P.Subramaniam
Standing Counsel

For EPFO : Mr.C.Kulandaivel

ORDER

Heard, Mr.S.N.Ravichandran, the learned counsel appearing on behalf of the contempt petitioner, Mr.P.Subramaniam, learned standing counsel



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appearing on behalf of the respondents/contemnor and Mr.C.Kulandaivel, the learned counsel appearing on behalf of the EPFO.

2. In this case, this present contempt petition is filed complaining willfull disobedience of the order dated 22.07.2021 made in W.P.No.28549 of 2014.

3. The brief facts leading to the filing this contempt petition are that in the year 1984, the workman applied for leave for one month from 01.02.1984 to 29.02.1984 and thereafter even after expiry of leave, kept on applying for further leave but didn't report for work. Under the said circumstances, an order of termination was passed on 11.05.1985 on the ground that even the charge memorandum sent to him, was returned to the management with an endorsement he left India. Even though, he was terminated from service in the year 1985, the workman raised a dispute in the year 2002. By an award dated 05.08.2010 made in I.D.No.151 of 2002, the Labour Court considered the issue and passed the following order and the operative portion which is contained in paragraph 15 is extracted hereunder for ready reference:-



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“15. In the result, this industrial dispute is allowed in part, and the petitioner is entitled for reinstatement with continuity of service only on 09.08.1995 on the basis of last pay drawn to be taken as pay as on 09.08.1995 for the purpose of making (enabling) the petitioner to entitle the terminal benefits and pensionary benefits if any from the respondent/management, and the petitioner is not entitled to the backwages and other benefits and an award is passed accordingly. This reinstatement with continuity of service as above is ordered only to enable the petitioner to get the terminal benefits and pensionary benefits if any from the respondent/Management. No costs.”

4. Aggrieved thereby, the management filed W.P.No.28549 of 2014. By an order dated 22.07.2021, the same came to be disposed of. This Court considering the absence of the workman from service in Para 6 and thereafter considered what is being granted by the Labour Court and further restricted the benefits in Paragraph No. 8. It is essential to extract Paragraph Nos. 6, 7 and 8 of the said judgment which reads as follows:

“6. In the present case on hand, the employee has failed to produce the passport pertains to him bearing passport No. R159427 dated 13.04.1981 and other old passports, which creates doubt that the employee left India for better employment and that he had not approached the Labour Court with clean hands. The Labour Court has held that the workman has not



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produced the satisfactory evidence to support his case. Further, when the documents are in custody of the workman, he is bound to produce the same. It is a clear case of suppression of fact by the employee. Had he been alive, certainly this Court would have invoked Sections 195 r/w 340 of Cr.P.C. to enquire about false affidavit, which attracts Sections 191 of I.P.C. for punishment under Section 193 of I.P.C. The Labour Court have also held that it cannot be said that there was no misconduct on the part of the workman and that misconduct by the workman cannot be said to be not proved. That apart after the dismissal order dated 11.05.1985, the employee has sent an application only on 09.08.1995 i.e., after a decade to the Special Cell of Honourable Chief Minister of Tamil Nadu with copy to the Chairman of the Petitioner-Management, which had been ultimately resulted in Industrial Dispute.

7. The Labour Court held that employee would be entitled for reinstatement with continuity of service only on 09.08.1995 for the purpose of enabling the workman to entitle terminal benefits and pensionary benefits, if any from the Management and not entitled to backwages and other benefits.

8. As the legal heirs of the deceased workman were already brought on record and the employee is no more, the question of reinstatement does not arise and as already held by the Labour Court, the employee would be entitled to the terminal benefits and pensionary benefits, if any till date of dismissal and not after that. The benefits if any, shall be extended to the legal heirs of the deceased employee, within a period of six months from the date of receipt of a copy of this order.”



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5. Therefore, on a careful perusal of the operative portion which is contained in Para No. 8, it can be seen that, this Court had restricted whatever the benefits which the workman would be entitled to and thereafter to his legal heirs with reference to his date of dismissal and not after that. Even though the word pensionary benefits if any has also been added, but the Court is very categorical in stating that till the date of dismissal and not after that.

6. In view of the negative covenant, it is very clear that the purport of the order is to grant the amount if any payable to him by taking the date of termination from service (i.e) 11.05.1985 as the cessation of service. It is now reported that by taking the said date, the gratuity, earned leave and the arrears etc., are paid. Even though pension and family pension was initially sanctioned, subsequently the same stood cancelled. Aggrieved thereby, the present contempt petition is filed.

7. Mr.S.N.Ravichandran, the learned counsel appearing on behalf of the workman would rely upon the subsequent proceedings of the respondent Board in the year 2006, in which, even in respect of the employees who



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retired prior to 1986, ex gratia is being implemented and thereafter family pension is also being granted. Therefore, he would submit that workman will be entitled for the said benefit.

8. The learned counsel appearing on behalf of the workman would further draw the attention of this Court to paragraph No. 22 of the counter affidavit filed in the contempt petition whereby the respondents themselves are admitting to those proceedings and therefore, he would submit that the cancellation of the ex gratia cum family pension amounts to direct violation of the order. I am unable to agree with the said contention of the learned counsel appearing for the workman. This Court had categorically restricted the benefit by taking into account the date of termination of the employee (i.e) 11.05.1985. A statement is made by the learned counsel appearing on behalf of the respondent/contemnor that as on 1985 there was only Contributory Provident Fund and there was neither ex gratia nor pension scheme that was available on that day.



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9. In view thereof, when the entitlement is disputed, nothing further can be claimed by pressing the contempt petition. I find that the respondents have complied with the order in its spirit as made by order dated 22.07.2021. The learned counsel would submit that the word pensionary benefit is also mentioned and therefore that requires clarification. This Court is not deciding any clarification or any disputed right or entitlement that is prayed for by the petitioner. It would be open for them to pursue the remedies. As far as the contempt petition is concerned, this Court is only concerned with whether or not the order of this Court is complied with and I find that by the actions of the respondents, they have complied with the order and therefore nothing further remains to be adjudicated in the contempt petition.

10. Accordingly, the contempt petition is closed. No costs.

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Neutral Citation: Yes/No
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