



WEB COPY



W.A.No.2411 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.A.No.2411 of 2024
and C.M.P.No.17105 of 2024

The Management of Southern Railways,
Rep. by its Dy. Chief Personnel Officer,
Engineering, Head Quarters Office,
Personnel Branch, Chennai – 600 003.

...Appellant

Vs.

1.The Presiding Officer,
The Central Government Industrial
Tribunal cum Labour Court, Chennai.

2.A.Nandakumar

...Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 19.09.2023 in W.P.No.6401 of 2013.

For Appellant : Mr.Prasad Vijayakumar
Standing Counsel

For R1 : Labour Court

For R2 : Mr.K.Venkataramani, Sr. Counsel
for Mr.S.Srinivasan



W.A.No.2411 of 2024

JUDGMENT

(Judgment of the Court was made by M.S.RAMESH, J.)

WEB COPY

When the 2nd respondent herein was terminated from service with effect from 04.12.1991, the order of punishment was set aside by the Central Government Industrial Tribunal cum Labour Court, Chennai (hereinafter referred to as 'the Tribunal'), through its award dated 13.03.1995 passed in I.D.No.8 of 1994, directing the Management to reinstate him into service, together with continuity of service, backwages and all other attendant benefits. The challenge to the award before this Court by the Management in W.P.No.5040 of 1999 was also dismissed on 15.10.2008. Since no further Intra-Court Appeal was preferred against the same, the award of the Tribunal had become final.

2. In this background, the 2nd respondent herein had filed a Claim Petition in C.P.No.1 of 2012 under Section 33(C)(2) of the Industrial Disputes Act (hereinafter referred to as 'the Act'), claiming backwages for the period from May, 1997 to March, 2011. Through an order dated 06.12.2012, the Tribunal had computed the backwages payable to the 2nd respondent at Rs.12,79,212/-, which order came to be challenged by the Management before this Court in W.P.No.6401 of 2013. The learned



W.A.No.2411 of 2024

single Judge had dismissed the Writ Petition on 19.09.2023, by disagreeing with the claim of the Management that the 2nd respondent was gainfully employed as a casual worker. By placing reliance on the order of the Hon'ble Supreme Court in the case of ***Capt.M.Paul Anthony Vs. Bharat Gold Mines Ltd.*** reported in ***(1999)3 SCC 679***, it was held that there was no infirmity or illegality in the order of the Tribunal. This order of dismissal is assailed in the present Intra-Court Appeal.

3. The learned standing counsel appearing for the Management submitted that the learned single Judge had failed to consider that the 2nd respondent had worked only for 74 days and had not completed 240 days in a calendar year and therefore cannot be treated as a workman. He further submitted that since the claim amount in the proceedings under Section 33(C)(2) of the Act was not earlier adjudicated, the Tribunal had exceeded its jurisdiction by adjudicating such a claim.

4. Per contra, the learned senior counsel appearing for the workman would submit that since the Claim Petition itself was based on the award of the Tribunal granting monetary benefits, there was no infirmity in the computation undertaken by the Tribunal. He further



W.A.No.2411 of 2024

submitted that the workman was terminated from service way back in the year 1991 and though more than 23 years have lapsed, he is yet to receive the monetary benefits of his entitlement.

5. It is rather unfortunate that though the punishment of termination from service imposed by the Management was set aside by the Tribunal way back in the year 1995, the Management had been somehow or the other, depriving the 2nd respondent from receiving his rightful claims. Before the learned single Judge, when the order passed under Section 33(C)(2) of the Act was challenged, the Management appears to have raised a ground claiming that the 2nd respondent was gainfully employed by acting as a casual daily wage Driver for several spells during the claim period and therefore was not entitled for the claim made before the Tribunal.

6. Though the learned single Judge had substantiated that such gainful employment during short spells may not dis-entitle him to make a claim, in view of the decision in ***Capt.M.Paul Anthony's (supra)***, we are constrained to remark that even such a justification was not required to be made, since it is obvious that such a ground of gainful employment is



W.A.No.2411 of 2024

misconceived. If at all the Management was of the view that the 2nd respondent was not entitled for the monetary benefits of backwages, the only option that would be available to them is to prefer an appeal against the order passed in W.P.No.5040 of 1999, in which the award of the Tribunal made in I.D.No.8 of 1994 was challenged. Having failed to do so, it is not now open to the Management to canvass the ground that ought to have been raised before the Writ Court.

7. In the backdrop of these findings, we do not find any illegality or infirmity in the order of the learned single Judge. Accordingly, the Writ Appeal stands dismissed. In view of the dismissal of the Writ Appeal, the Management shall forthwith comply with the directions of the order passed in W.P.No.6401 of 2013, dated 19.09.2023, within a period of two weeks from the date of receipt of a copy of this judgment. No costs. Consequently, connected miscellaneous petition is closed.

[M.S.R., J] [C.K., J]
02.09.2024

Index:Yes/No

Neutral Citation:Yes/No

Speaking order/Non-speaking order

hvk



WEB COPY



W.A.No.2411 of 2024

M.S.RAMESH, J.
and
C.KUMARAPPAN, J.

hvk

To

The Presiding Officer,
The Central Government Industrial
Tribunal cum Labour Court, Chennai.

W.A.No.2411 of 2024

02.09.2024