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W.A.No.2547 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2024

CORAM

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

**W.A.No.2547 of 2021 &
CMP.No.16578 of 2021**

John A.Christopher

... Appellant

Vs.

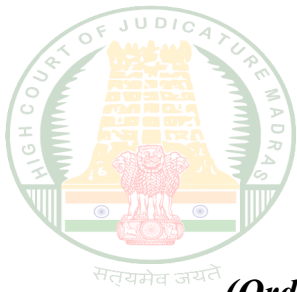
1. The Management of Christian Medical
College & Hospital, Post Box No.3,
Ida Scudder Road, Vellore 632 004,
represented by its Head of Personnel
Department.
2. The Presiding Officer,
Principal Labour Court,
Vellore

.... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent Act praying to set
aside the order dated 15.07.2021 passed in W.P.No.1658 of 2012.

For Appellant : Mr.L. Chandrakumar

For Respondents : Mr. Sanjay Mohan for
Mr.S.Ramasubramaniam
R2- Court



JUDGMENT

(Order of the Court was made by J.NISHA BANU, J.)

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This Writ Appeal is preferred by the appellant/employee against the order passed by the learned Single Judge, whereby, it held as follows;

' 9. Accordingly, this writ petition is allowed and the award of the 1st respondent dated 19.04.2011, passed in I.D.No.198 of 2007 is hereby set aside. This is a fit case to prosecute the 2nd respondent/employee for making a false statement on oath, not only attracting the provisions of section 191 I.P.C., but also other provisions.

10. Notice is ordered to the 2nd respondent/Employee herein to appear in-person before me on 07.10.2021 for preliminary enquiry under section 195 r/w.340 Cr.P.C., as the Employee cannot be allowed to go scot free.

11. On a perusal of the Passport copy produced by the Employee, it is seen that his Passport bearing No.G9119966 expired as early as on 02.07.2018 and it is not known as to whether the Passport has been subsequently renewed or not. Therefore, a copy of this order shall be marked to the Passport Authorities to ascertain about its renewal and for seizure of the passport, as it is mentioned in the backside of the Passport that "This Passport is the property of the Government of India", which, according to me, should not vest with a dishonest man, who used to utter falsehood in the Court of Law. No costs. ...'

The learned Single Judge, set aside the award of the Labour Court in I.D.No.198 of 2007, order dated 19.04.2011, wherein, punishment of



W.A.No.2547 of 2021

dismissal imposed on the employee by the Management was set aside.

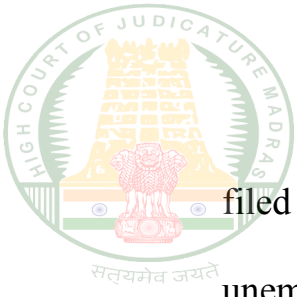
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2. The necessary facts leading to filing of this appeal is as follows;

The appellant/employee was appointed as Radio-Grapher in 1st respondent/Management. For certain misconducts committed by him, he was terminated from service based on the enquiry report. Aggrieved over the same, the appellant/employee has raised an industrial dispute before the Labour Court, Vellore in I.D.No.198 of 2007 under section 2A(2) of the Industrial Disputes Act (herein after mentioned as ID Act) seeking a relief to reinstate him in service with continuity of service along with backwages and all other attendant benefits.

3. The Labour Court, by award dated 19.04.2011, finding the dismissal of the employee being disproportionate to the charge against the petitioner, set aside the punishment of dismissal and thereby ordered for reinstatement and modified the said punishment by imposing stoppage of one increment without cumulative effect and without backwages.

4. Aggrieved against the said award, the 1st respondent/Management



W.A.No.2547 of 2021

WEB COPY

filed W.P.No.1658 of 2012 on the ground that during the period of unemployment, the employee was gainfully employed in a Hospital at Netherlands and the suppression of said fact leads to an act of perjury. In respect of the abovesaid allegation, the employee replied that the wages paid under section 17-B of the ID Act can be adjusted from any of his terminal benefits and if there are no terminal benefits accrued, the employee will repay the same to the 1st respondent/management.

5. The Writ Court, on appreciation of the facts on record, came to the conclusion that the employee mislead the court by suppressing the fact that he was gainfully employed in the abroad at the time of filing 17(B) petition. Holding so, the learned Single Judge allowed the writ petition and further directed to prosecute the employee for making a false statement under section 191 of IPC and also ordered notice to the him to appear in person for preliminary enquiry u/s.195 r/w.340 Cr.P.C. Aggrieved against the order of the Writ Court, the appellant/employee has filed the present Writ Appeal.

6. The contention of the learned counsel for the appellant/employee is the dispute with regard to 17-B petition had reached finality and since the



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Management did not prefer any appeal, the issue had reached its finality, hence, it could not be re-agitated or re-argued further. In case of gainful employment, the Court may deny 17-B wages or recover the amount from the employee. Whereas, in the present case, the learned Single Judge proceeded to highlight the alleged false statement on oath, when it was specifically admitted by the employer in M.P.No.1 of 2014 that the employee was gainfully employed and therefore terminal benefits can be adjusted towards 17(B) wages received by the employee. In view of the same, initiation of offence of perjury without rendering any findings thereon, is liable to be set aside. The order of the learned Single Judge in ordering seizure of passport goes beyond the scope of the writ petition. The learned Single Judge ought not to have initiated prosecution in calling for perjury rather than denying wages claimed under 17 B of the Act.

7. Refuting the same, the learned counsel appearing for the 1st respondent/Management further submitted that based on the averment that the employee was not gainfully employed anywhere, this Court has ordered wages under section 17 B of the Act on 19.09.2014. At that relevant point of time, the 1st respondent/Management had no sufficient material to establish the



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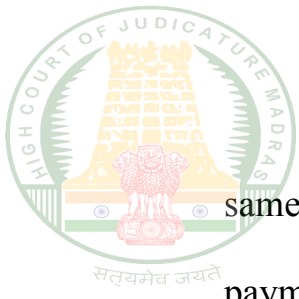


W.A.No.2547 of 2021

gainful employment of the employee. Further, as ordered by the Court, 17 B wages were also paid by the 1st respondent/Management to the appellant. Now it came to the knowledge of the employer that the employee was gainfully employed in the hospital at Netherlands. Therefore, it is clear that based on the false averments, he obtained order granting 17-B wages from this Court and the same leads to an act of perjury. Therefore, the order of the Writ Court setting aside the award does not warrant any interference. Pleading so, he sought for dismissal of this appeal.

8. Heard both sides and perused the materials available on record.

9. Admittedly, in the writ petition filed by the Management, this court by an order dated 19.09.2014 in MP.No.2 of 2013, gave direction to the Management to pay the last drawn wages to the employee from the date of the award till 31.08.2014 and continue to pay the same for succeeding months. During October 2014, the Management filed a modification petition alleging that employee was gainfully employed abroad during the period of his unemployment. On 24.02.2015, the learned Single Judge ordered for production of passport, visa particulars of the employer and on perusing the



same, the learned Single Judge, on 31.03.2015, ordered for discontinuing the payment of 17 B wages.

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10. Based on the materials produced before the court, the Writ Court came to the conclusion that the employee was gainfully employed during the period of unemployment under the Management and accordingly, the Writ Court allowed the writ petition by setting aside the award of the labour court by directing to take steps to prosecute him under section 191 of IPC as mentioned in the impugned order cited supra.

11. Section 17-B of the Industrial Disputes Act envisages as under;

Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:

[Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the



W.A.No.2547 of 2021

Court shall order that no wages shall be payable under this section for such period or part, as the case may be.]'

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From the above, it is clear that the employer is liable to pay full drawn wages as lastly drawn by him. If the workman had not been employed in any other establishment during such period then an affidavit to that effect by such workman had to be filed in such Court.

12. It is seen that in the present case on hand, the employee has filed his affidavit in M.P.No.2 of 2013 stating that the employee was not gainfully employed anywhere for the past six years and suffering without monetary assistance and also finding it difficult to have even a square meal a day. So, on the basis of his pleadings, this Court ordered wages under section 17B of the Act. But during that period, according to the Management, the employee was gainfully employed at abroad and in support of their averment, documents were also filed.

13. The learned Single Judge, on perusing the endorsements found in the passport, visa and the employment certificate, came to the correct conclusion that the factum of the employee being employed at abroad during



W.A.No.2547 of 2021

WEB COPY

his unemployment period has been suppressed before the Court and the employee has not approached the Court with clean hands.

14. Considering the above said admitted facts and circumstances, the Writ Court, relying on the decision of the Honourable Supreme Court reported in ***(1994) 1 SCC 1, in the case of S.P.Chengalvaraya Naidu Vs. Jagannath***, held that '*a person whose case is based on falsehood, has no right to approach the Court and he can be summarily thrown out at any stage of the litigation*' and rightly came to the conclusion that the appellant has not approached this court with clean hands. In such a view of the matter, the Writ Court has rightly allowed the writ petition by setting aside the award passed by the Labour Court.

15. It is seen that the employee received 17B benefits by playing fraud on the court by concealing the facts that he was gainfully employed at abroad. One who comes to the court must come with clean hands, or else, the process of the court would be abused. As stated supra, it is held by the Apex Court that a person, whose case is based on falsehood, has no right to approach the court and the employee in this case has also not come to this court with clean



W.A.No.2547 of 2021

WEB COPY

hands, the learned Single Judge proceeded to prosecute the employee for making such a false statement on oath and therefore there is no merit in the appellant's appeal.

16. It is appropriate to recover the wages granted under section 17B of the Act from the appellant herein for the reason that he was gainfully employed abroad during the period of his unemployment. Thus, this court directs the wages paid under section 17B of the Act shall be recovered from the appellant/employee. Ends of Justice would be met out if a direction is given to the appellant to return the 17(B) wages within a period of three months from the date of receipt of a copy of this order.

17. Accordingly, We direct the appellant to repay the 17(B) wages paid to him with interest at the rate of 12% per annum within three months from the date of receipt of a copy of this order and if he does not refund the amount within three months, liberty is given to the respondent to recover the amount under the Revenue Recovery Act.



W.A.No.2547 of 2021

WEB COPY

18. Accordingly, the Writ Appeal is dismissed with the above observation. No costs. Consequently, the connected miscellaneous petition is closed.

[J.N.B.,J.] [P.D.B.,J.]

22.07.2024

Index: yes/no
Internet:yes/no
msr

To

The Presiding Officer,
Principal Labour Court,
Vellore.



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W.A.No.2547 of 2021

**J. NISHA BANU, J.
&
P. DHANABAL, J.**

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