



W.P.No.19619 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.01.2024

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.19619 of 2020

and

WMP.No.24243 of 2020

V.Krishnakumar

...Petitioner

vs.

The Management,
M/s. Palani Andavar Cotton & Synthetic Spinners Limited,
No.231, Thali Road,
Udumalpet,
Tiruppur-9.

...Respondent

Writ petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the entire records in pursuant to the Impugned order dated 14.08.2019 in C.P.No.100 of 2016 passed by the Additional Labour Court, Coimbatore.

For Petitioner : Mr.K.Sathiya Murthi

For Respondent : Mr.R.Jayaprakash



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ORDER

Writ petition is filed challenging the order dated 14.08.2019 passed in C.P.No.100 of 2016 by the Additional Labour Court, Coimbatore.

Facts in Nutshell are as follows:

2. The petitioner was employed with the respondent management since 02.05.1984 and his last drawn salary was Rs.5,915/-. On due enquiry the petitioner was dismissed from service on 17.10.2002. The dismissal was held to be in violation of Section 33(1)(b) of the I.D.Act. The petitioner filed computation petition for the period from 17.10.2002 to 28.02.2003 in C.P.No.194 of 2003 before Labour Court, Coimbatore. The said C.P along with another CP was allowed on 18.07.2006 and the respondent management filed writ petitions in W.P.Nos.20386 to 20389 of 2010 challenging the said order. This Court dismissed the writ petition vide order dated 03.09.2010. Thereafter the recovery proceedings were initiated and on 13.02.2013, the amounts were settled by the respondent



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management to the petitioner. According to the petitioner eventhough the respondent mill was in operation it did not employ the petitioner, despite his repeated requests for reinstatement and hence the petitioner filed the computation petition claiming a sum of Rs.9,40,326/- along with 12% interest per annum including backwages, bonus and leave encashment.

3. The respondent contended that against the order passed in W.P.Nos.20386 to 20389 of 2010, the respondent preferred a writ appeal which was pending at the time of computation proceedings. The respondent contended that the petitioner was gainfully employed in a nearby mill and was earning substantial salary. The entitlement of the petitioner with regard to the bonus and leave wages were denied. In support of the plea that the petitioner was employed during the period for which the claim was made, the respondent relied on the compensation petition filed by the petitioner claiming Rs.6,02,644/- for employment injury sustained by him on 05.12.2016 against Gowrishankar Textiles, his



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employer at the relevant time. Hence, according to the respondent the claim petition was not maintainable as the petitioner during the relevant period was employed in Gowrishankar Textiles.

4. Before the Labour Court the petitioner examined himself as W.W1 and marked Ex.W1 to Ex.W6. The respondent did not examine any witness but marked Ex.M1.

5. The Labour Court on an appreciation of the entire evidence on record dismissed the claim petition on grounds *inter alia*, that the claim was disputed by the respondent and that the petition was filed after long delay of 13 years. The Labour Court found that the respondent had *prima facie* established the gainful employment of the petitioner and hence rejected the application as not maintainable. Aggrieved by the Award of the Labour Court, the petitioner has filed the above writ petition.



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6. The learned counsel for the petitioner submitted that the Labour Court erred in dismissing the computation petition thinking that there was a dispute regarding entitlement and on the ground of delay. The learned counsel submitted that even assuming that the petitioner was gainfully employed, such employment was only casual in nature and for livelihood and hence the Labour Court should not have considered the same as gainful employment.

7. The learned counsel for the respondent on the other hand submitted that the claim petition was filed after a delay of 13 years and hence the Labour Court was justified in rejecting it as a stale claim. The learned counsel for the respondent submitted that the Labour Court had factually found that the claim petition itself was not bonafide and that there were serious disputes as to the entitlement of the petitioner to the amounts claimed and also regarding his non-employment. The learned counsel further submitted that the Labour Court on the basis of evidence on



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record factually found that the respondent had *prima facie* proved that the petitioner was employed during the period of claim and hence the finding could not be interfered with unless it was proved to be perverse. The learned counsel therefore submitted the claim petition was rightly dismissed by the Labour Court.

8. I have heard both the learned counsels and I have perused the materials placed on record.

9. It is seen that the petitioner was employed in the respondent mill and he was dismissed from service on 17.10.2002. The petitioner filed computation petition in C.P.No.194 of 2003 claiming the wages for the period from 17.10.2002 to 28.02.2003 and the computation petition was allowed on 18.07.2006 along with C.P.No.195 of 2003. The respondent filed writ petition challenging the aforesaid common order in W.P.No. 20389 of 2010 and the writ petition was dismissed by this Court on 03.09.2010.



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Meanwhile the petitioner initiated recovery proceedings under the Revenue Recovery Act. The respondent on 13.02.2013 settled the claim amount to the petitioner.

10. It is the petitioner's case that though the respondent mill was in full operation, inspite of the petitioners repeated requests for reinstatement the respondent did not reinstate him and therefore he filed the claim petition claiming Rs.9,40,326/- along with 12% interest per annum including backwages, bonus and leave encashment etc for the period 01.03.2003 to 30.08.2016. On the other hand it was the respondents case that the petitioner was gainfully employed in a nearby textile mill and he was earning Rs.9,100/- per month as wages much more than what he earned with the respondent. The respondent further stated that the petitioner suffered employment injury on 05.12.2016 and as his right hand was amputated, he filed a petition claiming compensation of Rs.6,02,644/- against Gowrishankar Textiles. According to the respondent the claim



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included the period during which the petitioner was gainfully employed and hence it was unsustainable. The further objection of the respondent was that the petition itself was barred by delay and laches, in as much as the computation petition for the period from 2003 was filed in 2016 with enormous delay of 13 years.

11. Ex.M1 is the claim petition filed by the petitioner claiming compensation for the employment injury sustained by him while in employment at Gowrishankar Textile Mills as a blow room worker. The Labour Court on the basis of the Ex.M1 and the admission of the petitioner as W.W.1 that he filed W.C. 59 of 2017, held that the petitioner was gainfully employed and he was not entitled to make any claim for the period of his employment. The contention of the petitioner that the employment was only casual, temporary and for short period was also considered by the Labour Court, but was rejected for want of evidence in support of the same. On the entitlement of the petitioner to bonus and leave



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encashment, the Labour Court relying on the Judgment of the Hon'ble Supreme Court in 2008(2)LLJ 629, rejected the claim for bonus and as regards leave encashment rejected it for want of supporting evidence.

12. It is pertinent to note here that the petitioner did not whisper about his employment with Gowrishankar Textile Mills, either casual, temporary or permanent in the computation petition. It was only after the respondent raised the issue in its counter to the computation petition that the petitioner filed a rejoinder stating that the said employment was undertaken only for sustenance. It is therefore seen that the petitioner had not approached the Court with clean hands. Hence the finding of the Labour Court that the claim petition was not bonafide cannot be faulted. As already stated Ex.M1 clearly shows that the petitioner was gainfully employed and as early as on 05.07.2017 he filed claim petition in W.C.No.59/2017 for the employment injury sustained by him during the course of his employment with Gowrishankar Textiles Mills. The petitioner



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deliberately did not give the details of his employment with Gowrishankar Textiles. It was the respondents case that the Mill was closed from 2004 and the said fact was not disputed by the petitioner. The petitioner further admitted in his evidence that he did not approach the respondent for employment after 2003.

13. In the light of the above facts, I find no infirmity in the findings of the Labour Court. The Labour Court on proper appreciation of the facts and law has given categorical findings and I find no perversity in the appreciation of evidence by the Labour Court. It is seen that the claim petition was filed with the delay of 13 years which is not properly explained. The Labour Court considering the facts cumulatively found that enormous delay was fatal to the claim of the petitioner.



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In view of the above discussions, I find no illegality or impropriety in the order of the Labour Court and therefore the same is confirmed. The writ petition is meritless and the same is dismissed. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.

22.01.2024

Index:Yes/No

Speaking order:Yes/No

Neutral Citation:Yes/No

dsn

To
The Presiding Officer,
Additional Labour Court,
Coimbatore.



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N.MALA,J.

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