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W.P.Nos.1283 & 7177 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2024

CORAM:

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

W.P.Nos.1283 & 7177 of 2019

and

W.M.P.Nos.1442 & 1438 of 2019

W.P.No. 1283 of 2019

V.Balakrishnan

... Petitioner

Vs.

The Management of Hallmark Industries,
No. A30, Madras Export Promotion Zone,
Tambaram,
Chennai - 600 045.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the award dated 16.10.2018 in I.D.No. 277/2006 on the file of III Additional Labour Court, Chennai and quash the same consequently direct the respondent to pay a sum of Rs. 13,07,723/- towards compensation in lieu of reinstatement along with 12% interest from the date of due to till the date of realization.



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W.P.Nos.1283 & 7177 of 2019

For Petitioner : Mr.K.V.Dhanapalan
for M/s.T.Fenn Walter Associates

For Respondent : Mr.V.P.Raman

W.P.No. 7177 of 2019

The Management of Hallmark Industries,
No. A30, Madras Export Promotion Zone,
Tambaram,
Chennai - 600 045.

... Petitioner

Vs.

V.Balakrishnan

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorari, to call for the records in I.D.No. 277 of 2006 and quash the impugned award dated 16.10.2018 passed by the III Additional Labour Court, Chennai.

For Petitioner : Mr.V.P.Raman

For Respondent : Mr.K.V.Dhanapalan
for M/s.T.Fenn Walter Associate

ORDER

These two writ petitions are filed by the Management and the workman challenging the self-same award and as such are taken up together and



W.P.Nos.1283 & 7177 of 2019

disposed of by this common judgement. Irrespective of their array, Mr. V. Balakrishnan is referred to as workman and M/s.Hall Mark Industries is referred to as Management in this order.

2. The brief facts leading to the filing of these writ petitions are that the workman was employed as a Cutting Master with the management, with effect from 01.07.1995. While so, it is the case of the workman that when he reported for work on 18.08.2002, he was orally directed to leave and was thereafter not employed. Hence he raised a dispute. Conciliation failed and therefore, the claim petition was filed under Section 2(A)2 of the Industrial Disputes Act which was taken on file as I.D.No. 277 of 2006. The claim is resisted by the management.

3. It is the case of the management that the workman, being a Cutting Master, is in a supervisory position and, as such, will not come within the definition of 'workman' since he is receiving higher wages. On the merits, they contend that being a Cutting Master, he had been periodically asking for advances and on 18.08.2002, even though the workman owed amounts to the



W.P.Nos.1283 & 7177 of 2019

management, he requested further advance, which was refused. Aggrieved by the same, he voluntarily stopped reporting for work, which caused difficulties for the management. The workman was never non-employed or retrenched by the management, and he voluntarily stopped coming to work.

4. On the said pleadings, the Labour Court considered the issues. Before the Labour Court, the workman examined himself as WW.1 and Ex.W.1 to W.18 were marked. On behalf of the management, one Jai Gokal and K. Pandiyan were examined as MW.1 and MW.2 and Ex.M.1 to M.10 were marked. Thereafter, the Labour Court framed seven points for determination. The Labour Court considered the nature of employment of the workman and held that it was not supervisory nature and, as such, he would come within the definition of 'workman' as per the provisions of the Industrial Disputes Act. Thereafter, the Labour Court considered the issue of whether the workman of his own volition stopped coming to work from 18.08.2002 or whether he had been non-employed. The Labour Court found that the management had non-employed him and he didn't stop coming to work of his own volition. Thereafter, the Labour Court considered the issue of relief to be



W.P.Nos.1283 & 7177 of 2019

granted to the workman. The Labour Court found that pending the dispute, the workman was otherwise gainfully employed. The Labour Court also found that the employment was for the purpose of survival. The Labour Court thereafter considered the relevant factors such as the period of employment of the workman and instead of ordering reinstatement, computed the compensation by considering 42 months salary and arrived at a sum of Rs.1,94,754/-. However, instead of awarding the full sum, considering the factum of gainful employment and the fact that the workman did not disclose the same, reduced the compensation from Rs.1,94,754/- to Rs.50,000/-. Aggrieved by the same, both the management and the workman are before this Court.

5. Mr.V.P. Raman, the learned counsel appearing on behalf of the management firstly would submit that the workman is working as a Cutting Master. There have been employees working under him. He supervises their work. The workman himself in his cross-examination admits that he used to supervise the employees who are working under him and therefore, given the higher wages drawn by him, the finding of the Labour Court that he will come



W.P.Nos.1283 & 7177 of 2019

within the definition of 'workman' is erroneous. Secondly, he would submit that, even assuming that the person comes within the definition of the workman when the workman himself has given letters in Ex. M.2, Ex.M.3 and Ex. M.4, coupled with the voucher in Ex.M1, it can be seen that the workman was in the habit of taking advances. Therefore, the version of the management that only because he was asking for additional advances which he was not entitled to, and the management refused to give him additional advance, stood proven. The Labour Court did not believe the said documents only on the ipse dixit of the workman, badly denying his signatures. Therefore, the Labour Court ought to have held that the workman stopped coming for work of his own volition and ought not to have granted any relief whatsoever to the workman.

6. Finally, the learned Counsel for the management would submit that when the gainful employment has been wilfully suppressed, the Labour Court was right in reducing the compensation. The process of filing a petition under 2(A)2 for reinstatement should be for genuine causes, and when the workman, being a cutting master, is gainfully employed elsewhere, he cannot use the



W.P.Nos.1283 & 7177 of 2019

process merely on technicalities to make unlawful gains. In that view of the matter, the award of the Labour Court for the reduced compensation of Rs.50,000/- cannot also be sustained.

7. Per Contra, Mr K.V.Dhanapalan, the learned counsel appearing on behalf of the workman would submit that in this case, the Labour Court having found that the workman was retrenched, ought to have reinstated him with full back wages. The workman was only a cutting master whose work is skilled labour and therefore, his employment cannot be held as a supervisory or managerial function. Even as per the management, when the workman demanded re-employment by Ex.M.4 dated 03.09.2002, there was no positive response. Initially, the management did not contest the matter before the Labour Court, and only by the order of this Court, an ex-parte award was set aside and the matter was remanded for one more opportunity to the management. In view thereof, he would submit that the Labour Court ought to have seen the default on the part of the management and ought to have ordered reinstatement with full back wages. In any event, the Labour Court having found in paragraph No. 37 that the workman was going for alternate



W.P.Nos.1283 & 7177 of 2019

employment only for mere survival, has no justification whatsoever in limiting the quantum of compensation only to Rs.50,000/-

8. The learned counsel for both sides also took this Court to the orders passed in the earlier round of the writ petition, whereunder the workman was permitted to withdraw initially a sum of Rs.60,000/- and thereafter another sum of Rs.40,000/- from out of the deposit made by the management with reference to 50% of the back wages by way of conditional order when it challenged the ex-parte Award.

9. It is the contention of the learned counsel appearing on behalf the management that the workman was permitted to withdraw the amount as a relief, whereas the learned counsel for the workman contends that it should be treated only as costs for setting aside the ex-parte award.

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



W.P.Nos.1283 & 7177 of 2019

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11. At the outset, admittedly, the workman was a cutting master. The management is a garment unit. Therefore, it can be seen that the work of cutting master is a skilled labour and it cannot be held to be supervisory. It is relevant to quote the admission in cross-examination to which the learned counsel for the management would rely upon:-

“ஜீனியர் கட்டர் மற்றும் கட்டிங் மாஸ்டருக்கும் வித்தியாசம் உள்ளதா என்றால் புதிதாக வேலைக்கு வருபவர்கள் வேலை தெரியவில்லை என்றால் அவர்கள் கட்டிங் மாஸ்டரின் கீழ் கட்டராக இருந்து வேலை பார்ப்பார்கள்.”

12. Thus it can be seen that the cutting masters who are seniors and whose skills are better are to teach the newly employed persons for the same job. Such teaching/guiding or mentoring cannot make the job supervisory. Supervising is very different from the person who is in a senior position teaching the nitty-gritty to a person who newly enters into service. Therefore, I am not in a position to accept the said argument on behalf of the learned counsel for the management. In this case, the Labour Court after due appreciation of the evidence has held that V. Balakrishnan is a workman. The said finding cannot be termed as perverse.



W.P.Nos.1283 & 7177 of 2019

13. The next question to be decided by this Court is that whether the workman had voluntarily stopped reporting for work or that he was orally terminated by the management. Even as per the case of the management, the workman had asked for an advance on 18.08.2002 and stopped coming to work. Thereafter on 22.08.2002, he wrote a letter in Ex.M.3 to the management. Thereafter also, the workman writes a letter in exhibit M.4. whereunder he alleges that when he came for work on 18.08.2002, the management had orally asked him to stop reporting for work and he specifically prays for reinstatement with back wages and continuity of service. It can be seen that there was no response from the management even assuming that Ex.M.3 and M.4 are all letters written by the workman. When it is the version of the workman that he has been orally stopped from work and when it is the version of the management that the workman on his own volition stopped reporting for work, considering the documentary evidence on record and the fact that the management remained silent to the communications of the workmen, I am of the view that the discretion exercised by the Labour Court by appraising the evidence in exercise of its power under Section 11A of the Industrial disputes Act, cannot be termed as



W.P.Nos.1283 & 7177 of 2019

perverse to interfere under Article 226 of the Constitution of India.

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14. Coming to the next question, as to what relief can be granted to the workman, because the workman had put in only 7 years of service and the period of dispute is only large, in lieu of reinstatement with back wages, the Labour Court was justified in awarding compensation. The Labour Court has computed 42 months of wages. Even as per the dictum of the judgement of the Hon'ble Supreme Court in ***O.P. Bhandari vs. Indian Tourism Development Corporation Ltd and Others*** (1986 4 SCC 337) and thereafter in ***Workmen Vs. Bharat Fritz Werner Private Limited and another*** (1990 3 SCC 565), 39 months' salary and an amount towards the loss of future employment can be granted as compensation. Therefore, I do not find that the computation of the back wages by the labour Court to the tune of Rs.1,94,754/- is excessive or incorrect.

15. However, the Labour Court reduced the same to Rs.50,000/- only on the ground that the workman had suppressed his subsequent gainful



W.P.Nos.1283 & 7177 of 2019

employment. Firstly, it can be seen from the claim statement, that the workman has not made any positive assertion that he was not in any gainful employment. The learned counsel for the Management points to the implied assertion regarding the workman's last drawn wages and submits that he is no longer in employment. However, the same cannot be put against the workman. When the Labour Court itself has found that the subsequent employment is only for a mere survival it cannot be said that he has gainfully employed elsewhere. Hence the action of the Labour Court in reducing the compensation and restricting it only to Rs.50,000/- cannot be justified. Apart from the same, this Court also takes into consideration, the fact that the workman joined service in the year 1995 and he was working till the year 2002. Originally an ex-parte award was passed on 01.12.2009, thereafter, it was set aside by this Court and there have been earlier litigations with reference to the deposit of backwages and withdrawal of the backwages. Therefore, considering the overall facts and circumstances of the case, I am of the view that it would be just and fair for the workman to be paid the compensation as computed by the Labour Court. Therefore, the portion of the award restricting it to Rs.50,000/- is incorrect, and accordingly, that portion of the Award is set aside.



W.P.Nos.1283 & 7177 of 2019

WEB COPY

16. As far as the further contention of the learned Counsel for the workman that the entire sum of Rs.1,94,754/- has to be paid afresh by the management and the sum of Rs.1,00,000/- already withdrawn should be treated as the cost is concerned, I am on the view that when orders have been passed earlier by the learned Single Judge as well as by the Hon'ble Division Bench, it has not been mentioned as costs but the workman was simply permitted to withdraw the portion of the amount which is deposited by the management and therefore, I am unable to agree with the learned counsel for the workman that it only costs. At the same time, merely because the said sum of Rs.1,00,000/- is permitted to be withdrawn along with accrued interest, the accrued interest portion cannot also be considered and calculated as part of the compensation amount. Therefore, I hold that out of the compensation receivable of Rs.1,94,754/-, the workman had already withdrawn a sum of Rs.1,00,000/- with accrued interest.

17. It can be seen that of the amount originally deposited by the management, a sum of Rs.1,95,825/- is still lying in the deposit of the



W.P.Nos.1283 & 7177 of 2019

Industrial dispute. Of the same, let the management is permitted to withdraw the sum of Rs.1,00,000/- along with the accrued interest and the workman can withdraw the balance sum of Rs.95,825/- along with accrued interest.

18. In view of the aforesaid findings, this writ petitions are disposed on the following terms:-

(i) The Award of the Labour Court in I.D No. 277 of 2006, dated 16.10.2018 is upheld, since it orders compensation of Rs.1,94,754/- to the workman, and is set aside and modified only to the extent it restricts the amount payable to Rs.50,000/- and it is held that the entire sum of Rs.1,94,754/- is payable to the workman;

(ii) Of the said compensation payable, already the workman has received a sum of Rs.1,00,000/-;

(iii) Pursuant to an earlier Order, 50% of back wages was deposited by the management to the credit of industrial dispute. After the workman and the management were permitted to withdraw a portion of the amount, a sum of Rs.1,95,825/- is still lying to the credit of the industrial dispute. Of the said sum, the



W.P.Nos.1283 & 7177 of 2019

management is now permitted to withdraw a sum of Rs.1,00,000/- along with the accrued interest. The workmen is now permitted to withdraw the balance of Rs.95,825/- along with the accrued interest.

(iv) No costs. Consequently, connected miscellaneous petitions are closed.

26.11.2024

Neutral Citation: Yes/No
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D.BHARATHA CHAKRAVARTHY, J.

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W.P.Nos.1283 & 7177 of 2019

W.P.Nos. 1283 & 7177 of 2019

26.11.2024