



W.P(MD)No.3778 of 2010

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.09.2024

CORAM:

**THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

W.P(MD)No.3778 of 2010

M. Sathiyamoorthy

... Petitioner

Vs

1.The Proprietor,  
Athirstam & Thinaboomi Dailies,  
9, Dinidugl Main Road,  
Vilankudi, Madurai.

2.The Presiding Officer,,  
Labour Court, Madurai.

...Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the award of the Labour Court in I.D.No.26/2001, dated 30-09-2009 and quash the same insofar as it relates to denial of back-wages to the petitioner is concerned and consequently direct the 1st Respondent Management to pay full back wages to the petitioner.



W.P(MD)No.3778 of 2010

For Petitioner : Mr. S.M.Mohan Gandhi  
For R1 : Mr.V.O.S.Kalaiselvam

## **ORDER**

The petitioner, who was working in the Athirstam & Thinaboomi Dailies, as a Clerk, has filed this writ petition as against the award passed by the Labour Court in ID.No.26/2001 dated 30.09.2009. This dispute was raised by the petitioner / workman that he has been terminated from service by the first respondent, without conducting any enquiry. The Labour Court accepted the same and ordered for reinstatement with continuity of service. However, the Labour Court has failed to award back-wages and therefore, the petitioner / workman has filed this writ petition in the year 2010.

2.Learned Counsel for the petitioner submitted that the petitioner / workman was terminated from service without conducting any enquiry and it has been accepted by the Labour Court. Once this has been accepted by the Labour Court, then the order of termination itself has to be treated as an illegal order and



W.P(MD)No.3778 of 2010

WEB COPY

therefore, the petitioner is entitled for back-wages. He has also stated that the Management has not filed any materials before the Labour Court to substantiate that the petitioner was gainfully employed during the pendency of ID proceedings. That apart, after terminating him from service, the Management has published in their daily newspaper that the petitioner has been terminated from service for misconduct of misappropriation and therefore, there cannot be any scope for re-employment for the petitioner during that period also.

3.In support of his contention, he has relied upon the following decisions:-

- i) Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyala and Others [2013 10 SCC 324];
- ii) M/s.Hindustan Tin Works Pvt Ltd v. Employees of M/s.Hindustan Tin Works Pvt Ltd and Others [1979 2 SCC 80]; and
- iii) Narinder Mohan Arya v. United India Insurance Co Ltd and Others [2006 4 SCC 713].



W.P(MD)No.3778 of 2010

WEB COPY

4.Learned Counsel for the respondent / Management

submitted that the Management is not in existence as on date. He further submitted that the Management has conducted an enquiry, however, it could not place the relevant materials before the Labour Court. In fact, the Management has produced all the witnesses before the Labour Court and substantiated that there was misappropriation committed by the petitioner. Without considering the materials placed by the Management, the Labour Court has passed the order of reinstatement. The learned counsel has also relied upon the decision of the Hon'ble Supreme Court in ***Uttar Pradesh State Road Transport Corporation Vs. Gajadhar Nath [Civil Appeal No.7536 of 2021, dated 08.12.2021]***. In the said decision, the Hon'ble Supreme Court, by referring to ***Workmen of M/s.Firestone Tyre and Rubber Co of India Pvt Ltd v. Management and Others [1973 1 SCC 813]***, has held that even if no enquiry was conducted, if the Management was in a position to prove the charges as against the workman during the enquiry, then it needs to be considered.



**W.P(MD)No.3778 of 2010**

WEB COPY

5. Heard the learned Counsel appearing on either side and perused the materials placed on record.

6. The petitioner / workman was terminated from service by the first respondent on 10.09.1998. Therefore, he has raised Industrial Dispute in the year 2001. It was awarded on 30.09.2009. The Labour Court found that the order of termination was passed without conducting any enquiry and therefore, treated the order of termination as an illegal one, passed an award for reinstatement with continuity of service. However, the Labour Court has failed to order for back-wages to the petitioner / workman.

7. Though the Management has placed some facts and attempted to project that there was an enquiry, the Management has taken a specific stand during the proceedings before the Labour Court that the documents pertaining to the enquiry were all destroyed during a fire accident. They have not produced any materials to substantiate that there was an enquiry. Therefore, the Labour Court



**W.P(MD)No.3778 of 2010**

came to a conclusion that the order of termination is an illegal one.

WEB COPY

8.In fact, certain witnesses have been produced by the Management before the Labour Court, however, there is no pleading to that effect in the objections raised by the Management in the Industrial Dispute. Moreover, the respondent / Management has not challenged the award passed in ID.No.26 of 2001, dated 30.09.2009.

9.It is also the case of the petitioner / workman that he has been terminated on the charges of misappropriation. It was also published in the daily newspaper by the Management. Once they have published in the daily newspaper that this petitioner has misappropriated, there is no scope for any re-employment during the enquiry before the Labour Court. The Management has also not adduced any evidence that this petitioner was gainfully employed in somewhere else, during the relevant period. Therefore, as per the ratio laid down in the decisions referred by the petitioner as stated supra, the petitioner is entitled for back-wages.



W.P(MD)No.3778 of 2010

WEB COPY

10. Learned counsel for the Management has relied upon the Judgment of the Honourable Supreme Court in *Uttar Pradesh State Brassware Corporation Ltd., and another Vs. Udai Narain Pandey*, reported in **2006(1) L.L.N.125** and the order of the Division Bench of this Court in *S.Sivaraj Vs. The Managing Director, Tamil Nadu Forest Plantation Corporation Limited*, reported in **2007 (3) TLNJ 645 (Civil)** and states that there is no precise formula for payment of full backwages, on termination of service being declared invalid and it has to be decided depending upon the facts and circumstances of each case. The Honourable Supreme Court in the above cited Judgment has observed as under:

*58.A Division Bench of this Court in M.L.Binjolkar Vs.State of Madhya Pradesh (2005(3) L.L.N.1035), referring to a large number of decisions, held, in para 6, at page 1037:*

*“....The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted*



W.P(MD)No.3778 of 2010

*above that it would depend upon several factors and the Court has to weigh the pros cons of each case and to take a pragmatic view....”*

The Division Bench of this Court has held as follows:

*10.It is not a rule of thumb that in every case, where reinstatement is ordered, the payment of backwages in a natural consequences. It depends on the facts of each case. On the facts and circumstances of this case, we are of the considered view that the termination, which was set aside by this Court is purely on the ground of procedural irregularity and such order will not confer an automatic right for the appellant to draw the backwages.*

11.No doubt, the Courts have held that in the event, if the order of punishment is held to be illegal, it does not mean that the workman is entitled for backwages and depending upon the facts and circumstances of each case. In this case, the Management has dismissed the petitioner from service without conducting an enquiry and therefore, the Labour Court has found that the order of dismissal



**W.P(MD)No.3778 of 2010**

WEB COPY

is illegal one, it has also passed an order, directing the Management to pay back-wages to the petitioner during the dismissal period, till the date of award. It is to be noted that the Management is a publisher, running two daily Magazines and after the order of dismissal, a publication was also effected in their newspapers, exposing the conduct of the petitioner/ workman that he has been dismissed from service on misconduct/misappropriation. Therefore, it can be presumed that no one will be ready to offer any employment opportunity to this petitioner. Though the Labour Court has not awarded back-wages, the Labour Court has found that the order of dismissal is illegal. In this case, the Labour Court ought to have awarded back-wages to the petitioner/workman.

12. In the absence of any specific materials that he was gainfully employed during the relevant period, denial of back-wages is not proper on the part of the first respondent and therefore, in view of the ratio laid down by the Honourable Supreme Court as well as this Court cited supra, this writ petition is allowed with a



**W.P(MD)No.3778 of 2010**

WEB COPY

direction to the first respondent Management to pay the back-wages to the petitioner/Workman during the dismissal period, till the date of award. No costs.

**25.09.2024**  
(2/2)

NCC:Yes/No  
Index:Yes  
vrn

To

- 1.The Proprietor,  
Athirstam & Thinaboomi Dailies,  
9, Dinidugl Main Road,  
Vilankudi, Madurai.
- 2.The Presiding Officer,  
Labour Court, Madurai.



WEB COPY



**W.P(MD)No.3778 of 2010**

**B.PUGALENDHI, J.**

vrn

**Order made in**  
**W.P(MD)No.3778 of 2010**

**25.09.2024**  
**(2/2)**