



W.A(MD)No.1378 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.04.2024

CORAM

**JUSTICE N. SESHASAYEE
and
JUSTICE P.VADAMALAI**

W.A(MD) No.1378 of 2016

S.Jayamalar

... Appellant/1st Respondent

Vs.

1.The Assistant Director,
District Sericulture Centre,
Palani Road,
Dindigul.

... 1st respondent/Petitioner

2.The Presiding Officer,
Trichy Labour Court,
Trichy,
Dindigul Camp,
Dindigul District.

... 2nd respondent/2nd respondent

Prayer: Appeal filed under Clause 15 of the Letters Patent, against the order dated 29.10.2011 made in W.P(MD)No.8556 of 2007.

For Appellant
For R-1

:Mr.S.Sarvagan Prabhu
:Mr.A.Baskaran,
Additional Government Pleader



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JUDGMENT

(Judgment of the Court was delivered by N.Seshasayee, J.)

The appellant herein is a workman who challenges the order passed by the learned Single Judge in W.P(MD)No.8556 of 2007, dated 29.10.2011, by which, the order of the Labour Court directed the first respondent herein to pay salary from 01.09.1992 to 14.11.1996 under Section 33-C(2) of the Industrial Disputes Act, 1947(in short ‘the Act’), was set aside.

2. Brief facts are as follows:

- a) The appellant is under the employment of the District Sericulture Centre, Dindigul, the first respondent herein. There is a dispute whether the appellant was a casual labourer or a regular employee. But, in view of the facts to be stated, this distinction has become immaterial.



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b) On 02.07.1987, the services of the appellant was terminated. The appellant immediately raised an industrial dispute and it finally landed before the Labour Court in I.D.No.16 of 1988. Vide its exparte Order dated 20.09.1989, the concerned Labour Court directed the reinstatement of the appellant with back wages. Neither this order was immediately complied with nor was it challenged by the employer before this Court.

c) In these circumstances, the appellant moved the Labour Court with C.P.No.223 of 1993 under Section 33C (2) of the Act, for payment of her salary with arrears of back wages in tune with the award of the Labour Court, dated 20.09.1989. On 16.06.1994, the Labour Court passed another ex-parte award directing the employer to pay the appellant a sum of Rs.20,330/- as back wages payable from 27.03.1987 to 31.08.1992. This order too was not challenged and the sum was paid.

3. It is to be noted that even at this point of time, the appellant was not



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reinstated as per the original order of the Labour Court. She was ultimately reinstated only on 15.11.1996. In these circumstances, the appellant had moved the Labour Court with C.P.No.33 of 2000 seeking payment of wages from 01.09.1992 to 14.11.1996. The employer who hitherto chose to remain ex-parte, now sprang into action and contested. It raised two principal defences and they are:

- (i) That the appellant was not a regular employee but was only a casual labourer;
- (ii) That the employer was essentially a non-profit Centre and due to lack of business, this Centre was closed and all its assets were handed over back to the Revenue Authority.

These defences however, were rejected by the Labour Court and it ordered payment of Rs.44,266.28 as wages for the period from 01.09.1992 to 14.11.1996.

4. This order of the Labour Court was challenged by the employer in W.P(MD)No.8556 of 2007. The learned Single Judge who heard the matter accepted the contentions of the employer and allowed the writ petition. The



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principal line of reasoning of the learned Single Judge is that, in terms of the ratio laid down by the Hon'ble Supreme Court in ***Municipal Corporation of Delhi vs. Ganesh Razak and others*** [1995 (1) SCC 235], daily rated casual labourers cannot be granted wages as claimed by the appellant/writ petitioner.

5. Head both sides. The learned counsel for the appellant submitted that while relying on the ratio in ***Ganesh Razak's*** case, the learned Single Judge had overlooked a critical factual difference in that, while in ***Ganesh Razak's*** case there had never been an adjudication prior to the institution of the claim petition under Section 33-C(2) of the Act, in the present case, there is an Order of the Labour Court in I.D.No.16 of 1988 directing the reinstatement of the appellant, and followed it with its order in C.P.No.223 of 1993. In other words, the appellant's right to be reinstated and to earn her wages/salary has commenced from the date on which the Labour Court had directed her reinstatement but it was the employer who chose to delay her reinstatement for close to seven years. This apart, in C.P.No.223 of 1993, the Labour Court had directed payment of wages for a period of about five and a half years which substantially included the period after the passing of the award of the



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Labour Court, dated 20.09.1989 and this amount was paid without a whimper of protest. The present C.P.No.33 of 2000 was filed only for the subsequent period and up to the date of actual reinstatement and inasmuch as the employer has not challenged the order in C.P.No.223 of 1993, it is now estopped from challenging the award passed in C.P.No.33 of 20200. Reliance was placed on the ratio laid down by the Hon'ble Supreme Court in ***D.N.Krishnappa vs. the Deputy General Manager*** [Civil Appeal No.9008 of 2022, dated 12.12.2022]

6. The learned Additional Government Pleader submitted that admittedly the appellant had not worked between 01.09.1992 to 14.11.1996. This apart, the appellant had not submitted her application for joining the duty.

7. This Court is plainly unimpressed with the line of defences which the employer had adopted before this Court. First, it must be stated that there is a significant factual difference between the ratio in ***Ganesh Razak's*** case and the present case and this itself has been pointed out by the learned counsel for the appellant in his submission. This Court therefore, does not intend to



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repeat it again. Insofar as the present case is concerned, this has considerable factual similarity with the facts of the case in *T.N.Krishnappa's* case. The other points which are against the employer are that it has chosen not to challenge the order passed in C.P.No.223 of 1993 where the period covered is about three years subsequent to the passing of the order of reinstatement. When there is no challenge to the first part of the period between the date of the award of the Labour Court in I.D.No.16 of 1988 and the date of actual reinstatement, this Court sees no logic in denying the employee the right to claim wages for the remainder part of the period before her actual reinstatement.

8. Insofar as the argument based on “No Work - No Pay” is concerned, as rightly argued by the learned counsel for the appellant, it was no fault of the appellant but it is a creation of the employer. The employer now would make a statement that the appellant ought to have filed an application for her actual reinstatement. But, this Court wonders why at all she should prefer an application? Did not the employer know that it is under obligation to implement the award which the Labour Court had passed in



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I.D.No.16 of 1988? The burden is heavily cast on the employer and it cannot shift it to a poor employee.

9. To conclude, this Court finds every reason to set aside the order of the learned Single Judge, and accordingly, the order of the learned Single Judge, dated 29.10.2011 made in W.P(MD)No.8556 of 2007, is set aside and accordingly, this Court confirms the order passed by the Labour Court, Trichy in C.P.No.33 of 2000, dated 24.07.2007. The first respondent herein is directed to comply with the said award without any further delay, failing which the employee is at liberty to execute the same as per law.

10. This writ appeal is allowed accordingly and the Order of the learned single Judge dated 29.10.2011 made in W.P(MD)No.8556 of 2007 is set aside. No Costs.

(N.S.S., J.) (P.V.M., J.)
15.04.2024

NCC : Yes/No
Index : Yes/No



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- 2.The Presiding Officer,
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PM

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