



W.P.No.29061 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 07.01.2025

CORAM:

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.29061 of 2010

and

M.P.No.1 of 2012

The Management of
Chemplast Sanmar Ltd.,
(formerly Chemicals & Plastics India Ltd.,)
No.9, Cathedral Road
Chennai 600 086.

... Petitioner

Vs.

1.K.A.Seralathan (Deceased)

2.The Presiding Officer
II Additional Labour Court
Chennai.

3.K.J.Ganthimathi

4.Hariprasath

(R3 & R4 are substituted as LR's of
deceased R1, as per order dated
07.01.2025 in MP.No.1/2015 in
W.P.No.29061 of 2010)

...Respondents



W.P.No.29061 of 2010

WEB COPY **Prayer :** Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records connected with the award dated 06.09.2010 made in I.D.No.49 of 2002 on the file of the second respondent, II Additional Labour Court, Chennai and quash the same.

For Petitioner : Mr.Sai Prasad

For Respondents : R1- Died
R2 – Labour Court
Mr.Senthilnathan for R3 & R4

ORDER

This Writ Petition is filed challenging the award of the Labour Court dated 06.09.2010 made in ID.No.49 of 2002. By the said award, while holding the non employment of the Workman as unjustified, the Labour Court directed the entire backwages from the date of non employment of the Workman till the date of the award to be paid to the Workman. Aggrieved by the same, the management has filed the present Writ Petition



W.P.No.29061 of 2010

2. The brief facts in which the Writ Petition arises are originally

the Workman was employed as a clerk in the Account Section with effect from 20.10.1982. Thereafter, he was re-designated as Senior Assistant with effect from 28.07.1994. He was further promoted as Junior Officer on 30.01.1995. He was further promoted as Officer with effect from 01.10.1999. In the year 2000, he was drawing a salary of Rs.10,599.55/- after the deduction. While so, he was found to be surplus and by an order of termination dated 09.04.2001 he was terminated from service. Upon termination, the entire outstanding payable to him by calculating the gratuity, provident fund arrears etc., were also paid to the workman. Aggrieved by the termination, the Workman raised a dispute. Conciliation failed. Thereafter, the claim made by the Workman was taken on file as ID.No.49 of 2002. The claim of the Workman was resisted by the management by stating that since the person has been given subsequent promotion and was working as an Officer and was only attending to managerial and administrative functions, cannot be termed as a Workman within the meaning of the Industrial Disputes act. In any event, only because he was found to be surplus the termination was *bonafide* made and all his benefits were paid to him.



W.P.No.29061 of 2010

WEB COPY

3. On the said pleadings, when the Labour Court took up the matter for enquiry the Workman examined himself as *W.W.1* and *Ex.W.1* to *Ex.W.36* were marked. On behalf of the management one *Rajagopalan* was examined as *M.W.1* and *Ex.M.1* and *Ex.M.2* were marked on behalf of the management. The Labour Court considered the case of the parties and found that even though the terminology of Officer was used the person concerned was only a Workman. Once it is found that the person concerned is a Workman, since no procedure with reference to *25F of the Industrial Disputes Act, 1947* was also followed and this was not also a case of any charge or domestic enquiry found that the non employment is unjustified and granted the aforementioned relief. Aggrieved by which, the present Writ Petition is filed.

4. *Mr.Sai Prasad*, learned counsel appearing on behalf of the management firstly by taking this Court through the various promotion orders and thereafter to the relevant portions of the cross examination whereby the Workman himself has admitted that he is moved away from the category of



W.P.No.29061 of 2010

the Workman and would point out the portion where the regular benefits such as medical benefits, dearness allowance etc., were not continued after his promotion which the Workman himself admitted would go to show that the Workman was an Officer in the real sense of the term which the Labour Court has failed to consider. Further pointing out to the portions of the cross examination with reference to the place of work of the Workman and also to the fact that his wife was also working in the same concern and that he was employed in the Head Office in *Radhakrishnan Road*, would submit that by the cross examination the management has established that he is not a Workman and his duties and responsibilities were only administrative and managerial in nature and therefore, the Labour Court ought not to have granted the benefit. Alternatively, the learned counsel would submit that in any event, it can be seen that when he has become surplus, only because of the *bonafide* reason, he was removed from employment and all the settlements were *bonafide* made. In that event, the Labour Court only ought to have granted the compensation that was payable by calculating in the same manner as that of the gratuity and pay to him and ordering payment of the entire wages for the period was not in accordance with law and the same is on



W.P.No.29061 of 2010

the higher side and results in unfair consequences to the management.

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5. Per contra, *Mr.Senthilnathan*, the learned counsel appearing on behalf of the respondents 3 and 4 in the Writ Petition, would submit that, the Workman was never involved in any managerial or supervisory capacity. Eventhough the management has pleaded the same, no evidence was let in on behalf of the management with reference to the same. No evidence with reference to the Workman having the power to sanction the leave, taking disciplinary action or managing the other employees in the concern was let in. In the absence of the same, the Labour Court need not go on the mere designation as Officer. Therefore the finding of the Labour Court is in order. Once the non employment is incorrect, then the natural course available for the Labour Court is only to award reinstatement with backwages. Only considering the fact that the Workman was to attain the age of superannuation in the year 2011, the Labour Court stopped by granting only the backwages alone and that itself is inadequate relief to the Workman and as a matter of fact the Labour Court ought to have granted the further relief also.



W.P.No.29061 of 2010

6. I have considered the rival submissions made on either side

and perused the material records of the case.

7. As far as the first question is concerned as rightly contended that it is not the name of the designation which matters but it is the duties and responsibilities which has to be looked into. If predominantly the duties and responsibilities of the person is not administrative, managerial or supervisory nature, then the same would be clerical in nature, in spite of the name of the designation. In this case, when it is the contention of the management that the said *K.A.Seralathan* was not a Workman, except for the cross examination that is made, there is no other positive evidence with reference to the Workman having any other supervisory power against any other lower cadre or any other managerial power granted to him is not brought on record. As far as the cross examination is concerned, though that demonstrates that the Workman has been moving up the ladder, and certain benefits which are either granted to him were not granted to him subsequently, the same by itself is not enough to hold as proof that the Workman was only predominantly working in a managerial or supervisory capacity and accordingly, I do not



W.P.No.29061 of 2010

find any error in the finding of the Labour Court that the said *Seralathan* was only a Workman.

8. Once he is a workman, then his non employment was neither after any domestic enquiry nor by complying 25 F of the Act and as such, not justified. Now coming to the relief that is granted to the Workman, now it is seen that the Workman also died on 28.05.2015 and regrading the relief that is granted to the workman, I consider the following aspects :

a) As per the award of the Labour Court the Workman who was drawing a wage of Rs.11,330/- per month was directed to be paid the backwages for the entire period from 09.04.2001 till the date of the award that is on 06.09.2010 which roughly works out upto about Rs.12,00,000/- in total.

b) The Workman had also since passed away on 28.05.2015. It is stated that the Workman was aged 62 as on date of his death and therefore he attained the age of superannuation that is 58 years roughly in the year 2011.



W.P.No.29061 of 2010

WEB COPY

c) The overall emoluments that is received at the time of termination which includes the gratuity which is calculated up to the date the particulars of which is also produced before this Court by a communication dated 09.04.2001 is also taken into account. After considering the overall facts and circumstances of the case, I am of the view that instead of ordering the entire backwages, to balance the rights of the parties and to serve the interest of justice roughly about 60% of the entire backwages amount as ordered by the Labour Court can be paid. Instead of going into the exact calculation, I am of the view that the management can be directed to pay a sum of Rs.7,00,000/- to the respondents 3 & 4 the legal heirs of the workman namely, his wife *K.J.Gandhimathi* and son *Hariprasath* equally.

9. In view thereof, this Writ Petition is disposed of on the following terms;

(i) The award of the Labour Court dated 06.09.2010 made in ID No.49 of 2002 is upheld in as much as it finds the deceased K.A.Seralathan was a Workman in the petitioner management and the non employment of the said Seralathan is not justified;



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W.P.No.29061 of 2010

(ii) The award of the Labour Court is modified with reference to the relief that is granted from entire backwages to payment of sum of Rs.7,00,000/- to the Workman, who is since now been represented by his wife and son being the respondents 2 and 3 in the Writ Petition. The said sum of Rs.7,00,000/- shall be paid to them within a period of 8 weeks from the date of receipt/production of the website uploaded copy of this order, without waiting for the certified copy of the order.

(iii) No costs. Consequently, connected Miscellaneous Petition is closed.

07.01.2025

Neutral Citation : No
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To

The Presiding Officer
II Additional Labour Court
Chennai.



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W.P.No.29061 of 2010

D.BHARATHA CHAKRAVARTHY, J.
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