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W.P.No.4942 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.06.2025

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No. 4942 of 2021

&

W.M.P.No. 5523 of 2021

Jenarthanan

...Petitioner

Vs.

J.Devi

...Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records culminating in the award in ID.No.41 of 2018 on the file of the Principal Labour Court dated 20.11.2020 and quash the same.

For Petitioner : Mr. M.Santhanaraman

For Respondent : Mr. T.Anantha Sekar.



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ORDER

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Challenging the award passed by the Principal Labour Court, Chennai in ID.No.41 of 2018, the employer is before this Court. The brief facts preceeding the filing of this Writ Petition is herein below set out.

2. The respondent workman had joined the services of the petitioner on 01.10.2013 as Front Office Executive on a monthly salary of Rs.9,000/-. The petitioner concern operates on four shifts, namely, from 7.00 am to 4.00 pm, 9.00 am to 6.00 pm, 10.00 am to 7.00 pm and 11.00 am to 8.00 pm. The respondent would work in the shift as directed by the management from time to time.

3. It is the case of the respondent that the petitioner had over 10 branches in the city of Chennai. She was posted in all the branches and worked in various shifts till 30.05.2015. It is the case of the respondent that in the month of April 2015 the management had directed the respondent to work from 7 Am to 9 PM without any shift basis and



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without any leave. The petitioner management had also directed the respondent to work at different branches on the same day. Between 7 am to 12 pm she was to work at the Washermen Pet branch and between 1 pm to 9 pm she was to work at Royapettai.

4. The respondent would submit that travelling was very difficult and they were assured that once more employees were employed the problem would be sorted out. Further, the petitioner has agreed to pay over time and travel expenses to the respondent. However, the respondent had not received the travel expenses. The petitioner has only paid a sum of Rs.20/- as against Rs.70/-, which is payable by them. A sum of Rs.200/- was deducted every month under the head other deductions.

5. It is the case of the respondent that she had approached the management and requested them to pay her the over time allowances and travel allowances. Since she had questioned the same she was transferred from Washermen Pet to Anna Nagar. The respondent had



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ventilated her grievance through a letter to the petitioner. This letter had evoked a show cause notice dated 24.10.2015, which was received by her on 05.12.2015.

6. Thereafter, the respondent was served with termination letter without giving her any reasonable opportunity. The respondent thereafter gave a letter dated 29.12.2015 seeking reinstatement. Though the said letter was received by the petitioner management on 02.01.2016 there was no reply to the same. Thereafter, the respondent had preferred a complaint before the Labour Officer who attempted to conciliate between the parties which had ended in a failure.

7. Thereafter, reference was made to the Principal Labour Court, Chennai and the dispute was taken up by the Principal Labour Court, Chennai in ID.No.41 of 2018, seeking to set aside the termination order.

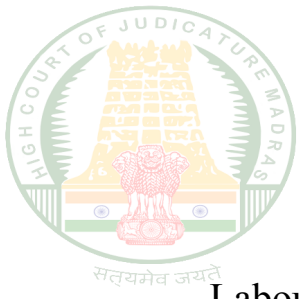


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8. The petitioner management had filed a counter inter alia denying the contentions raised by the respondent. They would deny the allegations that the respondent workman was made to work different shifts, overtime and without providing overtime charges. The petitioner would contend that the respondent had shown signs of indiscipline and had disobeyed seniors. The deduction of Rs.200/- per month is towards tea and snacks provided by the management to the employees at a subsidised rate.

9. The petitioner would further submit that the respondent's work at Washermen Pet was not satisfactory and therefore she was transferred to bigger branch at Anna Nagar. Thereafter, the respondent had started giving trouble by picking up quarrel with her senior staff members. The petitioner would submit that the respondent had threatened her senior staff and harassed her which was seriously taken note of by the management.



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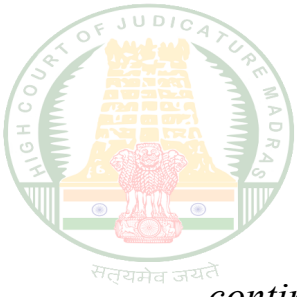
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10. Further, the respondent had filed a false case before the Labour Commissioner contending false allegations for which show cause notice was issued by the petitioner to the respondent on 14.11.2015 for misconduct. Since the reply given by the respondent was not satisfactory the petitioner management was left with no other alternative except to pass orders on 05.12.2015 terminating her services with effect from 14.11.2015.

11. The petitioner had submitted a response that she was not conversant in English language and had sought for translating show cause. This despite the fact that her petition before the Labour Commissioner was in the English language.

12. The Principal Labour Court, Chennai, had framed the following points for adjudication:

(i) Whether the termination of the petitioner made by the respondent is illegal, against natural justice and is liable to be set aside?



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(ii) *Whether the petitioner is entitled for reinstatement with continuity of service, back wages and other benefits?*

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13. The respondent had examined herself as WW1 and marked Ex.W1 to Ex.W7. The respondent was examined as MW1 and marked Ex.M1.

14. The learned Labour Judge, after hearing the arguments and perusing the records had passed orders directing reinstatement and awarding 30% back wages after setting aside the termination order passed by the petitioner.

15. Challenging the same the petitioner management is before this Court.

16. The learned counsel appearing for the petitioner would submit that the respondent / workman was not entitled to backwages as there was no plea that she was not gainfully employed after dismissal



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from services. In support of this argument he had produced the Judgement reported in **2018 (18) SCC 21 – M.L. Singla Vs. Punjab National Bank and Another**. He would also rely upon the Judgement of the Hon'ble Supreme Court reported in **2013 (5) SCC 136 – Assistant Engineer Rajasthan Development Corporation and another Vs. Gitam Singh**, to state that in case of order of reinstatement the workman could be compensated as provided under Section 25 F of the Industrial Dispute Act.

17. The learned counsel appearing for the respondent / workman would submit that the Labour Court after considering the evidence has come to the conclusion that the termination was per se erroneous. The respondent was not served with proper charge memo and without affording reasonable opportunity the order of termination has been made by the petitioner. This fact has been taken note of by the Labour Court who has ordered reinstatement. However, the Labour Court has erred in granting only 30% back wages and ought to have granted entire back wages.

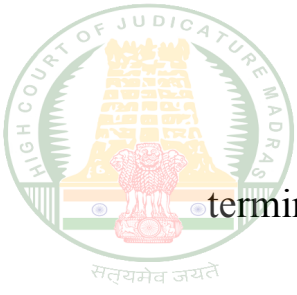


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18. A perusal of the Judgement in ***M.L.Singla's*** case, would show that in order to avail the benefit of backwages it is necessary for the workman to plead and prove that he was not gainfully employed after his dismissal through evidence. A perusal of the petition filed before the Labour Court would clearly show that such a plea has not been taken by the respondent and even the evidence in this regard has not been let in by the workman except a denial to the suggestion in cross examination that she was gainfully employed. Therefore, the order granting backwages has to be set aside.

19. In other respects the learned Labour Judge has perused the evidence and has come to the conclusion that the petitioner management has not proved any of the allegation that they have raised against the respondent. The respondent / management has not even provided a translated copy of the show cause notice which has been sought for by the respondent / workman and without providing the same and awaiting for the explanation they have rushed into



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terminating her services.

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20. The allegation that the petitioner did not discharge her duties properly in Washermen Pet and therefore she was transferred to bigger branch, namely, Anna Nagar only goes to show that allegation that the respondent was not discharging her duties properly is absolutely baseless.

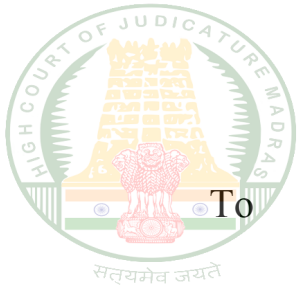
21. Therefore, the Writ Petition is partly allowed. The finding of the Principal Labour Court, Chennai, with respect to awarding 30% back wages is set aside. In all other respect the award stands confirmed. Consequently, the connected miscellaneous petition is closed. No costs.

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Index : Yes/No

Internet : Yes/No

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To

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The Principal Labour Court
Chennai.

P.T. ASHA, J,



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