

THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.03.2025

PRONOUNCED ON : 02.04.2025

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CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

**W.A.No.831 of 2024
and
C.M.P.No.5765 of 2024**

M/s.Chennai Container Terminal Pvt. Ltd,
Rep. by its Chief Executive Officer cum Director,
Chennai Port Trust,
Old Administration Office Building,
Chennai - 600 001.

...

Appellant

versus

1.The Presiding Officer
Central Government Industrial Tribunal
cum Labour Court,
Shastri Bhavan, Chennai.

2.G.Suresh Kumar

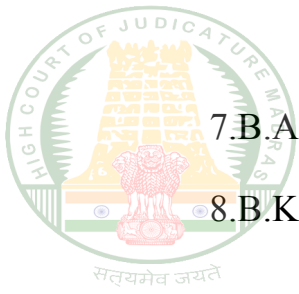
3.R.Harikrishnan

G.Bhuvanesh (Died)

4.S.Balachandran

5.K.Lakshmanan

6.B.Rajeshwari



7.B.Akshaya

8.B.Keerthana

...

Respondents

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Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order of this Court dated 26.09.2023 passed in W.P.No.3269 of 2017.

For Appellant : Mr.S.Ravindran, Senior Counsel
For Mr.S.Bazeer Ahamed

For Respondents : Labour Court - R1
Mr.V.Govardhanan
For M/s.Row And Reddy - R2 to R8

J U D G M E N T

(Judgment of the Court was made by **G.ARUL MURUGAN, J.**)

This intra Court appeal is filed against the order dated 26.09.2023 in W.P.No.3269 of 2017, whereby award of the labour court in respect of reinstatement of workman with continuity of service and back wages came to be confirmed.

Short facts to be noted in the appeal are as follows;

2. The appellant-private limited company is engaged in the business of container terminal handling work and took over the container handling operations of the Chennai Port Trust. The respondents 2 to 8 workmen had joined in the service with the appellant as Checker in December 2001. In



May 2005, there had been a strike and in order to weaken the collective bargaining power, the appellant gave name sake promotions to the workmen as Junior Officers on 01.06.2005. However, the workmen continued to carry on duties of Checker. To ventilate their grievances, they became members of Employees Union and on 14.02.2013 they placed a charter of demands and as the same was not acceded to, a strike notice came to be issued.

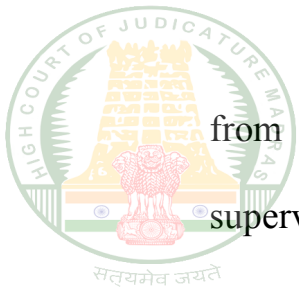
3. Further on 17.07.2013, the Union had furnished a list of members to the conciliation officer demanding payment and to protect the work condition of the workman pending conciliation proceedings. However, the appellant transferred the workmen on 01.08.2013 by giving time till 14.08.2013 to join in the transferred place. Though the conciliation officer directed the appellant to maintain status quo, still the appellant by letter dated 06.08.2013 directed the workmen to obey the transfer order, failing which, action will be taken. This forced the workmen to approach this Court in W.P.No.22492 of 2013 and when the matter came up for hearing, the appellant withdrew the transfer order. Instead of allowing the workmen to report for the duty, the management issued an order of termination on 21.04.2014. Contending that the termination of service is contrary to



Section 33 of the Industrial Disputes Act, 1947, (hereinafter referred to as 'the Act'), and is in violation of Sections 25 G, 25H and 25F of the Act, the workmen raised an industrial dispute and pursuant to the reference by the Government, the workmen filed claim petitions in I.D.Nos.118,119,120, 122 of 2014 and 4 of 2015 before the Labour Court.

4. The appellant had resisted the claim petitions mainly on the ground that the respondents are not workmen within the meaning of Section 2(s) of the I.D Act, as they are working as supervisors in the management cadre. Further, it was contended that the transfer was part of the conditions outlined in the promotion order and as such the appellant justified the transfer that had been effected. The Labour Court by a common award dated 27.10.2016, held that both the transfer and the subsequent termination were the result of victimization and directed the appellant for reinstatement of the workmen with continuity of service and back wages.

5. The management has challenged the said award in the writ petition. The writ Court by considering the evidence of two witnesses of the management MW1 and MW2 and particularly the cross examination, had found that name sake promotion was effected only to deprive the workmen



from enjoying the status of workmen but they were not working in a supervisory capacity. The Writ Court, therefore, held that the respondents are entitled to raise dispute in terms Section 2(s) of the I.D Act and declined to interfere with the award passed by the Labour Court and confirmed the reinstatement with continuity of service and also the back wages. Assailing the order passed by the writ Court, the management had preferred the above appeal.

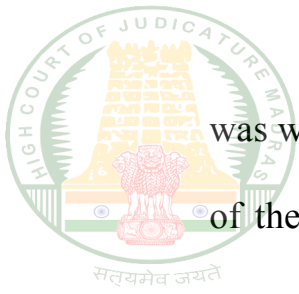
6. Mr.S.Ravindran, learned Senior Counsel, though made broad submissions on entire issue, however restricted his arguments only in respect of award of full back wages. In this regard, it is the contention of the learned Senior Counsel that the award of back wages is not automatic as a consequence of ordering reinstatement. It is for the workmen to plead and prove that they were not in gainful employment anywhere. He further contended that in the instant case, even separate affidavits have not been filed by individual workmen and only one witness WW1 G.Bhuvanesh alone was examined, who had filed the proof affidavit. This cannot be taken as a basis to conclude it is a statement of all the other workmen. It is for workmen to individually plead, as the facts differ from each workman, that they are not in gainful employment.



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7. He further contended that the Labour Court had not whispered a word or discussed anything about as to whether the workmen was gainfully employed or not, or adduced any other reasons for granting full back wages. However, in one line, simply in view of ordering reinstatement with continuity of service, had allowed full back wages. It is his further vehement contention that the writ Court had also not given any specific finding and considered this issue but simply confirmed the full back wages as per the award. In this regard, to buttress his arguments, the learned Senior Counsel relied on the decision of the Hon'ble Supreme Court in the case of ***Management of Regional Chief Engineer, Public Health and Engineering Department, Ranchi Vs. Their Workmen, represented by the District Secretary***, reported in ***(2019) 18 SCC 814***.

8. Contending contra, Mr.V.Govardhanan for M/s.Row and Reddy, learned counsel for the respondent/workmen contended that when once the Labour Court found that the termination of services of the workmen was the result of victimisation and an unfair labour practice by the management, then automatically the workmen is entitled for award of full back wages, as the management had denied them employment. He further contended that it



was within the domain and powers of the Labour Court under Section 11(A) of the I.D. Act and when the Court is satisfied that the order of dismissal was not justified, while passing the award and setting aside the dismissal, it can grant such other relief to the workmen as it deems fit.

9. In the instant case, the Labour Court on finding that the order of termination is only due to victimisation, while setting aside the termination, had ordered for reinstatement along with back wages. It is his further contention that when in a case where only the punishment was modified on the ground of proportionality, the discretion was with the Courts to decide back wages. But however when the dismissal from service is set aside on the ground of victimisation or unfair labour practice, then the workmen is entitled to the full back wages. He further contended that one of the workmen had examined himself as WW1 which is on behalf of all the other workmen and in his proof affidavit, he had specifically stated that, since the date of his termination they are without any employment and they have got a family to support. When the workmen had pleaded so, the management had not come forward with any proof to disprove the claim and establish that the workmen was in gainful employment and denying the liability of paying back wages. As such the award as confirmed by the writ court for



payment of full back wages is completely justified and is in consonance with the provision of the Act.

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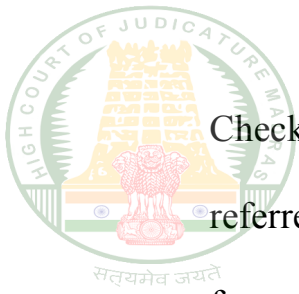
10. In this regard, he relied on the following decisions of the Hon'ble Supreme Court;

- i. Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others, reported in [(2013) 10 SCC 324]
- ii. PGI of N.E and Research, Chandigarh Vs. Raj Kumar, reported in [(2000) Supp (4) SCR 350]
- iii. NICKS (India) Tools Vs. Ram Surat and Another, reported in [(2004) 8 SCC 222]

11. Heard the respective learned counsels and perused the materials available on record.

12. The short issue that arises in this appeal, is as to whether the payment of full back wages to the workmen was justified.

13. It is not in dispute that the appellant company is indulged in the container handling operations at Chennai Port Trust from 2001. It is also not in dispute that the respondents have joined in the service of the appellant as



Checker in December 2001. In view of the subsequent developments as referred earlier, by order dated 21.04.2014 these workmen were terminated from service. The workmen had raised the industrial dispute contending that the termination was in contrary to Section 33 of the I.D Act and is in violation of Section 25G, 25H and 25F of the Act. Pursuant to the order of reference, the claim of the workmen was taken in I.D.Nos.118, 119,120 and 122 of 2014 and 4 of 2015. Before the Labour Court, G.Bhuvanesh, was examined as WW1 on the side of the workmen and Exhibits W1 to W189 were marked. 2 witnesses MW1 and MW2 were examined on the side of the management and Exhibits M1 to M214 were marked. After considering the evidence, the Labour Court, by a common award dated 27.10.2016, found that the termination of service was a result of victimization and ordered reinstatement with continuity of service and also awarded full back wages.

14. A perusal of the award shows that the Labour Court after analysing all the evidence and finding that the respondents are workmen within the meaning of Section 2 (s) of the Act and finding that the transfer of workmen and consequential termination are only due to victimisation, had passed an award, directing reinstatement with continuity in service and full back wages. As rightly pointed out by the learned Senior Counsel for



the appellant/management, the Labour Court had not discussed or rendered any findings in respect of the award of full back wages. By setting aside the termination and passing an award ordering reinstatement with continuity of service, full back wages were awarded without adducing any reasons. The writ court also while accepting that the respondents are workmen, had confirmed the award with full back wages.

15. In this regard to support the award of back wages, the learned counsel for the respondents heavily relied on the decision of the Hon'ble Supreme Court in the case of **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) and Others** reported in **[(2013) 10 SCC 324]**, for the proposition that the full back wages awarded by the Labour Court are fully justified. The Hon'ble Supreme Court considered various decisions in this regard and culled out the principles in paragraph 38 of the judgment, which is extracted below:

“38. The propositions which can be culled out from the aforementioned judgments are:

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of



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the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3. *Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.*

38.4. *The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds*



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that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if



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W.A.No.831 of 2018



he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (supra).

38.7. The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to herein above and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.”

16. However in the decision of the Hon'ble Supreme Court in ***P.Karupiah (Dead) through legal representatives vs. General Manager, Thiruvalluvar Transport Corporation Limited*** reported in **2018 (12) SCC 663**, it is held that there must be proper pleadings and evidence to show that the workman was not gainfully employed during the period of non-employment. Further, in the decision relied on by the appellant in

**Management of Regional Chief Engineer, Public Health and Engineering****Department, Ranchi Vs. Their Workmen** reported in (2019) 18 SCC 814,

the Hon'ble Supreme Court has held that it is necessary for the workmen to plead and prove with the aid of evidence that after his dismissal from service, he was not gainfully employed anywhere and he had no earning himself or his family. The Hon'ble Supreme Court has also held that the employer is also responsible to prove it otherwise against the employee. However, the initial burden is on the employee. The workmen without proving the same, has no right to claim the back wages from his employer as of right, only because of the Court had set aside the dismissal order and ordered for reinstatement.

17. In fact, in the above decision, the Hon'ble Supreme Court had faulted the High Court for granting the relief simply by relying on para 38 of *Deepali Gundu Surwase* case, wherein the propositions of the earlier decision has been culled out. The relevant portion is extracted below;

“10. In our considered opinion, the courts below completely failed to see that the back wages could not be awarded by the Court as of right to the workman consequent upon setting aside of his dismissal/termination order. In other words, a workman has no right to claim back wages from his employer as of right only because the Court has set aside his dismissal order in his favour and directed his



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reinstatement in service.

11. It is necessary for the workman in such cases to plead and prove with the aid of evidence that after his dismissal from the service, he was not gainfully employed anywhere and had no earning to maintain himself or/and his family. The employer is also entitled to prove it otherwise against the employee. namely, that the employee was gainfully employed during the relevant period and hence not entitled to claim any back wages. Initial burden is, however, on the employee.

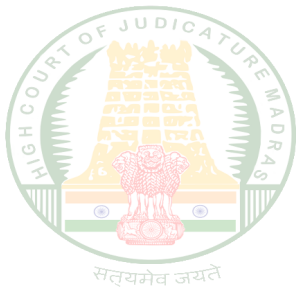
12. In some cases, the Court may decline to award the back wages in its entirety whereas in some cases, it may award partial depending upon the facts of each case by exercising its judicial discretion in the light of the facts and evidence. The questions, how the back wages are required to be decided.

13. The Court is, therefore, required to keep in consideration several factors, which are set out in the aforementioned cases, and then to record a finding as to whether it is a fit case for award of the back wages and, if so, to what extent.

14. Coming now to the facts of the case at hand, we find that neither the Labour Court nor the High Court kept in consideration the aforesaid principles of law. Similarly, no party to the proceedings either pleaded or adduced any evidence to prove the material facts required for award of the back wages enabling the Court to award the back wages.

15. On the other hand, we find that the Labour Court in one line simply directed the appellant (employer) to pay full back wages for a long period to 37 workmen while directing their reinstatement in service.

16. We, however, find that the High Court in para 9 of the order



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placed reliance on the decision of this Court in Deepali Gundu Surwase® for holding that the question of back wages is covered by this decision. In our view, the High Court erred in so observing. It should have seen that in Deepali Gundu Surwase itself, this Court referred to decisions, which we have mentioned in para 12 above and then in para 38 of Deepali Gundu Surwase, this Court culled out the ratio of all the cited cases. Thereafter, this Court in Deepali Gundu Surwase cases granted relief to the workers concerned on the facts involved in that case. In our opinion, the High Court did not apply the ratio of the decision in Deepali Gundu Surwases to the facts of this case properly and only quoted one paragraph of the judgment in Deepali Gundu Surwases which contained general observations. Those observations had to be read in juxtaposition with para 38 which culled out the ratio of all the case law on the subject.

17. We cannot, therefore, concur with such direction of the courts below awarding full back wages to the workmen which, in our opinion, has certainly caused prejudice to the appellant (employer).

18. However, having regard to the facts and circumstances of the case, we consider it just and proper and in the interest of justice to award to these 37 workmen 50% of the total back wages.

19. This we award to the workmen in exercise of our powers under Article 142 of the Constitution of India for doing substantial justice to the parties concerned having reiterated the legal principles which govern the question of award of back wages.”

18. In the aforesaid decision, the Hon'ble Supreme Court by referring to all the earlier decisions including *Deepali Gundu Surwase* case held that



the workmen cannot claim back wages as a right, only because the court has set aside the dismissal order and ordered for reinstatement, but it is for the workmen to plead and prove with all evidence that he has not been gainfully employed.

19. As per the above referred decision in the *Management of Regional Chief Engineer* case (cited supra), the Court has to render a finding as to whether the workmen are entitled for back wages and, if so, to what extent.

20. Coming to the facts on hand, as discussed above in detail, only one workmen who had examined himself as WW1 had filed a proof affidavit, which contains the following one line 'since the date of his termination we are without any employment and we have got a family to support'. Except this, which is averred by only one workman, no other workmen have come forward or chosen to file a statement that they are not in gainful employment, pursuant to the termination. We have gone through the deposition containing the cross examination of WW1. When the workmen have not come forward with pleadings or proof to establish that they have not been in gainful employment, the management had also not



taken any efforts to prove it otherwise against the employee to show that they have been gainfully employed during the relevant period. The management had not even raised the suggestion with the witness in respect of gainful employment. As like the facts as in the case of *Management of Regional Chief Engineer* (cited supra), no party to the proceedings had either pleaded or adduced any evidence to prove the material facts required, to enable the Court to award back wages as has been referred to in paragraph 14 of the above decision of the Hon'ble Supreme Court, except for the one line in the proof affidavit, and that too by only one workman.

21. When no pleadings were available and no materials were placed on either side, the Labour Court went ahead and granted full back wages. The Labour Court has not recorded any findings as to whether it is a fit case or on what basis full back wages were awarded. The writ Court, while confirming the award, also did not render any findings regarding the eligibility or whether it was fit to award full back wages.

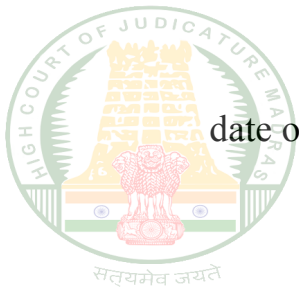
22. The decision relied on by the learned counsel for the respondents/workmen in *Hindustan Tin Works Private Limited* is regarding the award of full back wages and the decision in the *PGI of N.E. and*



Research case deals with the extent to which the High Court can interfere with the award of the Labour Court. The decision in the *NICKS (India)*

Tools case also deals with the interference of the writ court concerning the award of full back wages. However, all the decisions regarding award of back wages including the *Deepali Gundu Surwase* case, have been considered and taken note of by the Hon'ble Supreme Court in the *Management of Regional Chief Engineer* case, where it is held that the workmen has to plead and prove with the aid of evidence regarding not in gainful employment, for awarding back wages. Therefore, the decisions relied on by the respondents do not enure to their benefit.

23. In view of the peculiar facts and circumstances of the present case, where the statement of one workman on behalf of others is alone available and neither party has pleaded nor proved their case, in respect of gainful employment and where both the Labour Court and the writ court have awarded full back wages, we deem it appropriate, in the interest of justice, to modify the award and order of the writ court in so far as awarding full back wages, instead by awarding 50% of the back wages. In all other aspects, the award stands confirmed and the directions as directed by the writ court shall be complied with following the same timelines, from the



date of receipt of a copy of this order.

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24. With these observations and directions, the writ appeal stands partly allowed. No order as costs. Consequently, connected Miscellaneous Petition is closed.

(R.S.M., J.) (G.A.M., J.)
02.04.2025

Speaking order

Index : Yes

Neutral Citation : Yes

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To

The Presiding Officer
Central Government Industrial Tribunal
cum Labour Court,
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W.A.No.831 of 2024



R.SUBRAMANIAN, J.
and
G.ARUL MURUGAN, J.

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Pre-Delivery Judgment made in
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