



WP No. 8906 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-10-2025

CORAM

THE HONOURABLE MRS.JUSTICE N. MALA

WP No. 8906 of 2021

1. D.Sivagnanam
No.76, I Cross Extension, Bharathi
Nagar,Karuvadikuppam,
Lawspet,Puducherry.

Petitioner(s)

Vs

1. The General Manager
M/s.Puducherry Road Transport
Corporation (PRTC), Ayyanar Koil
street, Raja Nagar,Puducherry.

Respondent(s)

PRAYER

Writ petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of certiorarified mandamus calling for the
records relating to the Award dt. 26.2.2020 passed by the Industrial
Tribunal,Puducherry in I.D. (L) No.37/ 2017 and quash the same in so far as
it denied back wages and monetary benefits to the petitioner while grating



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the relief of reinstatement and direct the respondent management to reinstate the petitioner with alternative work, back- wages and all other attendant benefits.

For Petitioner(s): C.K.Chandrasekhar
K.Elumalai

For Respondent(s): Mr.R.Sreedhar, AGP

ORDER

(1)The writ petition is filed by the employee challenging the Award of the Labour Court in ID.No.37/2017 dated 26.02.2020, insofar it relates to the denial of back wages alone.

(2)The brief facts leading to the filing of the writ petition, are as follows:

(3)The petitioner was employed as a Conductor in the respondent/Corporation, initially on temporary basis and thereafter, was made permanent. While so, on 04.03.2006, while the petitioner was on duty, he met with an accident and sustained grievous injuries including fracture in the spinal cord in L4 and L5. The petitioner was granted 72 days disability leave from 05.03.2006 to 15.05.2006. Subsequently, the respondent/Corporation also provided the petitioner with alternate



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employment as Cashier from 16.05.2006 and then as Clerk upto 18.08.2010. The said postings were given to the petitioner in consideration of the grievous injuries sustained by him and his disability to continue as Conductor. On 18.08.2010, the respondent/Corporation relieved the petitioner from the Clerk post and directed him to work as regular Conductor. Though the petitioner requested the respondent/Corporation to give him alternate work, the respondent/Corporation instead of considering the petitioner's request, issued him a charge memo on 01.06.2012 and thereafter dismissed him from service. Aggrieved by the illegal termination, the petitioner raised a dispute in ID.No.37/2017 before the Labour Court and the Labour Court, vide impugned Award dated 26.02.2020, partly allowed the Claim Petition, by directing the respondent/Corporation to reinstate the petitioner, but without full backwages and other monetary benefits. Aggrieved by the Award of the Labour Court insofar as full backwages and monetary benefits were denied, the petitioner filed the above writ petition for the aforesaid relief.



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(4)The respondent/Corporation did not contest the dispute and therefore, an ex-parte Award was passed by the Labour Court. The respondent/Corporation, has however, filed a counter in the writ petition. The respondent/Corporation contended that the petitioner was not entitled for back wages since the petitioner had neither pleaded nor provided any material evidence regarding the employment status. The respondent/Corporation submitted that the writ petition lacked *bona fide* since the petitioner did not make any effort to join the respondent/Corporation despite his reinstatement. The respondent/Corporation submitted that the petitioner's removal was due to his prolonged, unauthorised absence reflecting his lack of interest in continuing the services with the respondent/Corporation. The respondent/Corporation therefore prayed for the dismissal of the writ petition.

(5)The learned counsel for the petitioner submitted that the Labour Court, having found the termination of the petitioner to be illegal, ought not to have denied the full backwages to the petitioner. The learned counsel further submitted that the Labour Court failed to note that the petitioner sustained grievous injuries including spine injury in the accident which



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occurred in the course of employment and therefore, the respondent/Corporation was bound to provide alternate employment to the petitioner as per the provisions of the Rights of Persons with Disabilities Act, 2016. The learned counsel submitted that since the respondent/Corporation failed to provide alternate employment, the respondent/Corporation was bound to pay back wages for illegal termination. The learned counsel further submitted that the denial of full back wages to the petitioner amounted to rewarding the respondent/Corporation for its illegal termination. For the aforesaid reasons, the learned counsel prayed that the writ petition may be allowed.

(6)The learned Additional Government Pleader [Puducherry], appearing for the respondent/Corporation, on the other hand, reiterated the submissions made in the counter affidavit and submitted that the petitioner neither pleaded nor provided any material evidence regarding his employment status and therefore, the Labour Court was justified in denying full back wages.

(7)Heard both sides and perused the materials placed on record.



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(8)The core issue to be decided is whether the Labour Court was justified in denying full back wages to the petitioner on the sole ground that the petitioner failed to plead and prove that he was not gainfully employed consequent to the illegal termination.

(9)The facts of the case are not in dispute. It is the case of the petitioner that his termination was illegal since no enquiry was conducted before terminating his services. Even the Labour Court found that the termination was illegal and in violation of principles of natural justice since no disciplinary proceedings were conducted. The Labour Court relied on the judgment of the Hon'ble Supreme Court in the case of ***Dipti Prakash Banerjee Vs. Satvendra Nath Bose National Centre for Basic Science at Calcutta***, reported in ***AIR 1999 SC 983 : 1999 [3] SCC 60***, in support of its findings on illegal termination. The Labour Court, having held that the termination was illegal, denied back wages to the petitioner on the ground that the petitioner failed to plead and prove by filing an affidavit or by adducing oral evidence that he was not gainfully employed pursuant to the illegal termination.

(10)The fact that the petitioner failed to prove by an affidavit or oral



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evidence that he was not gainfully employed after termination of his services by the respondent/Corporation, cannot be disputed. The question, however, is whether for the said reason, the petitioner should be deprived of the back wages?

(11)The facts of the case establish that the petitioner sustained injuries including spinal injury [L4 and L5], in an accident which occurred on 04.03.2006, in the course of employment. The respondent/Corporation, considering the nature of injuries and disabilities sustained by the petitioner initially placed the petitioner as a Cashier and later, as a Clerk. Thereafter, on 18.08.2010, the respondent/Corporation directed the petitioner to continue as regular Conductor. The petitioner contended that the direction to continue as regular Conductor amounted to victimisation on account of his involvement in Trade Union activities. The Labour Court rejected the contention on the basis that no supporting material was produced. In my view, the Labour Court failed to note that the averments in the Claim Petition were not denied by the respondent/Corporation by filing counter and therefore, in the absence of any denial, the Labour Court ought not to have disbelieved the petitioner. This aspect is relevant



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only to highlight that there existed some motive for the respondent/Corporation to terminate the petitioner's services, without conducting an enquiry.

(12)The petitioner's specific case is that he sustained injuries spinal injuries [L4 and L5] and being diabetic, he was unable to continue as a Conductor. When the respondent/Corporation, having initially provided alternate employment, thereafter ought to have referred him to the Medical Board to assess his fitness and permitted him to continue in suitable employment. Its failure to do so, coupled with termination without enquiry, renders the termination illegal. Under Section 20 of the Rights of Persons with Disabilities Act, 2016, the respondent/Corporation, as an employer, was bound to provide alternate employment to an employee who acquires disability during his service. The failure to follow this statutory mandate further vitiates the termination. When the termination is both illegal and motivated, denial of back wages is unsustainable.

(13)I am fortified in my view by a Three-Judges Bench judgment of the



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Hon'ble Supreme Court in the case of *M/s.Hindustan Tin Works Pvt. Ltd*

Vs. The Employees of M/s.Hindustan Tin Works Pvt Ltd and Others

reported in *1979 [2] SCC 80*. The Hon'ble Supreme Court held as follows:-

"7. The question in controversy which fairly often is raised in this Court is whether even where reinstatement is found to be an appropriate relief, what should be the guiding considerations for awarding full or partial back wages. This question is neither new nor raised for the first time. It crops up every time when the workman questions the validity and legality of termination of his service howsoever brought about, to wit, by dismissal, removal, discharge or retrenchment, and the relief of reinstatement is granted. As a necessary corollary the question immediately is raised as to whether the workman should be awarded full back wages or some sacrifice is expected of him.

8. Let us steer clear of one controversy whether where termination of service is found to be invalid, reinstatement as a matter of course should be awarded or compensation would be an adequate relief. That question does not arise in this appeal. Here the relief of



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reinstatement has been granted and the award has been implemented and the retrenched workmen have been reinstated in service. The only limited question is whether the Labour Court in the facts and circumstances of this case was justified in awarding full back wages.

9. It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman



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has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen's demand for revision of wages, the termination may well amount to



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unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages. Articles 41 and 43 of the Constitution would assist us in reaching a just conclusion in this respect. By a suitable legislation, to wit, the U.P. Industrial Disputes Act, 1947, the State has endeavoured to secure work to the workmen. In breach of the statutory obligation the services were terminated and the termination is found to be invalid; the workmen though willing to do the assigned work and earn their livelihood, were kept away therefrom. On top of it they were forced to litigation up to the Apex Court now they are being told that something less than full back wages should be awarded to them. If the services were not terminated the workmen ordinarily would have continued to work and would have earned their wages. When it was held that the termination of services was neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered service they would legitimately be entitled to the wages for the same. If the workmen were always ready to work but they were kept away therefrom on account of an invalid act of the employer, there is no justification for not awarding them full back wages



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which were very legitimately due to them. A Division Bench of the Gujarat High Court in Dhari Gram Panchayat v. Safai Kamdar Mandal [(1971) 1 LLJ 508 (Guj)] and a Division Bench of the Allahabad High Court in Postal Seals Industrial Cooperative Society Ltd. v. Labour Court II, Lucknow [(1971) 1 LLJ 327 (All)] have taken this view and we are of the opinion that the view taken therein is correct."

(14) From the aforesaid judgment of the Hon'ble Supreme Court, it is discerned that when the termination is illegal, the fault lies with the employer and keeping the employee away from the work and thereafter, declining full back wages to the employee, will amount to rewarding the employer for his wrongful / illegal termination of the employee.

(15) On careful consideration of the entire facts and circumstances of the case and in view of the aforesaid judgment of the Hon'ble Supreme Court, I find merit in the writ petition.

(16) Hence, the writ petition is **allowed** and the Award of the Labour Court dated 26.02.2020 in ID.No.37/2017 insofar as it relates to denial of full backwages, is **set aside**. The respondent/Corporation is directed to pay



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full backwages to the petitioner from the date of termination till the date of superannuation and also other monetary benefits within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

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AP

Index: Yes

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

1. The General Manager
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N.MALA J.

AP

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