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W.P.Nos.10622, 10625, 10627, 10629 & 10633

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.07.2025

Pronounced on : 09.09.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.Nos.10622, 10625, 10627, 10629 & 10633 of 2021
and WMP.Nos.11233, 11237, 11240, 11241 & 11246 of 2021

The Management
V.S.T.Service Station Private Limited
Rep. by its Group Head HR - S.Kalyanakrishnan
Nellikuppam Salai
Kondur
Cuddalore - 607 002.

... Petitioner in all WPs

Vs

1.K.Palanivel
2.R.Rajeshkumar
3.C.Stanley Prakash
4.A.Murali

... Respondent in W.P.No.10622 of 2021
... Respondent in W.P.No.10625 of 2021
... Respondent in W.P.No.10627 of 2021
... Respondent in W.P.No.10629 of 2021

K.Tamilarasan (deceased)
5.T.Vijayalakshmi
6.Minor T.Maunika
7.Minor T.Niranjana

... Respondents 1 to 3 in W.P.No.10633 of 2021



Prayer in W.P.10622 of 2021 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the Labour Court, Cuddalore in I.D.No.119 of 2017 and quash its award dated 23.03.2021.

Prayer in W.P.10625 of 2021 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the Labour Court, Cuddalore in I.D.No.120 of 2017 and quash its award dated 23.03.2021.

Prayer in W.P.10627 of 2021 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the Labour Court, Cuddalore in I.D.No.121 of 2017 and quash its award dated 23.03.2021.

Prayer in W.P.10629 of 2021 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the Labour Court, Cuddalore in I.D.No.122 of 2017 and quash its award dated 23.03.2021.

Prayer in W.P.10633 of 2021 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the Labour Court, Cuddalore in I.D.No.123 of 2017 and quash its award dated 23.03.2021.

For Petitioner : Mr.S.Ravindran, Senior Counsel



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(in all WPs)

for Mr.S.Bazeer Ahamed

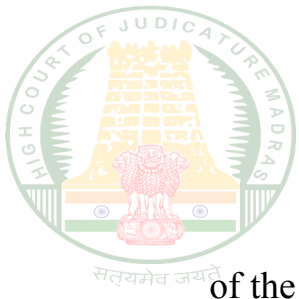
For Respondent : Mr.K.Mohanamurali
[in WP.Nos.10622, 10625,
10627 & 10629 of 2021]

For Respondents : R1 - Served [No appearance]
[in W.P.No.10633 of 2021] R2 & R3 - Minors, Rep. by R1

COMMON ORDER

The respondent before the Labour Court, Cuddalore, viz., The Management, V.S.T. Service Station Private Limited, Cuddalore, is the petitioner before this Court. The above writ petitions are filed seeking to quash the awards passed by the Labour Court in I.D.No.119 of 2017, I.D.No.120 of 2017, I.D.No.121 of 2017, I.D.No.122 of 2017 and I.D.No.123 of 2017 respectively.

2. Since common arguments have been put forward by the counsels on either side, a common order is being pronounced in this batch of writ petitions. For the ease of narration, the documents / exhibits referred to in I.D.No.119/2017, which is the subject matter of W.P.No.10622 of 2021, is taken up as a reference case.



3. The brief facts that have been set out in the affidavits filed in support of the writ petitions are as follows :

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- a) The petitioner-company is engaged in the business of sales and service of Tata Motor Vehicles in Tamil Nadu for over 60 years. To start with, they engaged themselves in selling and servicing of heavy vehicles namely buses and lorries manufactured by Tata Motors.
- b) In the year 1995, Tata Motors had entered into a passenger car business and the petitioner had undertaken the sale and service of passenger cars as well.
- c) The petitioner branch at Cuddalore had two distinct divisions: one for the sale and service of heavy vehicles, and other is engaged in the sale and service of passenger cars. Each divisions had their own set of officers, staff, technicians and helpers.
- d) In the year 2016, there were 18 technicians working in the passenger car division of the petitioner establishment.
- e) The petitioner establishment which kick-started the sale and service of passenger cars of Tata Motors in the year 1995, had suffered a business set back from the year 2016, due to heavy competition in passenger car vehicles.



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- f) The Chief Operating Officer along with the Management team from Chennai, visited the petitioner establishment in November 2016, and had informed the 18 technicians of the passenger car division that due to business reasons, the dealership between the Management and the Tata Motors has come to an end, resulting in winding up of the passenger car division at Cuddalore. The technicians were also informed that the Management was ready to provide alternative employment to them in its Trichy establishment, and the workmen who are willing to work at its Trichy branch, shall inform the HR Department in writing within three days. This was also confirmed by the petitioner-company vide its notices dated 16.11.2016 and 21.11.2016, wherein it indicated that the workmen who do not communicate their willingness in writing by 25.11.2016, would be presumed that they are not willing to relocate their services.
- g) Of the 18 technicians, 13 had left the services of the petitioner-company, after receiving their legal dues. The respondents herein namely K.Palanivel, R.Rajeshkumar, C.Stanley Prakash, A.Murali and K.Tamilarasan, had stopped reporting for work during December 2016.



- h) The aforesaid respondents had raised industrial disputes before the Labour Court, Cuddalore alleging that their services were orally terminated by the petitioner-establishment on 21.12.2016. The details of which are as follows :

<i>Sl. No.</i>	<i>Name of the workman / Respondent herein</i>	<i>I.D. No.</i>
1	K.Palanivel	I.D.No.119 of 2017
2	R.Rajeshkumar	I.D.No.120 of 2017
3	C.Stanley Prakash	I.D.No.121 of 2017
4.	A.Murali	I.D.No.122 of 2017
5.	K.Tamilarasan (now deceased)	I.D.No.123 of 2017

- i) During the conciliation proceedings before the Labour Officer, Cuddalore, the petitioner had stated that they had offered employment to the said technicians in their Trichy Branch, and that the services of those five workmen have not been terminated. Since, the said technicians/respondents were not willing to work in any other establishment of the petitioner, the conciliation ended in failure. The failure report of the Conciliation Officer dated 22.12.2017, did not record the statement of the petitioner, as it was not given in writing.
- j) Thereafter, the non-employment of the respondents was adjudicated before the Labour Court, Cuddalore.



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- k) The petitioner-Management had filed its counter to the I.D, proceedings, wherein they had stated that they are willing to provide employment to those 5 workmen at their Chennai branch. They also reiterated that the services of those 5 workmen were not terminated by them.
- l) Before the Labour Court, the workmen examined themselves as a witness and marked Ext.W1 and Ext.W2 in each of the I.D petitions filed by them. On the side of the Management, two witnesses were examined viz., Group HR/Head was examined as M.W.1 and the Senior Executive (HR) of the Cuddalore Establishment was examined as M.W.2 (in all I.Ds). Through M.W.1 and M.W.2, the Management had marked 20 documents viz., Ext.M1 to Ext.M20 in I.D.No.119 of 2017, I.D.No.120 of 2017 and I.D.No.123 of 2017. Insofar as I.D.No.121 of 2017 and I.D.No.122 of 2017 are concerned, the Management had marked 18 documents through M.W.1 and M.W.2 viz., Ext.M1 to Ext.M18.
- m) According to the petitioner-Management, during cross-examination the respondents have admitted that the petitioner-Management's dealership with Tata Motors was cancelled in November 2016, which



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fact was informed to them by the representative of the Management even before 07.12.2016. They also admitted that 8 persons who were working in the passenger car division of Cuddalore branch, had left the services by receiving the legal dues. The respondents/workmen had also admitted that they did not report for work from 21.12.2016.

n) M.W.1. in his evidence had deposed that the workmen of the passenger car division, Cuddalore branch, were informed about the winding up of the passenger car division. That apart, the Management had also offered alternative job option to the said 18 workmen who were then employed in Cuddalore establishment, and the same was informed by Ext.M1 and Ext.M2, notices dated 16.11.2016 and 21.11.2016 respectively. Except the respondents/workmen, other 13 workmen had left the services of the petitioner-company, by receiving their legal dues, which is evident from Ext.M3 to Ext.M16. Further, the workman who had filed I.D.No.119 of 2017, I.D.No.120 of 2017 and I.D.No.123 of 2017, were willing to receive their PF dues, which are evident from the communications dated 24.10.2017 (Ext.M17) sent by the Employees Provident Fund Office to the petitioner. The petitioner in turn had also informed the EPFO that the aforesaid three



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employees had stopped reporting for work from 21.12.2016.

- o) Pending the industrial dispute in I.D.No.123 of 2017, the workman-K.Tamilarasan died and the case was contested by his legal heirs.
- p) The Labour Court, by its independent award dated 23.03.2021 in I.D.No.119 of 2017, I.D.No.120 of 2017, I.D.No.121 of 2017, I.D.No.122 of 2017 and I.D.No.123 of 2017, had held that the petitioner-Management had not proved that they had provided alternative employment to the said workmen, and also held that their non-employment was in violation of provisions of Section 25F of the Industrial Dispute Act, particularly, when the petitioner-company had not been able to prove that the respondents have been gainfully employed, (except for the workman in I.D.No.123 of 2017, who was dead), the Labour Court had directed the petitioner-Management to reinstate the other workmen in service with backwages and other attendant benefits.

Challenging the said awards, the petitioner-Management had filed aforesaid writ petitions.

4. The ground on which the awards of the Labour Court are sought to be



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challenged was on the ground that the respondents/workmen who have come forward with a case that on 21.12.2016, they have been terminated from service by the petitioner-Management, has not proved the said allegation. Therefore, though the respondents on whom the onus lies, has failed to prove the same, the Labour Court has erred in shifting the onus of proof upon the petitioner-company. Therefore, the awards fail on this ground alone. That apart, the petitioner-company would submit that they have proved the cancellation of dealership with Tata Motors by marking Ext.M1 and Ext.M2, which has not been denied by the respondents/workmen. However, the learned Judge, Labour Court, Cuddalore, had overlooked the same. It was above referred cancellation that formed the genesis for the petitioner-company to take a decision, to close down the passenger car division. The fact that except for these 5 workmen who had conducted the litigation, all the other workmen had left the services during February, 2017 and March, 2017, only goes to show that the passenger car division was not functioning anymore. The petitioner would further submit that the award granting backwages to the workmen, without there being a pleading or proof that the workmen were not gainfully employed, ought to be set aside.



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5.1 Mr.S.Ravindran, learned Senior Counsel appearing on behalf of the petitioner-Management submitted that the respondents-workmen have been reinstated and arguments are being advanced only with reference to the awards directing payment of backwages.

5.2 The learned Senior Counsel would submit that in order to be awarded backwages, there must be a pleading and proof that the workmen are not gainfully employed. He would rely upon the judgment of the Hon'ble Supreme Court in *Novartis India Limited Vs State of West Bengal and others* reported in (2009) 3 SCC 124, with particular reference to paragraph 21. He would submit that nowhere in the claim statement, have the workmen raised this plea. He would further submit that the Labour Court has not given any reasons for awarding backwages.

6. Per contra, Mr.K.Mohanamurali, learned counsel appearing for the respondents/workmen would submit that though the petitioner had pleaded alternate employment, they have not proved the same. Further, the petitioner-company have also not proved the termination of the dealership at Cuddalore, and Ext.M20 relates to the termination of dealership at Chennai and Trichy



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alone. That being the case, the argument that the respondents were offered alternate employment at Chennai, cannot be countenanced. He would further submit that the argument that the respondents/workmen have not pleaded and proved that they are not gainfully employed elsewhere, cannot be sustained for the simple reason that the case of the petitioner-Management is that the respondents have not been terminated and they continue to be in service. He would further submit that the respondents have filed an application before the Joint Commissioner of Labour-II, the authority under the Minimum Wages Act, seeking recovery of alleged unpaid wages in terms of the Minimum Wages Act. This application had been filed with a delay of 3324 days, which was condoned and ultimately, the authority had directed the petitioner to pay the minimum wages. This order was challenged by the petitioner-Management by filing W.P.No.4092 of 2020 and by order dated 29.04.2025, the same was allowed and the petitioner-Management has chosen not to challenge the same. He would therefore pray that the writ petitions may be dismissed.

7. Heard the learned counsels on either side. Though the writ petitions have been filed seeking to quash the award in the respective I.Ds. in its entirety, however, since the workmen have been reinstated, arguments have been



advanced only with reference to that portion of the award pertaining to the payment of backwages. That there is no pleading or proof with reference to the workmen being gainfully engaged elsewhere is an admitted fact. The counsel for the respondents would submit that the failure to plead the above is not fatal to their case for the following reasons :

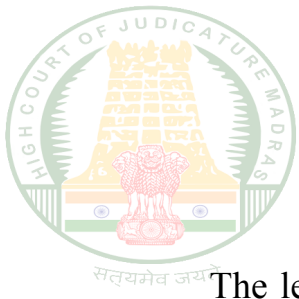
- a. The case of the petitioner is that there is no termination and therefore, the workmen are deemed to continue in service; and
- b. The authority under the Minimum Wages Act had ordered the petitioner-Management to pay minimum wages and the challenge to the same in W.P.No.4092 of 2020 had gone against the petitioner, who has chosen not to contest the same.

It has been stated that the respondents have now been reinstated into service and the minimum wages have been ordered to be paid. The argument of the petitioner-Management is that without there being a pleading that during the period when the respondents/workmen have been kept out of work, the workmen were not gainfully employed elsewhere, they are not entitled to backwages. In *Novartis India Limited Vs State of West Bengal and others* reported in **(2009) 3 SCC 124**, the Hon'ble Supreme Court was considering the challenge to their dismissal from service by the employees who had refused to



join duty at the transferred place and whose service were terminated. The termination without holding an enquiry was held to be *void ab initio* and the Industrial Tribunal also held that the workmen were entitled to backwages. The Hon'ble Supreme Court upheld the order holding the termination to be bad. The learned Judges while discussing the award of full backwages to the workman, has observed as follows in paragraph No.21 :

"21. There can, however, be no doubt whatsoever that there has been a shift in the approach of this Court in regard to payment of back wages. Back wages cannot be granted almost automatically upon setting aside an order of termination inter alia on the premise that the burden to show that the workman was gainfully employed during interregnum period was on the employer. This Court, in a number of decisions opined that grant of back wages is not automatic. The burden of proof that he remained unemployed would be on the workmen keeping in view the provisions contained in Section 106 of the Evidence Act, 1872. This Court in the matter of grant of back wages has laid down certain guidelines stating that therefor several factors are required to be considered including the nature of appointment; the mode of recruitment; the length of service; and whether the appointment was in consonance with Articles 14 and 16 of the Constitution of India in cases of public employment, etc.,"



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The learned Judges after discussing the various judgments in this regard, have observed as follows in paragraph No.37 :

"37. Back wages in a situation of this nature had to be granted to the respondents by way of compensation. If the principle of grant of compensation in a case of this nature is to be applied, indisputably having regard to the fact situation obtaining herein, namely, that they were doing a specialised job and were to reach their age of superannuation within a few years, grant of back wages was the only relief which could have been granted. It was furthermore not expected that they would get an alternative employment as they were superannuated. Burden of proof was undoubtedly upon the workmen. The said burden, however, was a negative one. Once they discharged their burden by deposing before the Tribunal, it shifted to the employer to show that their contention that they had not been employed, was incorrect. No witness was examined on behalf of the employer. Even here was no pleading in that behalf."

8. Since in the case before the Hon'ble Supreme Court, there was a pleading that the workman remained unemployed and therefore, the Hon'ble Supreme Court confirmed the award of backwages. In the case on hand, there



is no pleading to this effect nor has evidence been let in.

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9. In ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya & others*** reported in (2013) 10 SCC 324, the Hon'ble Supreme Court has discussed the entire gamut of the law relating to reinstatement and backwages, and held as follows in paragraph No.38.3 :

"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 averment about this 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."

10. Therefore, in the absence of a pleading to the effect that the



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workmen/respondents were not gainfully employed, the award granting backwages is *per se* erroneous. Accordingly, the awards granting backwages in I.D.No.119 of 2017, I.D.No.120 of 2017, I.D.No.121 of 2017, I.D.No.122 of 2017 are set aside.

11. In the result, W.P.Nos.10622, 10625, 10627, 10629 of 2021 are partly allowed. Since the Labour Court had granted backwages alone in I.D.No.123 of 2017, which is the subject matter of W.P.No.10633 of 2021, the same is set aside and W.P.No.10633 of 2021 stands allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

09.09.2025

Index : Yes / No
Neutral Citation : Yes / No
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P.T. ASHA, J.

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