



W.P(MD)No.11415 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.08.2025

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THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.11415 of 2022

and

W.M.P(MD)Nos.8117 & 8118 of 2022

R.Kannan

... Petitioner

Vs.

The Management,
The Metal Powder Company,
Maravankulam, Tirumangalam Taluk,
Madurai District-625 706.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the Labour Court, Madurai pertaining to the order, dated 22.03.2022, in I.D.No.110 of 2015, quash the same as illegal, as far as it deny back wages.

For Petitioner : Mr.T.Ravichandran

For Respondent : Mr.M.Kumar



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ORDER

The present writ petition has been filed by the workman challenging the portion of the award of Labour Court, Madurai in I.D.No.110 of 2015, wherein, his request for payment of back wages has been rejected.

2. The petitioner herein was issued with a charge memo on 07.05.2014 and pursuant to the domestic enquiry, he was dismissed from service on 09.08.2014. The petitioner had challenged the order of dismissal under Section 2A(2) of the Industrial Disputes Act, 1947. The Labour Court passed a preliminary order to the effect that, the enquiry has not been conducted in a fair manner following the principles of natural justice. Thereafter, the Management was granted an opportunity to let in fresh evidence to prove the charges. The Management had filed Exhibits M.1 to M.14 and has examined one Mr.G.Mathivanan on their side to establish the charges.

3. After considering the oral and documentary evidence on either side, the Labour Court has arrived at a finding that, the enquiry report is perverse and the charges as against the workman have not been proved by the



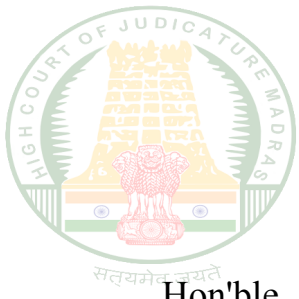
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Management. Ultimately, the Labour Court proceeded to set aside the order of dismissal and directed reinstatement. The Management has not challenged the award of reinstatement.

4. After ordering reinstatement, the Labour Court has proceeded to reject the request of the workman for payment of back wages on the ground that, the workman had not come forward to attend duty or appear before the Management or demanded the Management to allow him to do work either orally or through a written submission. The Labour Court has further proceeded to observe that, on reinstatement, payment of back wages is not automatic and it is the discretion of the Labour Court depending upon the facts and circumstances of each case. Challenging that portion of the award, the present writ petition has been filed by the workman.

5. According to the learned Counsel appearing for the writ petitioner, when an order of dismissal has been passed and it has been challenged before the competent Court, the workman cannot again approach the Management and seek employment. Therefore, such a finding by the Labour Court is clearly unsustainable in the eye of law. He further relied upon the judgment of the



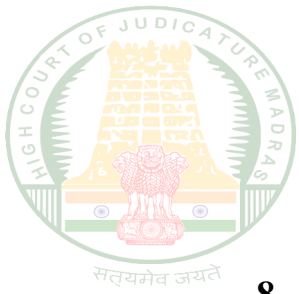
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Hon'ble Supreme Court reported in **2013 (10) SCC 324 [Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Others]**, dated 12.08.2013 to contend that in all cases, where the termination is found to be illegal per se, the payment of back wages is automatic. Otherwise, it would amount to conferring an advantage upon the Management for passing illegal termination orders.

6. Per contra, the learned Counsel appearing for the Management submitted that the petitioner has not established the fact that he was not gainfully employed during the period of non-employment. Unless the same is established, he would not be entitled to get back wages. He further submitted that the workman had instigated the other workman to strike the work. Besides, he had obstructed the other loyal workman from attending duty. Only considering those circumstances, the Labour Court has rejected the request for back wages. Hence, he prayed for confirming the award of the Labour Court.

7. Heard both sides and perused the materials available on record.



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8. As far as the award of the Labour Court relating to reinstatement of the workman is concerned, the same has not been challenged by the Management and it has reached its finality.

9. The Labour Court has proceeded to reject the request for payment of back wages only on the ground that, the workman has not approached the Management seeking re-employment. As rightly pointed out by the learned Counsel appearing for the petitioner, once a workman is issued with an order of dismissal from service, he is not expected to approach the Management again seeking re-employment. In the present case, the petitioner has raised an industrial dispute and approached the Labour Court.

10. In paragraph No.8 of the claim petition, the workman has specifically pleaded that, from the date of dismissal, he is suffering due to his non-employment. This fact has not been specifically disputed by the Management. In case, if the workman is gainfully employed elsewhere, it is for the Management to establish the same before the Labour Court in order to avoid payment of back wages. When such a fact has neither been pleaded nor been



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proved before the Labour Court, the Labour Court cannot reject the prayer for back wages.

11. Considering the fact that the Labour Court has arrived at a specific finding that the termination order is per se illegal, this Court is inclined to allow the writ petition and direct the Management to pay 75% of the back wages for the period of non-employment between the date of dismissal and the date of reinstatement.

12. With the above said observation, this writ petition stands partly allowed to the extent as stated above. The payment shall be made within a period of twelve (12) weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

05.08.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR



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R.VIJAYAKUMAR, J.

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