



W.P.(MD) No.5997 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved On 19.02.2025	Orders Pronounced On 30.04.2025
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CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.5997 of 2019
and
W.M.P.(MD) No.4790 of 2019

The Management,
Sp. Spl. 87. Kunnur Primary
Agricultural Cooperative Credit Society,
Kunnur Post, Srivilliputhur Taluk,
Virudhunagar District,
Rep., by its Secretary, R.Ganesan

... Petitioner

Vs.

A.Mariappan

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari, to call for the records of the impugned order passed by the Labour Court, Madurai in C.P.No.46/2017, dated 14.11.2018 and quash the same as illegal.

For Petitioner : Mr.S.Selvakrishnan
for Mr.L.George Paul Anto



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For Respondent : Mr.K.Ganesamoorthi
for Mr.K.Vinayagan

ORDER

This writ petition has been filed aggrieved by an order dated 14th November, 2018 in C.P.No.46 of 2017 on the file of the learned Labour Court, Madurai.

2.1. The brief facts that are relevant for the disposal of this writ petition are as under:

2.2. The respondent herein while working as Night Watchman in the petitioner-Society was dismissed from service by an order dated 21.08.1997. Aggrieved by the same, the respondent herein raised an industrial dispute *vide* I.D.No.59 of 1998 on the file of the learned Labour Court, Madurai and the said Industrial Dispute was allowed by the learned Labour Court by an award dated 16.08.2007 setting aside the order of dismissal and directing for reinstatement of the respondent with continuity of service. It was thereafter, the respondent was reinstated by taking an



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undertaking from the respondent that he will not make any claim for backwages for the period, since the date of dismissal till the date of reinstatement. It was thereafter, the respondent started making a claim for backwages for the period he was kept out of service because of the order of dismissal from service by submitting a representation before the petitioner.

2.3. Thereafter, the respondent approached this Court by filing W.P.(MD) No.588 of 2012 seeking for a writ of mandamus to direct the petitioner herein to consider the representation said to have been submitted by him for backwages. The said writ petition was refused to be entertained by this Court by an order dated 01.04.2013 on the ground that the petitioner therein has an efficacious remedy under Section 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as “the I.D.Act”) and left it open to the petitioner therein who is the respondent herein to workout his remedies under the provisions of law.

2.4. It was thereafter, the respondent filed a petition under Section 33C(2) of the I.D.Act before the learned Labour Court claiming an amount



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of Rs.4,43,814/- towards arrears of salary with interest and for costs. The said claim made by the respondent herein was allowed by the learned Labour Court by order dated 14.11.2018. It is aggrieved by the said award, the petitioner approached this Court by filing the present writ petition.

3. Heard Mr.S.Selvakrishnan, learned counsel for Mr.L.George Paul Anto, learned counsel for the petitioner and Mr.K.Ganesamoorthi, learned counsel for Mr.K.Vinayagan, learned counsel for the respondent.

4. A perusal of the Award in I.D.No.59 of 1998 would disclose that the petitioner has sought for the relief of setting aside of the order of dismissal and sought for reinstatement with continuity of service. The relief as sought for by the respondent herein was granted by the learned Labour Court by award dated 16.08.2007. The Award does not disclose that the respondent herein sought for any relief with regard to backwages or arrears of salary from the date of dismissal.



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5. The learned Labour Court having examined the matter in detail, came to the conclusion that the respondent herein is entitled for all the reliefs sought for and accordingly, granted the relief duly setting aside the order of dismissal and ordering for reinstatement of the respondent with continuity of service. In the absence of any claim made or relief sought for backwages, in I.D.No.59 of 1998, there was no occasion for the petitioner herein, who was arrayed as respondent in the said Industrial Dispute to resist any such claim made by the respondent, nor there was any occasion for the learned Labour Court to make an adjudication and render a decision as to whether the respondent herein is entitled for any backwages or not.

6. However, the learned Labour Court while considering the claim made by the respondent herein in C.P.No.46 of 2017 under Section 33C(2), came to the conclusion that the petitioner is entitled for backwages on three counts. Firstly, on the ground that the learned Labour Court in I.D.No.59 of 1998 came to the conclusion that the respondent herein is entitled for all the reliefs sought for in the Industrial Dispute and therefore, it has to be inferred that the respondent herein is entitled for backwages also. Secondly on the



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ground that the petitioner herein has obtained an undertaking from the respondent not to claim any backwages while reinstating the respondent herein into service and therefore, it presupposes that the respondent herein is entitled for such backwages in terms of the award passed in I.D.No.59 of 1998. Thirdly, on the ground that there was no adverse adjudication made against the respondent herein in the Award.

7. In the considered view of this Court, all the three counts, which are made basis for allowing the claim petition filed by the respondent are wholly unsustainable. Firstly, as already noted above, there was no relief sought for by the respondent herein concerning the backwages in the Industrial Dispute at all. Therefore, the question of any adjudication or granting relief in that regard does not arise. Secondly, merely because the petitioner has obtained an undertaking disentitling the respondent to claim any backes does not by itself creat a right in the respondent herein. It could be to prevent any further litigation, the petitioner might have obtained an undertaking from the respondent herein or to avoid any further appeal against the award passed in I.D.No.59 of 1998. But the learned Labour



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Court totally misconstrued the same and came to the conclusion that the act of the petitioner herein in obtaining an undertaking recognised the right of the respondent for backwages.

8. The scope of application under Section 33C(2) is very limited and the same is in the nature of execution proceedings. Execution proceedings pre-supposes a crystallised existing right. The award passed in I.D.No.59 of 1998 does not grant any relief with regard to the backwages in favour of the respondent herein. Therefore, the learned Labour Court while considering the application under Section 33C(2) of the I.D.Act cannot grant any relief by drawing inference from the award in I.D.No.59 of 1998. The law in this regard is well settled and as rightly relied upon by the learned counsel for the petitioner, the Hon'ble Apex Court in the case of ***Rajasthan State Road Transport Corporation and others vs. Shyam Bihari Lal Gupta*** reported in ***2006 SCC (L & S) 67***, held as under:

“3. According to the learned counsel for the appellant Corporation, the decree is absolutely silent so far as the back wages are concerned. The decree in



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essence contains only a declaratory relief without any consequential payment for monetary benefits. That being so, the executing court and the High Court were not justified in granting the relief sought for. Learned counsel for the respondent on the other hand submitted that when the decree clearly indicated that the termination was illegal non est, as a natural corollary, the plaintiff was entitled to the back wages.”

9. Similarly, in the case of ***State Bank of India vs. Ram Chandra Dubey reported in (2001) 1 SCC 73***, the Hon'ble Supreme Court held as under:

“8. The principles enunciated in the decisions referred by either side can be summed up as follows:

Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33-C(2) of the Act. The benefit sought to be enforced under Section 33-C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing



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right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33-C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the back wages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for back wages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of back wages could be decided is only in a proceeding to whom a reference under Section 10 of the Act is made. To state that merely upon reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to be considered, as



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stated earlier, to find out whether the workman is entitled to back wages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of back wages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of back wages.”

10. The contention of the learned counsel appearing for the respondent contending that by virtue of the order passed by this Court in W.P.(MD) No.588 of 2012, this Court has recognised the pre-existing right of the respondent herein to claim for backwages by filing an application under Section 33C(2) and therefore, the respondent is entitled for backwages as awarded under the impugned award, cannot be accepted for the simple reason that perusal of the order dated 01.04.2013 passed in W.P. (MD) No.588 of 2012 does not indicate any adjudication of the matter on merits, but this Court refused to entertain the said writ petition and left it open to the respondent herein to work out his remedies in accordance with law. Merely because this Court observed that the petitioner has got a



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remedy under Section 33C(2) that does not mean that the respondent is entitled for the relief. Perhaps, the learned Labour Court also appears to have misguided itself by totally misconstruing the order dated 01.04.2013 passed by this Court and granted the relief in favour of the respondent herein.

11. The reliance placed on the decision of the High Court of Delhi by the learned counsel appearing for the respondent in the case of ***Delhi Transport Corporation vs. Baleshwar [LPA No.579/2023, dated 17.08.2023]*** is of no help to advance the case of the respondent herein, as this Court has come to the conclusion that the learned Labour Court misdirected itself and exceeded its jurisdiction in entertaining an application under Section 33C(2) of the I.D. Act without there being any pre-existing right adjudicated in accordance with law.

12. In the light of the above, this Court is fully convinced that the learned Labour Court gravely erred in passing the impugned order granting the relief in favour of the respondent herein without there being any pre-



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existing right based on assumptions and presumptions, thereby rendering the order to illegality. All the conclusions arrived at by the learned Labour Court are perverse and result of total misconstruction of the law and facts. In the circumstances, the impugned order cannot be sustained and accordingly, the same is hereby quashed and accordingly, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

30.04.2025

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

ABR

To

The Labour Court, Madurai



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MUMMINENI SUDHEER KUMAR, J.

ABR

Pre-delivery Order made in
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