

W.A(MD).No.483 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

RESERVED ON : 04.09.2025

PRONOUNCED ON : 10.09.2025

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.A(MD).No.483 of 2020
and
CMP(MD).No.3495 of 2020

The Management
Arumuganeri Salt Worker Co-operative
Production and Sale Society
Arumuganeri

...Appellant/1st Respondent

Vs

1.S.A.Murugesan

...1st Respondent/Petitioner

2.The Presiding Officer
Labour Court
Tirunelveli

....2nd Respondent/2nd Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 15.02.2019 in WP(MD).No.1184 of 2012.

For Appellant : Mr.K.Vinoharan
For Mr.G.Prabhu Rajadurai

For Respondents : Mr.S.Kumar for R1
: Labour Court -R2



WEB COPY



W.A(MD).No.483 of 2020

J U D G M E N T

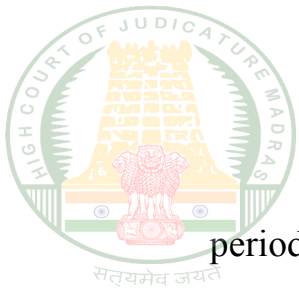
(Made by **R.VIJAYAKUMAR,J.**)

The present writ appeal has been preferred by the first respondent in WP(MD).No.1184 of 2012 challenging the order passed by the writ Court on 15.02.2019.

2.The first respondent herein who was engaged as a Salt Worker in the appellant Co-operative Society was dismissed from service on 01.04.1997. The workman filed I.D.No.187 of 1997 before the Labour Court, Tirunelveli. By its award dated 05.09.2011, the Labour Court was pleased to set aside the order of dismissal and directed reinstatement without backwages. Aggrieved over the non-granting of backwages, the workman had filed the above writ petition.

3.The writ Court proceeded to issue a direction to the management to pay 25% of backwages on the ground that the workman, having been dismissed wrongfully, he has to be compensated. This order is under challenge in the present writ appeal.

4.The learned counsel appearing for the appellant submitted that there is no pleading whatsoever on the side of the workman that he was not gainfully employed elsewhere during the period of non-employment. The workman has also not let in any evidence relating to the non-employment



W.A(MD).No.483 of 2020

period. In such circumstances, the writ Court was not right in awarding 25% of backwages. He relied upon the decision of the Hon'ble Supreme Court reported in **(2022) 13 SCC 202 (Allahabad Bank and others Vs. Avtar Bhushan Bhartiya)** in support of his contentions.

5.Per contra, the learned counsel appearing for the first respondent workman submitted that, the entire burden would be upon the employer to establish that the workman was not gainfully employed during his non-employment period. The management was not able to establish that the workman was gainfully employed during the non-employment period. He relied upon the decisions of the Hon'ble Supreme Court reported in **(2014) 11 SCC 85 (Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries Limited)** and **(2015) 9 SCC 345 (Raj Kumar Dixit Vs. Vijay Kumar Gauri Shanker, Kanpur Nagar)**. According to him, when the employer has not discharged his burden, the order of the writ Court, granting 25% of backwages may be sustained.

6.Heard both sides and perused the material records.

7.A perusal of the petition filed in I.D.No.187 of 1997 reveals that there is no pleading whatsoever on the side of the workman to the effect that he was not gainfully employed elsewhere during his non-employment period. The Labour Court has rejected the prayer for backwages primarily on the ground that there was neither a pleading nor any evidence on the side of the



W.A(MD).No.483 of 2020

workman relating to the gainful employment during the period of non-employment.

8.It is contended on the side of the workman that the burden is upon the employer to establish that the employee was not gainfully employed during the non-employment period and the Labour Court had erroneously fixed the burden upon the workman.

9.The workman has relied upon a decision of the Hon'ble Supreme Court reported in *(2014) 11 SCC 85 (Bhuvnesh Kumar Dwivedi Vs. Hindalco Industries Limited)*. A careful perusal of the said judgment reveals that, in the said case, the Labour Court had awarded reinstatement with backwages and other consequential benefits. However, the High Court was pleased to set aside the award of reinstatement and has awarded Rs.1,00,000/- as damages in lieu of reinstatement without assigning any reasons. Therefore, the Hon'ble Supreme Court was pleased to hold that the High Court can interfere only when it is convinced that the Labour Court has made patent mistakes in admitting evidence illegally or have made grave errors in law in coming to the conclusion on facts. The High Court cannot interfere in an award of the Labour Court under Article 227 of the Constitution of India which amounts to exceeding its jurisdiction. The facts of the said case are not applicable to the present case.



W.A(MD).No.483 of 2020

WEB COPY

10.The learned counsel for the first respondent had relied upon a decision of the Hon'ble Supreme Court reported in **(2015) 9 SCC 345 (Raj Kumar Dixit Vs. Vijay Kumar Gauri Shanker, Kanpur Nagar)**. A careful perusal of the said judgment reveals that in the said case, the Labour Court has awarded reinstatement with 50% of backwages. The High Court had modified the award by awarding Rs.2,00,000/- in lieu of reinstatement with 50% of backwages. The Hon'ble Supreme Court found that when the termination is found to be illegal, full backwages have to be awarded to the workman from the date of his termination till the date of passing the award, unless the employer proves that the employee was gainfully employed during the aforesaid period. Relying upon the said observation, the learned counsel for the workman contends that the burden is upon the employer to prove that the workman was not gainfully employed.

11.The Hon'ble Supreme Court in a decision reported in **(2022) 13 SCC 202 (Allahabad Bank and others Vs. Avtar Bhushan Bhartiya)** has categorically laid down the law relating to the burden of proof with regard to the gainful employment during the period of non-employment. The Hon'ble Supreme Court in Paragraph Nos. 35 and 36 has held as follows:

35.Even if we apply the propositions enunciated by this Court in Deepali Gundu Surwase (supra), the Officer-employee may not be entitled to full back wages. This is for the reason that there is

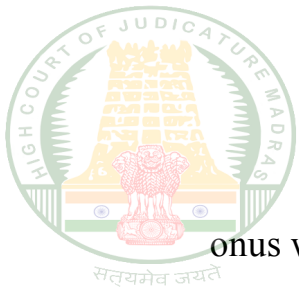


WEB COPY

nothing on record to show whether he was gainfully employed after his dismissal from service. A careful look at the pleadings in the writ petition W.P. No.1403 of 2013 would show that he has not pleaded about his non-employment. Though in paragraphs 36 to 38 of his writ petition, the employee has pleaded about the sudden set back to his health in the year 2011 and the financial hardships he was facing, there was no assertion about his non-employment. The employee had his pleadings amended after the dismissal of his appeal during the pendency of the writ petition. Even in the amended pleadings, there was no averment relating to his non employment. Therefore, even if we apply the ratio in Deepali Gundu Surwase (supra), the employee may not satisfy the third proposition found in para 38.3 thereof.

36. The reliance placed upon the decision in Pawan Kumar Agarwala vs. State Bank of India may not also be of help to the employee. It is a case where this Court applied the propositions laid down in Deepali Gundu Surwase (supra). This Court found that there was nothing to show that the employee was gainfully employed after the date of dismissal. It is needless to point out that in the first instance, there is an obligation on the part of the employee to plead that he is not gainfully employed. It is only then that the burden would shift upon the employer to make an assertion and establish the same."

12. In view of the judgment of the Hon'ble Supreme Court cited supra, it is clear that the initial burden is upon the employee to plead that he was not gainfully employed. Once the employee discharges his initial burden, the



W.A(MD).No.483 of 2020

onus would shift upon the employer to disprove the same. In the present case, the workman has not discharged his initial burden by pleading that he was not gainfully employed during the period of non-employment. In such circumstances, the onus cannot be shifted upon the employer. Unless the employee asserts that he was not gainfully employed, the employer cannot be called upon to prove that the employee was gainfully employed.

13.Compensation can be awarded only in cases where the reinstatement is not possible. After confirming the order of reinstatement, unless there are pleadings to the effect that the employee was not gainfully employed, the Labour Court cannot award backwages. When the Labour Court has arrived at a specific finding that there are no pleadings on the side of the workman, the writ Court ought not to have interfered in the said award and ordered 25% of the backwages, especially in the light of the judgment of the Hon'ble Supreme Court reported in **(2022) 13 SCC 202 (Allahabad Bank and others Vs. Avtar Bhushan Bhartiya)**.

14.In view of the above said deliberations, the order of the writ Court is set aside. The Writ Appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

(C.V.K.J.,)

(R.V.J.,)

10.09.2025.



W.A(MD).No.483 of 2020

WEB COPY

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

To

The Presiding Officer
Labour Court
Tirunelveli



WEB COPY



W.A(MD).No.483 of 2020

**C.V.KARTHIKEYAN,J.
AND
R.VIJAYAKUMAR,J.**

msa

Pre-delivery Judgment made in
W.A(MD).No.483 of 2020
and
CMP(MD).No.3495 of 2020

10.09.2025