
(2001) 10 MAD CK 0076

In the Madras High Court

Case No : Writ Petition No. 8072 of 1995

Arjunan M.(D) and Others

APPELLANT

Vs

Executive Engineer, TWAD Board and Another

RESPONDENT

Date of Decision : 09-10-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2002) 4 LLJ 141 : (2002) WritLR 204

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.K. Misra, J.—The writ petition is directed against that part of the award passed by the Labour Court which while directing reinstatement of the original petitioner, has refused to grant back wages. During pendency of the writ petition, the original petitioner having been expired, his legal representatives have been substituted. Any reference to the expression "petitioner" should be considered as original petitioner for convenience.

2. The petitioner was initially appointed as N.M.R. employee and subsequently regularised with effect from January 1, 1983. The petitioner was suspended on August 30, 1990 on the allegation that a false certificate had been given regarding educational qualification. Subsequently the petitioner was dismissed from service with effect from June 7, 1991. In the industrial dispute raised by the petitioner, it was held by the Labour Court that dismissal order was not justified. According to Labour Court there was no material on record to indicate that the petitioner has procured the job by producing false certificate. The Labour Court while directing reinstatement, refused to give back wages by ascribing the following reasons:

"..The respondent/Board is a statutory Board. It cannot be contended on behalf of the petitioner that the Departmental Authorities had taken proceedings

unnecessarily without any basis. There was some basis to take disciplinary proceedings against the petitioner. It was not a wanton act with a view to victimise the petitioner for its own reasons. Therefore, in these circumstances, I don't think that I need to issue the respondent/Department a direction to pay back wages. Therefore, I decline to grant any back wages".

3. The award relating to reinstatement has not been challenged by the respondent. The petitioner has filed the writ petition challenging the direction of the Labour Court regarding non- payment of back wages.

4. Before considering the question relating to legality of the award so far as non-payment of back wages is concerned, it is necessary to consider the legal question raised by the counsel appearing for the State. As already noticed, during pendency of the writ petition the petitioner having expired, his legal representatives have been brought on record. It has been submitted that question of grant of back wages was a cause of action personal to the petitioner, i.e., the workman concerned and the legal representative cannot claim the back wages to be paid. Learned counsel for the State has relied upon the doctrine *actio personalis moritur cum persona*. Even though the submission made *prima facie* appears to be attractive, such contention does not stand scrutiny. Workman was aggrieved by the direction of the Labour Court refusing to grant back wages. Such a claim cannot be said to be akin to the principle relating to action for damages where cause of action is personal to the claimant. It cannot be said that cause of action relating to claim of back wages is personal cause of action so far as the workman is concerned.

In *Rameshwar Manjihi (Deceased) through his son Rameshwar Manjihi (Deceased) through his son Lakhiram Manjihi Vs. Management of Sangramgarh Colliery and others*, : it was observed by the Supreme Court that on the death of the workman during pendency of the proceedings under the Industrial Disputes Act, the legal representatives of the deceased workman, who died during pendency of the proceedings, can continue the proceedings to reap the financial benefits in case the order impugned before the Labour Court is found to be illegal or inoperative. In other words, even where the death has occurred during pendency of the industrial dispute, the legal representatives can be awarded compensation. The ratio of said decision applies in full force to the present case, where there is already an order of reinstatement and the claim in the writ petition is relating to payment of back wages.

5. Similar view has been taken by Andhra Pradesh High Court in *Anjilamma and Others Vs. Labour Court-III, Hyderabad* and Another, where the legal representatives were permitted to institute industrial dispute after the death of the workman. It is also to be noted that similar views expressed by Kerala High Court in *Gwalior Rayons Vs. Labour Court and Others*, Gujarat High Court in *Bank of Baroda Vs. Workmen*, and Bombay High Court in *Sitabai Naruna Pujari Vs. Auto Engineers*, were approved by the Supreme Court in the decision already quoted. For the aforesaid reasons, the contention raised by the Learned

Additional Government Pleader is negatived.

6. Next question is as to whether the Labour Court was justified in refusing to grant back wages. Learned counsel for the respondent has submitted that question of payment of back wages being a matter of discretion of the Labour Court, non-payment of such compensation by Labour Court should not be interfered by the High Court while exercising jurisdiction under Article 226/227 of the Constitution of India. It is of course true that the High Court while deciding the matter under Article 226/227 of the Constitution against the award of the Labour Court, does not sit as an appellate Court and should not ordinarily interfere with the discretionary order passed by the Tribunal. However, in the present case, the Tribunal does not appear to have given any cogent reason for refusing to award back wages.

7. It has to be remembered that the petitioner was working as a N.M.R. and subsequently as Class IV employee. Termination was on the ground that certificate relating to educational qualification was forged. The so called educational qualification was required to be of V Standard. The Labour Court has held that there was no material to indicate that false certificate has been obtained.

Yet, the order of termination without giving an opportunity of hearing to the petitioner has been termed as "bona fide" by the Labour Court. Even though it cannot be denied that management has not acted with any "mala fide", it must be held that the petitioner was not to be blamed to the slightest extent. If there would have been any semblance of error on the part of the petitioner, the order refusing to grant back Wages could have been characterised as justified. Where however, the termination is found to be illegal and not due to any fault on the workman, ordinarily reinstatement be accompanied by a direction relating to payment of back wages also. This position seems to be clear in view of the decisions reported in Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others, : Smt. Anjilamma and Ors. v. Labour Court-III at Hyderabad and Anr. (supra) and several other decisions.

8. So called reasons given by the Labour Court have already been extracted. A mere perusal of the order would indicate that the Labour Court has refused to grant back wages by merely dubbing the statement of the employer as bonafide. No semblance of any fault has been found with the workman. Moreover, the fact that the workman died during pendency of the writ petition and the direction regarding reinstatement has become redundant and the members of the family have lost their sole breadwinner cannot be lost sight of.

9. For the aforesaid reasons, I am inclined to quash that part of the order of the Labour Court refusing to grant back wages. Accordingly the writ petition is allowed and it is directed that legal representatives of the workman shall be paid back wages payable from the date of dismissal of the workman till the date of actual reinstatement. However, there will be no order as to costs.