

(2013) 10 MAD CK 0010

In the Madras High Court

Case No : Writ Appeal No. 2151 of 2010 and MP. No. 1 of 2010

D. Ravi

APPELLANT

Vs

The Sports Development Authority of Tamil Nadu and The I
Additional Labour Court

RESPONDENT

Date of Decision : 31-10-2013

Acts Referred:

Citation : (2013) 4 LLJ 710

Hon'ble Judges : R. Mahadevan, J;N. Paul Vasanthakumar, J

Bench : Division Bench

Advocate : R. Sivakumar, for the Appellant; I. Sathish, for the Respondent

Final Decision : Disposed Off

Judgement

N. Paul Vasanthakumar, J.—Heard Mr. R. Sivakumar, learned counsel for the appellant and Mr. I. Sathish, learned counsel for the first

respondent. This appeal is filed against the order of the learned Single Judge insofar as denying back wages to the appellant, in Writ Petition No.

18200 of 2010 dated 19.11.2009, wherein the first respondent has challenged the award of the Labour Court made in I.D. No. 1194 of 1991

dated 22.10.1996. The Labour Court ordered reinstatement of the appellant with continuity of service and full back wages. The learned Single

Judge allowed the Writ Petition insofar as payment of back wages and confirmed the award insofar as ordering reinstatement.

2. The case of the first respondent before the Labour Court was that the appellant was engaged as a contingent employee from 4.5.1985 to help

the Pump Operator and during the course of his employment, the appellant permitted outsiders to use the swimming pool without issuing proper

tickets. The said misconduct was detected on 24.4.1989 and thereafter the appellant ran away from the premises out of fear of conducting enquiry

in the said matter. The appellant was terminated from service on 27.4.1989. The said termination was challenged in I.D. No. 1194 of 1991 before

the Labour Court, Chennai.

3. The said Industrial Dispute was opposed by the management stating that the appellant was not engaged on permanent basis and he was

terminated only on account of serious misconduct committed by him. The Labour Court disbelieved the said contention and directed reinstatement

with full back wages and continuity of service.

4. The learned Single Judge having noticed the non-compliance of the statutory provision u/s 25F of the Industrial Disputes Act, 1947 upheld the

order of reinstatement and set aside the portion of the award granting back wages.

5. The learned counsel for the appellant submitted that once reinstatement is ordered by the Labour Court, the payment of back wages has to be

granted in the light of the earlier judgment of the Supreme Court, which was the followed by the Labour Court and the subsequent judgments of

the Supreme Court holding that unless the non-employment of the period on which the workman was kept out of employment was proved, the

back wages cannot be ordered by the Labour Court, cannot be applied to this case. In the decision reported in Novartis India Ltd. Vs. State of

West Bengal and Others, , the Supreme Court considered the eligibility to claim back wages and when courts can order back wages while

ordering reinstatement. In paragraph 21 of the said judgment, the Supreme Court held as follows:

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.

6. The learned counsel appearing for the management on the other hand submitted that the appellant has not made averment stating that he was not

employed after the disengagement/termination in the Claim Petition or no proof was submitted before the Labour Court regarding non-employment

of the appellant during the period under which he was out of service. In the absence of any pleading and such proof of non-employment, the

learned Single Judge was right in setting aside the portion of award and he denied back wages.

7. The learned counsel for the appellant, however, submitted that the award of the Labour Court was made on 22.10.1996 and inspite of repeated

requests made by the appellant seeking reinstatement immediately, the appellant was reinstated only on 31.12.1999 and he is paid salary only from

the said date. It is an admitted fact that the order of the Tribunal ordering reinstatement was challenged before this Court only in October 2000.

Hence, the appellant is entitled to get back wages atleast from the date of the award that was on 22.10.1996 till 30.12.1999.

8. In the counter affidavit filed by the appellant in the Writ Petition before the learned Single Judge, the appellant has specifically stated that he had

submitted several representations requesting the management to reinstate him in service and comply with the order of the Labour Court and pay

back wages as awarded by the Labour Court and after a period of more than three years, the order of reinstatement was given to the appellant as

Pump Operator.

9. There is no denial about the submission of the appellant seeking reinstatement as averred in paragraph 5 of the counter affidavit, from the side of

the management. In the absence of any such rebuttal and no proof being filed to show that the appellant was otherwise employed elsewhere from

the date of the award till 30.12.1999, this Court is of the view that the appellant is entitled to get back wages atleast from the date of the award

i.e., 22.10.1996 till 30.12.1999 apart from continuity of service, particularly

when there is delay on the part of the management in filing the Writ Petition before this Court.

10. In such a view of the matter, we confirm the order of the learned Single Judge insofar as ordering reinstatement is concerned, with a direction

to the management to pay salary and other benefits to the appellant from 22.10.1996 to 30.12.1999, within a period of eight weeks from the date

of receipt of a copy of this order. If the appellant is having any other grievance relating to the fixation of his pay or seeking right of permanency, it is

open to him to approach the management and the said request is bound to be considered by the first respondent management in accordance with

law. The writ appeal is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.