
(2013) 11 MAD CK 0223
In the Madras High Court
Case No : W.P. No. 10073 of 2006

M. Chinnathambi

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 20-11-2013

Acts Referred:

Citation : (2014) 1 LLJ 681

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S. Tamilvanan, J.—This writ petition has been filed under Article 226 of the Constitution of India, seeking an order in the nature of Writ of certiorarified mandamus calling for the records pertaining to the Award, dated 07.08.2004 made in I.D. No. 304/99 on the file of the Labour Court, Salem, the first respondent herein and quash the same, so far as it relates to denial of back wages and directing the second respondent to pay back-wages and other attendant benefits to the writ petitioner/employee. The petitioner herein, an employee under the second respondent raised Industrial Dispute u/s 2(A)(2) of Industrial Disputes Act, claiming reinstatement with continuity of service and back wages . The petitioner has stated that he had joined the service of the second respondent as Office Assistant on 10.08.1990. On 24.06.1997, the petitioner was removed from service on the allegation that the petitioner refused to supply tea to the important officials, when he was working in the canteen under the administration of the second respondent.

2. The Management issued charge memo, dated 01.07.1997 for which, the petitioner submitted his reply, subsequently, domestic enquiry was conducted. The petitioner has stated that he had been working under the second respondent for about 7 years on the date of filing of petition before the Labour Officer, Krishnagiri. However, there was no settlement arrived at between the petitioner and the second respondent herein.

3. The charge framed against the petitioner is that on 24.06.1997 at about 6 p.m. and on 25.02.1997 at 9.45 a.m. the petitioner deliberately refused to supply tea to the important officials, in spite of several oral warnings and advice given to him, hence, according to the second respondent, charge sheet was issued to the petitioner. Since his explanation was not satisfactory, domestic enquiry was conducted, following principles of natural justice. Based on the findings of the Enquiry officer, second show cause notice was also issued to the petitioner and he submitted his explanation on 09.07.1998. Since the explanation was found not satisfactory, the petitioner was dismissed from service, by order, dated 17.07.1998.

4. Aggrieved by the order passed by the second respondent, the petitioner/workman preferred I.D. No. 304 of 1999 before the Labour Court, Salem, the first respondent herein. The Labour Court, partly allowed the petition filed in I.D. No. 304 of 1999, whereby the second respondent/employer was directed to reinstate the petitioner into service within three months with continuity of service, but without back wages. Aggrieved by which, this writ petition has been filed by the petitioner.

5. According to the second respondent, the Management has settled all the dues payable to the petitioner. The petitioner was gainfully employed in one of the establishment at Hosur. The first respondent, passed an Award, whereby, directed the second respondent to reinstate the petitioner into service, within three months without back-wages and other benefits.

6. In order to enlighten this Court on the legal aspect, the following decisions were relied on by both the learned counsel:

1. U.P. State Road Transport Corporation, Unnao Vs. Nazir Ali and Others,
2. Talwara Coop. Credit and Service Society Ltd. Vs. Sushil Kumar,
3. J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another,
4. B. Dhar v. State of Rajasthan, 2007 (1) LLN 717
5. U.P. State Brassware Corpn. Ltd. and Another Vs. Udai Narain Pandey,
6. Hindustan Motors Ltd. Vs. Tapan Kumar Bhattacharya and Another, ,
7. Ranjit Thakur Vs. Union of India (UOI) and Others,
8. The Management of Madras Fertilisers Ltd., Manali, Madras Vs. The Presiding Officer, Additional Labour Court, Madras, Kuppuswami (Died) and M. Kannammal, .
8. The Hon''ble Supreme Court in U.P.S. Brassware Corpn., Ltd., v. U.N. Pandey (supra), has held that payment of back-wages is not automatic, on the ground that the termination of service, being declared invalid and that there is no precise formula laid down to order payment of back-wages, in case of order of dismissal or suspension is set aside. The Hon''ble Apex Court has ruled that

payment of back-wages depends upon the facts and circumstances of each case under the Industrial Disputes Act. Relying on various earlier decisions of the Supreme Court, it was held as follows:

63. It is not in dispute that the respondent did not raise any plea in his written statement that he was not gainfully employed during the said period. It is now well settled by various decisions of this Court that although earlier this Court insisted that it was for the employer to raise the aforementioned plea but having regard to the provisions of S. 106 of the Indian Evidence Act or the provisions analogous thereto, such a plea should be raised by the workman.

8. In *B. Dhar v. State of Rajasthan* (supra), it was held by the Hon''ble Apex Court that grant of back-wages is not automatic, as the same depends upon the facts and circumstances of each case. Even in case where principles of natural justice has not been complied with, while the employee was dismissed, as ruled by the Hon''ble Supreme Court, when there was no work done by the employee/workman, he is not entitled to back wages, as a matter of right. Merely because a terminated employee is ordered to be reinstated and he is entitled to continuity of service for the purpose of pension and other retirement benefits, he cannot claim back wages , as the same is not consequential. In the matter of industrial dispute, as held by the Supreme Court, back wages need not be granted automatically although the order of termination passed against the workman is found to be against law.

9. In the Judgment referred to above, it was further held by the Apex Court thus:

13. Even in relation to the industrial disputes, this Court, in many judgments, has held that back wages need not be granted automatically although the order of termination passed against the concerned workman was found to be invalid. *U.P.S. Brassware Corpn. Ltd. v. U.N. Pandey* (supra) and *Municipal Council, Surjanpur Vs. Surinder Kumar*, .

10. Learned counsel appearing for the petitioner relied on the decision in *U.P.S. Brass-ware Corpn. Ltd. v. U.N. Pandey* (supra), and submitted that the petitioner is entitled to back-wages. However, in the aforesaid decision, the Hon''ble Supreme Court has held that payment of back wages need not be granted automatically, though the order of termination of service of an employee was declared invalid and no precise formula could be laid down in respect of back wages , as it depends upon the facts and circumstance of each case.

11. In the decision in *Hindustan Motors Ltd. v. T.K. Bhattacharya* (supra), while dealing with the Section 11A of Industrial Disputes Act, in respect of back wages, the Supreme Court has held that the Industrial Tribunal has to exercise its discretion.

12. Relying on the earlier decision of the Apex Court in *Post Graduate Institute of Medical Education and Research, Chandigarh v. Raj Kumar* 2001 (1) L.L.N 804, it was held by the Apex Court as follows:

Payment of back wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no straight-jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety....

13. In *J.K. Synthetics Ltd. v. K.P. Agrawal* (supra), the Supreme Court has held as follows:

20. But there are two exceptions. The first is where the Court sets aside the termination as a consequence of employee being exonerated or being found not guilty of the misconduct. Second is where the Court reaches a conclusion that the inquiry was held in respect of a frivolous issue or petty misconduct, as a camouflage to get rid of the employee or victimize him, and the disproportionately excessive punishment is a result of such scheme or intention. In such cases, the principles relating to back wages etc. will be the same as those applied in the cases of an illegal termination.

14. In *Talwara Coop. Credit and Service Society Ltd. v. Sushil Kumar* (supra), the Hon''ble Supreme Court has taken a similar view that grant of back wages is not automatic. The Industrial Tribunal, while exercising its power u/s 11A of the Industrial Disputes Act, 1947 is required to strike a balance, based on the relevant factors, as per Section 11A of the Industrial Disputes Act.

15. In the light of various decisions rendered by the Hon''ble Apex Court, it has been made clear that if the charges levelled against the workman is trivial in nature and the termination is illegal and if there is victimization of employer, by way of termination of service, he would be entitled to get back wages, otherwise, on the facts and circumstances of the case, the Industrial Tribunal should decide the entitlement of back wages to the workman.

16. In the instant case, admittedly the petitioner herein was appointed as Office Assistant on 10.08.1990 and on 24.06.1997 at about 6 p.m. and on 25.02.1997 at about 9.45 a.m. he deliberately refused to supply tea to the important officials, in spite of several oral warnings and the advice. It is not the case of the petitioner that serving tea was not his duty assigned to him.

17. Learned counsel appearing for the second respondent submitted that for the effective functioning of the second respondent, a Public Limited Company, it has to treat important officials, who visit the office of the second respondent. Though it was a part of the work of the petitioner, he had deliberately refused to do the same. In spite of several oral warnings and advice given to him by the superior officers, he failed to discharge his duty, hence, he was suspended and then removed from service and during the period of suspension, he was given subsistence allowance and without doing any work, the petitioner herein has claimed back wages, which is against law.

18. In the light of the decisions rendered by the Hon''ble Apex Court, the petitioner is not entitled to get back wages. In this regard, learned counsel for

the second respondent also drew the attention of this Court to the Award passed by the Labour Court in I.D. No. 304 of 1999. It cannot be disputed that the general rule is that "No work No pay" and payment of back wages is an exception. It has been made clear that for trivial reasons if the workman is dismissed from service illegally and there is victimization of the workman or employee, then he is entitled to claim back wages, as held by the Hon''ble Apex Court, however, which depends upon the facts and circumstance of each case. In the aforesaid decisions, the Hon''ble Apex Court has categorically held that grant of back wages is not automatic and it depends upon the facts and circumstance of each case.

19. In the instant case, it is not in dispute that the petitioner had refused to perform his duty assigned to him on two occasions, for the reasons best known to him. It is not the case of the petitioner that the work assigned to the petitioner was not his official duty. As mandatory provisions were not complied with, in imposing punishment of dismissal of the petitioner from service was not in accordance with law, hence, the Industrial Tribunal has rightly set aside the order and held that the petitioner is entitled to reinstatement and continuity of service, but without back wages. Admittedly, the petitioner is entitled to continuity of service, as per the impugned Award, which is not in dispute.

20. On the aforesaid facts and circumstances, in the light of various decisions rendered by the Hon''ble Apex Court, having gone through the Award passed by the Labour Judge, Salem, this Court is of the view that there is no error or infirmity in the impugned order passed by the Court below, so as to warrant any interference to direct the second respondent to pay full back wages. However, it is made clear that the petitioner is entitled to get subsistence allowance till he was reinstated into service and entitled to the benefits, as decided by the Labour Court. With the above observations, this Writ Petition is dismissed. No costs.