

(2014) 07 MAD CK 0036

In the Madras High Court

Case No : W.P. No. 28789 of 2013 and M.P. No. 1 of 2013

Management, Metropolitan Transport Corporation (Chennai)
Ltd.

APPELLANT

Vs

Presiding Officer-I, Additional Labour Court

RESPONDENT

Date of Decision : 15-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 2, 2-A(2)

Citation : (2015) 144 FLR 165

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : P. Paramasiva Doss, Advocates for the Appellant; S.T. Varadarajulu, Advocates for the Respondent

Judgement

R.S. Ramanathan, J.—The second respondent raised an industrial dispute in I.D. No. 633 of 19% on the file of the I Additional Labour Court, Chennai for reinstatement by invoking the provisions of section 2-A(2) of the Industrial Disputes Act, 1947. After contest, an award was passed on 5.9.2002, directing the petitioner to reinstate the second respondent herein in service with 50% back-wages, with continuity of service and all other attendant benefits.

The Award passed in I.D. No. 633 of 1996 on the file of the I Additional Labour Court was challenged by the petitioner herein as well as the second respondent in W.P. No. 22280 of 2003 and W.P. No. 49749 of 2006 respectively. A learned Single Judge of this Court, by an order dated 26.11.2010 allowed the writ petition filed by the petitioner/Management and set aside the award of the Labour Court made in I.D. No. 633 of 1996 and dismissed the writ petition filed by the second respondent.

Aggrieved by the same, the second respondent filed writ appeal in W.A. No. 374 of 2011. During the pendency of the writ appeal, the matter was referred to Lok Adalat and on 5.12.2012, a settlement was arrived at between the parties, which

reads as follows:--

"The award passed in I.D. No. 633 of 2002, dated 5.9.2002 is modified by directing the respondent i.e. Management of Metropolitan Transport Corporation (Chennai Division-I) Limited, to reinstate the appellant with continuity of service with all other attendant benefits. Only thing given up is full back wages. The award grants 50% of the back wages and that benefit are given up by the appellant viz., Mr. Anbalagan.

2. It is also agreed that the amount deposited by the Management before the Lower Court that is Rs. 1,19,397/- (Rupees One Lakh Nineteen Thousand Three Hundred Ninety Seven only), with interest if any shall be returned to the respondent/Metropolitan Transport Corporation, Chennai Division. To that effect the award is modified accordingly. Four weeks time is granted to implement the award."

2. Thereafter, the second respondent filed E.P. No. 207 of 2013 in. I.D. No. 633 of 1996 to execute the award of the Lok Adalat by claiming monetary benefits and the same is challenged by the petitioner in this writ petition.

3. It is submitted by the learned Counsel for the petitioner that the second respondent has to work out his remedy as per the terms of settlement arrived at before the Lok Adalat. As per the terms of settlement, the second respondent is not entitled to any back wages, as the same was given up by him and the petitioner agreed to reinstate the second respondent with continuity of service with all other attendant benefits. As per the terms of settlement, the amount deposited by the petitioner herein before the Labour Court was also allowed to be returned to the petitioner and therefore, on reinstatement, the second respondent is not entitled to claim any back wages. Therefore, the proceedings in E.P. No. 207 of 2013 initiated by the second respondent is a clear case of abuse of process of law and therefore, the first respondent should be prohibited from proceeding with E.P. No. 207 of 2013.

4. The learned Counsel for the petitioner also relied upon the judgments of the Hon"ble Supreme Court in V.V.G. Reddy Vs. APSRTC, Nizamabad Region and Another, and Sanat Kumar Dwivedi Vs. Dhar Jila Sahakari Bhoomi Vikas Bank Maryadit and Others, , in support of his contentions.

5. On the other hand, the learned Counsel for the second respondent submitted that as per section 11-B of the I.D. Act, the Labour Court have the power of a Civil Court to execute its own award as a decree of a Civil Court and also to execute any settlement as defined in clause (p) of section 2 as a decree. Therefore, in execution of the award passed in the Lok Adalat, Execution Petition was filed. If the petitioner has got any grievance, it is open to the petitioner to file counter and contest the EP and the petitioner cannot file a writ petition, seeking for relief of writ of prohibition, forbearing the first respondent from proceeding with E.P. No. 207 of 2013 filed by the second respondent. He further submitted that even though the writ petition in W.P. No. 22280 of 2003 filed by

the petitioner herein, challenging the award passed in I.D. No. 633 of 1996 was allowed, the award passed in I.D. No. 633 of 1996 was set aside and as per the terms of settlement, the petitioner was directed to reinstate the second respondent with continuity of service, with all other attendant benefits. Therefore, the second respondent is entitled to claim back wages and that was claimed in the EP. Whether the second respondent is entitled to claim back wages can be decided only before the I Additional Labour Court, where Execution Petition is pending and the same cannot be challenged by way of writ before this Court.

6. I am unable to accept the contention of the learned Counsel for the second respondent. Admittedly, parties arrived at a settlement before the Lok Adalat on 5.12.2012 and as per the terms of settlement, the award passed in I.D. No. 633 of 1996 was modified and the petitioner was directed to reinstate the appellant/second respondent with continuity of service with all other attendant benefits. It is also made clear that full back wages was given up and also 50% back wages as per the award passed in I.D. No. 633 of 1996 dated 5.9.2002 was also given up. Therefore, as per the terms of settlement, the second respondent is entitled to get reinstatement with continuity of service with all other attendant benefits and he is not entitled to claim any back wages as per the award passed in I.D. No. 633 of 1996 dated 5.9.2002. It is also made clear by Paragraph 2 of the terms of settlement, by which, the petitioner was permitted to get refund of the sum of Rs. 1,19,397/- deposited by the petitioner Management before the Labour Court. Had it been the intention of the parties that the second respondent is entitled to claim back wages as contended by him, there was no necessity for refund of the amount deposited by the petitioner before the Labour Court. In my opinion, the order of refund of the amount to the petitioner/Management would make it clear that the second respondent was not entitled to claim any back wages.

7. In this connection, the judgments relied upon by the learned Counsel for the petitioner would also make the position clear. Following the judgment reported in A.P.S.R.T.C. and Another Vs. S. Narsagoud, , the Hon"ble Supreme Court in the judgment reported in 2009 (1) CLR 423 SC, held that an employee is not entitled to claim any monetary benefits when he was reinstated with continuity of service. In the judgment reported in Sanat Kumar Dwivedi Vs. Dhar Jila Sahakari Bhoomi Vikas Bank Maryadit and Others, also, it was held that when a person was reinstated in service with a condition that he would not get any back wages, he was not entitled to claim any back wages. In this case also, as per the terms of settlement, the second respondent has given up full back wages and also 50% of the back wages as per "the award passed in I.D. No. 633 of 19%. Hence, the second respondent is not entitled to claim any back wages and E.P. No. 207 of 2013 was filed only for realising the back wages from the date of his termination. Hence, the second respondent is not entitled to claim that amount as per the claim made in E.P. No. 207 of 2013.

8. The contention of the learned Counsel for the second respondent that the petitioner has to work out his remedy only before the Labour Court, where E.P. No. 207 of 2013 was filed also cannot be accepted. Even though the petitioner is liable to work out his remedy before the Labour Court, having regard to the terms of settlement arrived at before the Lok Adalat, wherein, the second respondent has given up his claim for full back wages, he is not entitled to claim such back wages by filing an execution petition, which is an abuse of process of Court and this Court sitting under Article 226 of the Constitution has got power to quash the same. Hence, this writ petition is allowed and the first respondent is prohibited from proceeding with E.P. No. 207 of 2013, as the second respondent is not entitled to such a claim as per the terms of settlement. No costs. Consequently, connected miscellaneous petition is closed.