

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31-3-2006

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

Writ Petition No.597 of 2006
W.P.M.P.No.684 of 2006

K.Yamiah

...

Petitioner

Vs.

The Commissioner,
Corporation of Chennai,
Rippon Buildings, Park Town,
Chennai - 600 003.

...

Respondents

This writ petition has been filed under Article 226 of Constitution of India, for issuance of a writ of mandamus directing the Commissioner, Corporation of Madras, Rippon Buildings, Park Town, Chennai-3, the respondent herein to reinstate the petitioner into service with full back wages, continuity of service and all other attendant benefits.

For Petitioner : Mr.D.Ashok Kumar

For Respondent : Mrs.P.Bagyalakshmi

O R D E R

In this writ petition, petitioner seeks a direction to the respondent to reinstate him into service with full backwages, continuity of service and all other attendant benefits.

2. The brief facts necessary for disposal of the writ petition are as follows.

(i) Petitioner was appointed as a Sanitary Worker in the respondent Corporation in the year 1960 and posted at Division No.58 within Zone No.IV. He was continuously working in the said post. However, from 1.8.2004, petitioner could not report to duty owing to his ill-health and the said fact, according to the petitioner, was intimated to the department with an undertaking to furnish the requisite medical certificate on his returning to duty after his recovery from the illness.

(ii) The respondent Corporation initiated a disciplinary proceedings for the said absence and on 7.8.1986, petitioner was terminated from his service. The said order of termination was challenged in I.D.No.668 of 1993 under Section 2 A(2) of the Industrial disputes Act 1947. In the said industrial dispute, petitioner prayed for setting aside the order of dismissal dated 7.8.1986 and for reinstatement with backwages, continuity of service and all other attendant benefits.

(iii) The respondent Corporation, during the time of enquiry, failed to represent its case before the Labour Court and consequently the respondent was called absent and set exparte. Petitioner was examined as Workman witness No.1 and Exs.W-1 to W-5 were marked and the Labour Court passed an exparte award on 25.4.1996 and ordered reinstatement of the petitioner into service with full backwages, continuity of service and all other attendant benefits and also awarded cost of Rs.1,000/-. The said award of the Labour Court made in I.D.No.668 of 1993 dated 25.4.1996 was published in the Tamil Nadu Gazettee dated 17.7.1996.

(iv) After the award was passed and published in the Gazettee, petitioner submitted a representation through his counsel on 2.8.1996 and prayed for implementation of the award. Petitioner also submitted representations through the Council Member of Ward No.58 of the respondent Corporation to the Mayor on 2.12.1996; personally to the Mayor on 24.12.1996; and also to the Assistant Engineer, Corporation of Chennai, Circle 4, on 10.2.1997.

(v) As the said award having not been implemented, petitioner filed a petition before the Principal Labour Court, Chennai, in C.P.No.506 of 1999 and claimed Rs.69,120/- with cost and the same was ordered on 27.11.1997 by the Principal Labour Judge, Chennai. Petitioner was yet to get reinstatement, backwages and other benefits and therefore he submitted a representation before the Chief Minister's Cell, for which the respondent sent a reply on 24.11.1998 in which it is stated that the respondent filed set aside petition before the Labour Court and immediate steps will be taken for disposal of the said petition and after disposal of the said petition further action will be taken in this matter. The application for setting aside the exparte award was numbered as I.A.No.794 of 1998 by the First Additional Labour Court, Chennai, and the same was dismissed on 10.2.2000, by refusing to condone the delay of 109 days. The subsequent claim petition filed by the petitioner in C.P.No.65 of 2000 claiming Rs.18,360/- with cost of Rs.500/- was also ordered on 28.11.2001.

(vi) The grievance of the petitioner is that in spite of making several representations to the respondent as well as to the Mayor of the Corporation, he was not given any relief and therefore he has filed the above writ petition seeking direction as stated above.

3. On the above pleadings, I have heard the learned counsel appearing for the petitioner as well as the respondent.

4. The point in issue is whether the respondent is justified in not reinstating the petitioner with backwages, continuity of service and all other attendant benefits, even after the order of the Labour court in I.D.No.668 of 1993 dated 25.4.1996.

5. The award of the Labour Court has become final. The set aside petition filed with condone delay petition was also dismissed as early as on 10.2.2000 and the certified copy of the said order is found at page No.15 of the typed set of papers. Therefore, there is no justification on the part of the respondent Corporation in not implementing the award of the Labour Court. Even according to the learned counsel appearing for the respondent Corporation, neither the award of the Labour Court dated 25.4.1996 nor the order passed in I.A.No.794 of 1998 on 10.2.2000 was challenged in any other Forum or before this Court. Hence there is no justification on the part of the respondent in not implementing the order of the Labour Court, even after the lapse of about ten years. Petitioner was repeatedly making representations to the respondent Corporation, Mayor of Corporation and also to the Chief Minister's Cell, but in spite of the same, petitioner was not given reinstatement with backwages and continuity of service. The said attitude of the respondent is improper and a poor last grade servant is made to suffer for about ten years in spite of the order of the Labour court. The charge itself is only absence from duty. No other charge is pointed out by the learned counsel for the respondent at the time of hearing of the writ petition.

6. Hence I am of the considered view that the award of the Labour Court made in I.D.No.668 of 1993 on 25.4.1996 is to be implemented by the respondent Corporation within a period of two weeks from the date of receipt of copy of this order. So far as the backwages and other benefits are concerned, the respondent is directed to calculate the same in terms of the Labour Court award and pay the arrears payable till the date of reinstatement, within a period of four weeks from the date of receipt of copy of this order.

7. The writ petition is allowed on the above terms. No costs. Connected WPMP NO.684 of 2006 is closed.

vr

Sd/
Asst.Registrar

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Sub Asst.Registrar

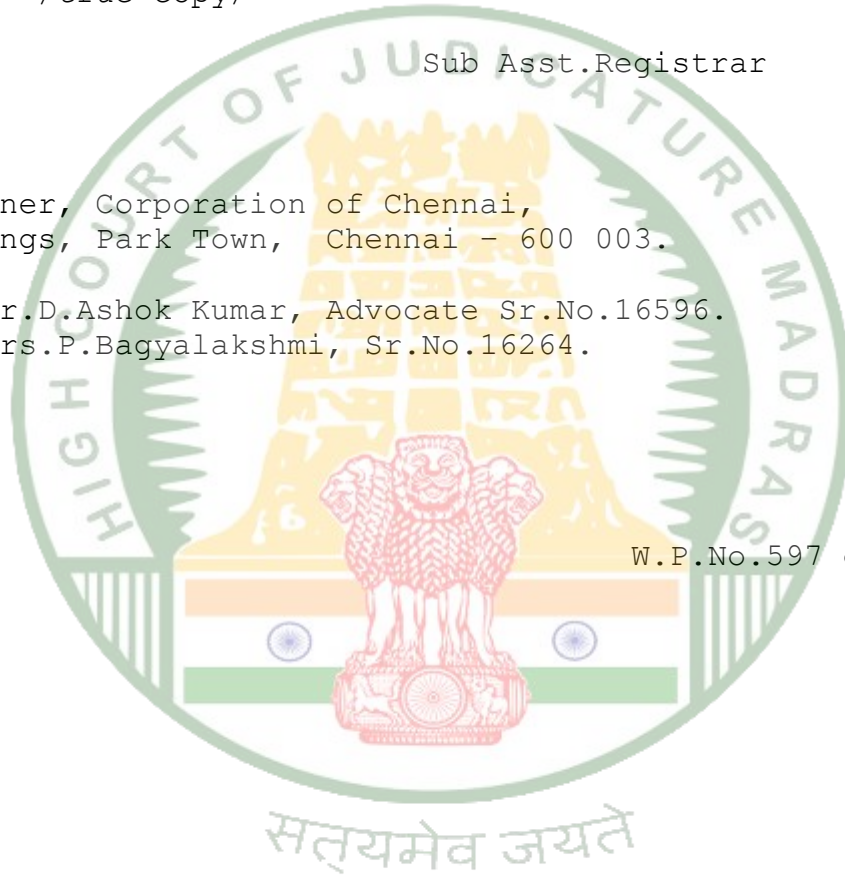
To

The Commissioner, Corporation of Chennai,
Rippon Buildings, Park Town, Chennai - 600 003.

+ one cc to Mr.D.Ashok Kumar, Advocate Sr.No.16596.
+ one cc to Mrs.P.Bagyalakshmi, Sr.No.16264.

BVR (CO)
RSM/6.4.2006

W.P.No.597 of 2006



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