

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2010

CORAM

THE HONOURABLE Mr. JUSTICE M.M. SUNDRESH

W.P.NO.13947 OF 2003

R. Madasamy

.. Petitioner

..vs..

1. The Management

Bombay Burma Trading
Corporation Limited
Singampatty group
Nallumukku post
Tirunelveli District

2. The Presiding Officer

Labour Court, Tirunelveli

.. Respondents

PRAYER: Writ Petition has been filed under Section 226 of the Constitution of India for issuance of Writ of Certiorari calling for the records on the file of the respondent No.2 in I.D No.77 of 1993 dated 27.12.2000 and quash the same in so far as it had denied the payment of back wages to the petitioner during the period of dismissal and the order restoring him to services.

For Petitioner : Mr. V. Raghavachari

For Respondents : No Appearance

ORDER

The petitioner has joined the duty of the first respondent company on 01.06.1977 as a labour. The petitioner thereafter put in about 20 years of service with the first respondent company. Charges have been framed against the petitioner, on the ground that the petitioner has not done his duty in a proper manner. The enquiry was conducted and thereafter an order of dismissal was passed. Challenging the same the petitioner raised a dispute before the respondent No.2. The second respondent after due enquiry held that the first respondent has not proved the charges and passed an award

reinstating the petitioner without back wages. Not satisfied with the said award, the petitioner has filed the present writ petition, in so far as the rejection of claim for backwages is concerned.

2. Mr. V. Raghavachari, learned counsel for the petitioner submitted that the award passed by the second respondent is liable to be set aside, in so far as the rejection of backwages are concerned. The learned counsel further submitted that without assigning any reason, the second respondent has declined the backwages on the ground that the petitioner has not worked after the date of dismissal. In support of the said contention, the learned counsel has relied upon the said judgment of the Hon'ble Apex Court reported in Allahabad Jal Sansthan vs. Daya Shankar Rai and another [(2005) 5 SCC 124].

3. Heard the learned counsel for the petitioner and non-appear for the first respondent, even though notice has been served.

4. It is seen that the Labour Court has held that the petitioner was working with the first respondent company for 20 years. The Labour Court also found that the allegation of the second respondent that the petitioner was in the habit of not completing 80% of the allotted work on him has no factual basis. The Labour Court further found that there is no evidence to substantiate the case of the first respondent that the petitioner was not doing his work properly. Further finding has been given that it cannot be said that the work put in by the petitioner was not in accordance with the standing order. Hence, considering the above said facts, the Labour Court has awarded the reinstatement. The Labour Court further observed that there is no evidence to show that the petitioner's work was not satisfactory, in the context of the charges framed against him. Therefore, the decision of the Labour Court is totally rejecting the backwages is legally and factually incorrect. The Labour Court has not given any reason in declining the request for back wages except by saying that the petitioner was dismissed long time before. There is also no finding that the petitioner was gainful employee elsewhere. The first respondent has not challenged the award before this Court which has become final and therefore the finding rendered therein on merits cannot be assailed.

5. It is no doubt true that granting of backwages is the discretion of the Court based upon the facts and circumstances of the each case. However the said discretion is a judicial discretion. The Labour Court after giving findings based upon the records to the effect that the dismissal of the petitioner is not justified ought to have granted the consequential relief of back wages. When the dismissal is not justified a workmen is entitled to get reinstated by operation of law. Then, the only question to be

decided by the Court is to find out the just compensation. Therefore, the Labour Court has committed an error in law in totally declining the relief of back wages even without assigning any reason except by saying that the petitioner was dismissed a long time ago. There is also no finding that the petitioner was gainfully employed elsewhere. The Hon'ble Apex Court reported in Allahabad Jal Sansthan vs. Daya Shankar Rai and another [(2005) 5 SCC 124] has observed as follows:-

"6. A law in absolute terms cannot be laid down as to in which cases, and under what circumstances, full back wages can be granted or denied. The Labour Court and/or Industrial Tribunal before which industrial dispute has been raised, would be entitled to grant the relief having regard to the facts and circumstances of each case. For the said purpose, several factors are required to be taken into consideration. It is not in dispute that Respondent 1 herein was appointed on an ad hoc basis; his services were terminated on the ground of a policy decision, as far back as on 24.1.1987. Respondent 1 had filed a written statement wherein he had not raised any plea that he had been sitting idle or had not obtained any other employment in the interregnum. The learned counsel for the appellant, in our opinion, is correct in submitting that a pleading to that effect in the written statement by the workman was necessary. Not only no such pleading was raised, even in his evidence, the workman did not say that he continued to remain unemployed. In the instant case, the respondent herein had been reinstated from 27.2.2001."

6. Hence, considering the facts of the case and applying the ratio laid down by the Hon'ble Apex Court in the indigent referred above, this Court is of the opinion that the present case, it is not just and proper that the petitioner will have to be given 50% back wages from the date of dismissal till the award of the Labour Court.

7. The Writ Petition is allowed accordingly and the first respondent is directed to pay the back wages within a period of two months from the date of receipt of copy of this order. No costs.

Sd/
Asst.Registrar

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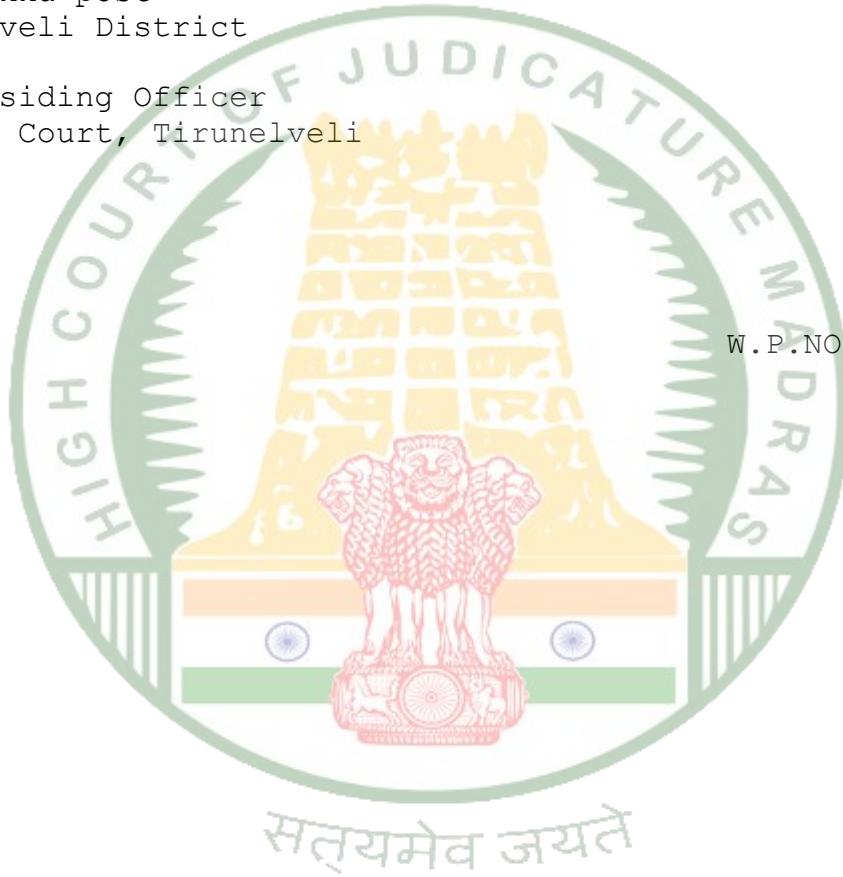
Sub Asst.Registrar

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To

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Tirunelveli District
2. The Presiding Officer
Labour Court, Tirunelveli

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