



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.810 of 2014  
and  
M.P.Nos.1 and 2 of 2014

Sundaram Fasteners Ltd  
Autolec Division  
Divisional Office  
47/2-A Poonamallee High Road  
Velappanchavadi  
Chennai 600 077  
Represented by its  
Assistant General Manager - IR

... Petitioner

Vs.

1. The Presiding Officer  
I Additional Labour Court  
Chennai.

2. V. Vijayakumar

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the 1<sup>st</sup> respondent in ID No.349 of 2007 and quash its award dated 26.02.2013.

For Petitioner : Mr. Aaroon Al Rasheed  
For M/s. T.S. Gopalan and Co.

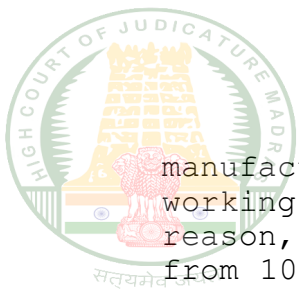
For R1 : Labour Court

For R2 : Mr.S.T.Varadarajulu

ORDER

The writ petition has been filed challenging the award dated 26.02.2013 passed in ID No.349 of 2007.

2. The petitioner was having a factory at Gummidipoondi for



manufacture of grey iron casting. The 2<sup>nd</sup> respondent/workman was working as an Electrical Supervisor. Without assigning any reason, the 2<sup>nd</sup> respondent absent from attending work with effect from 10.12.2001. The 2<sup>nd</sup> respondent / workman claimed that he was denied employment by the writ petitioner / Management during the year 2001. On 27.02.2002, the 2<sup>nd</sup> respondent sent a letter to the petitioner/Management. The 2<sup>nd</sup> respondent/workman raised a dispute of denial of employment. However, the petitioner / Management submitted their reply by pointing out that the 2<sup>nd</sup> respondent / workman has not been denied employment, but he had taken up employment in M/s.Magnum Polymers at Gummidipoondi and consequently, was not reporting for work in the petitioner/Management.

3. After a lapse of about 4 years, the 2<sup>nd</sup> respondent / workman approached the State Legal Services Authority and challenged the denial of employment. Again, the petitioner / Management submitted its reply by pointing out that the Management had not denied employment and the 2<sup>nd</sup> respondent had taken up employment in another company.

4. The 2<sup>nd</sup> respondent raised an Industrial Dispute after a lapse of about 6 years from the alleged date of denial of employment before the Labour Court. The petitioner / Management contested the case and reiterated that the 2<sup>nd</sup> respondent was not been denied employment and he had taken up another employment in another company, namely, M/s. Magnum Polymers at Gummidipoondi. Without considering the factual aspects established by the petitioner / Management, the Labour Court passed the impugned award for reinstatement with 50% of back-wages. Even after the award, the petitioner/ Management sent a letter on 08.11.2013, asking the 2<sup>nd</sup> respondent/workman to report for work. The 2<sup>nd</sup> respondent reported for duty and resigned from service within few days. Thus, the writ petitioner was constrained to move the present writ petition.

5. The learned counsel for the writ petitioner contended that the allegation regarding denial of employment by the 2<sup>nd</sup> respondent before the Labour Court all along that the writ petitioner / Management had contested the case by stating that at no circumstances, the employment was not denied to the 2<sup>nd</sup> respondent / workman, but he had taken up another employment in another company, namely, M/s. Magnum Polymers at Gummidipoondi. Pertinently, after passing the impugned award by the Labour Court, again the petitioner / Management directed the 2<sup>nd</sup> respondent to report for work. Though the 2<sup>nd</sup> respondent reported for work, he resigned from service after few days. Thus, the award of 50% of back-wages by the Labour Court is not in consonance with the established principles of law.



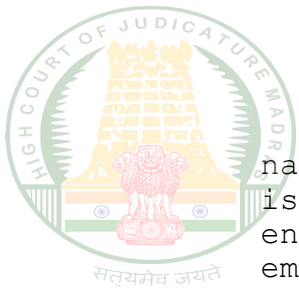
6. The learned counsel for the 2<sup>nd</sup> respondent / workman objected the contentions raised by the learned counsel for the writ petitioner / management by stating that the denial of employment was raised as a dispute and the 2<sup>nd</sup> respondent approached the Labour Officer and was consistently following the matter. Thus, there was a delay in raising the Industrial Dispute before the Labour Court, after denial of employment by the writ petitioner / management. Thus, the award of back-wages is proper and moreso, 50% of the back-wages alone has been ordered by the Labour Court and thus, there is no infirmity.

7. Considering the arguments as advanced between the parties to the lis on hand, this Court is of the opinion that the 2<sup>nd</sup> respondent was serving to the petitioner / Management as the Electrical Supervisor from the year, 1998. He served in the petitioner / Management hardly about 3 years. In the year 2001, the 2<sup>nd</sup> respondent claimed that the petitioner denied employment to him. Though he approached the Labour Officer, he had not raised the Industrial Dispute before the Labour Court during that period or at least within a reasonable period of time. The 2<sup>nd</sup> respondent claimed that the employment was denied to him by the writ petitioner / Management in the year 2001, but raised the Industrial Dispute in the year 2007, after a lapse of about 6 years. Even as per the list of exhibits marked by the workman before the Labour Court, the 2<sup>nd</sup> respondent / workman served till May, 2001 and thereafter, he has not filed any documents to establish that the 2<sup>nd</sup> respondent was continuously pursuing the matter till such time he raised the Industrial Dispute before the Labour Court. Thus, the delay in approaching the Labour Court, as stated by the writ petitioner / Management, is established.

8. The petitioner / Management further raised a question that if at all the 2<sup>nd</sup> respondent was denied employment from the year 2001 onwards, he raised the Industrial Dispute only in the year 2007, how he managed his livelihood also has not been explained. But the writ petitioner / Management consistently pleaded before the Labour Court that the 2<sup>nd</sup> respondent had taken up employment in M/s. Magnum Polymers at Gummidipoondi, and such a statement made by the writ petitioner had not even been denied by the 2<sup>nd</sup> respondent / workman.

9. The Hon'ble Supreme Court, in case of Kendriya Vidyalaya Sangathan and Another Vs. S.C. Sharma, reported in (2005) 2 Supreme Court Cases 363, made an observation that reads as follows:

"16. Applying the above principle, the inevitable conclusion is that the respondent was not entitled to full back wages which according to the High Court was a



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natural consequence. That part of the High Court order is set aside. When the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employers can bring on record materials to rebut the claim. In the instant case, the respondent had neither pleaded nor placed any material in that regard."

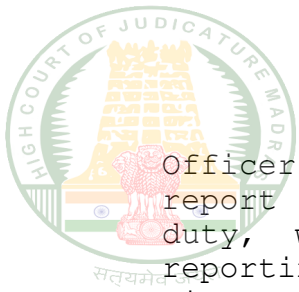
10. The Apex Court, in the case of Rajasthan State Road Transport Corporation, Jaipur Vs. Phool Chand, reported in (2018) 18 Supreme Court Cases 299, also made an observation that reads as follows:

"11. In our considered opinion, the Courts below completely failed to see that the back wages could not be awarded by the Court as of right to the workman consequent upon setting aside of his dismissal/termination order. In other words, a workman has no right to claim back wages from his employer as of right only because the Court has set aside his dismissal order in his favour and directed his reinstatement in service.

12. It is necessary for the workman in such cases to plead and prove with the aid of evidence that after his dismissal from the service, he was not gainfully employed anywhere and had no earning to maintain himself or/and his family. The employer is also entitled to prove it otherwise against the employee, namely, that the employee was gainfully employed during the relevant period and hence not entitled to claim any back wages. Initial burden is, However, on the employee."

11. In the present case, though the 2<sup>nd</sup> respondent / workman has raised allegation that employment was denied to him by the petitioner / Management in the year 2001, he was not able to establish how he managed his livelihood for about 6 years till such time he raised an Industrial Dispute before the Labour Court concerned. The consistent pleading of the writ petitioner / Management that the 2<sup>nd</sup> respondent had taken up employment with M/s. Magnum Polymers at Gummidipoondi was also not denied and further, he could not be able to establish that he was not given full employment applying the principles laid down by the Hon'ble Apex Court of India in the cases cited supra.

12. However, soon after the dispute was raised by the 2<sup>nd</sup> respondent / workman in the year 2002 by approaching the Labour



Officer, the Management has repeatedly directed the workman to report for duty, but the 2<sup>nd</sup> respondent had not reported for duty, which would establish that he was not interested in reporting for duty in the writ petitioner's Management. In such circumstances, the factual inference has to be drawn to his position that the 2<sup>nd</sup> respondent would have given full employment elsewhere, so that he would be in a position to manage his family affairs. Even after passing of the impugned award by the Labour Court, the writ petitioner / Management directed the 2<sup>nd</sup> respondent to report for duty. Though the 2<sup>nd</sup> respondent reported for duty, he resigned within few days.

13. This being the factum established, the 2<sup>nd</sup> respondent is not entitled for back-wages. Accordingly, the impugned award dated 26.02.2013 in ID No.349 of 2007 is quashed and the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-  
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Jeni

To

The Presiding Officer  
I Additional Labour Court  
Chennai.

+1cc to Mr.S.T.Varadarajulu, Advocate, S.R.No.34698

W.P.No.810 of 2014

JPL (CO)  
UMA (20/06/2022)