



WEB COPY



W.P.Nos.27937 to 27958 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.08.2023

PRONOUNCED ON : 04.10.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

W.P. Nos.27937 to 27958 of 2010
and
M.P.Nos. 1 & 2 (21 Nos) of 2010

The Management of MRF Limited,
Itchiputhur Village,
Arakonam – 631 003.
Rep. by its Plant Manager.

.... Petitioner

Vs

1. The Presiding Officer,
Principal Labour Court,
Vellore.

2. M.Subramaniam

.... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records connected with I.D.No.167 of 2007 on the file of 1st respondent i.e., The Presiding Officer, Principal Labour Court, Vellore and to quash common order dated 06.09.2010 made therein.

For Petitioner in all W.Ps : Mr.Sanjay Mohan
for Mr.S.Ramasubramaniam
& Associates



W.P.Nos.27937 to 27958 of 2010

For R2
(in W.P.Nos.27938
to 27947 & 27949
to 27956 of 2012)

: Mr.V.Prakash, Senior Counsel
for K.Sudalai Kannu

For R2
(in W.P.Nos.27957
and 27958 of 2012)

: Mrs.C.Monica

COMMON ORDER

These Writ Petitions have been filed challenging the Common Award dated 06.09.2010 in I.D.Nos.167, 170, 173 of 2007, 73 to 77 of 2008 passed by the first respondent, thereby directed the petitioner to reinstate the second respondent, in all the writ petitions, in service with 25% back wages, continuity of service and all other attendant benefits.

2. In this order, the petitioner hereinafter shall be referred as “Management” and the second respondent in all the writ petitions hereinafter shall be referred as “Workman”.

3. The case of the workmen is that they had joined the service of the management as a daily rated labourers. Though they were working on daily wages basis, the nature of work performed by them were the same as that of the permanent workmen. They had been working continuously without any break and they were paid Rs.45/- as wages per



W.P.Nos.27937 to 27958 of 2010

day. Without issuance of any order appointing them on regular basis, by an order dated 01.08.2002, the workmen were appointed as “apprentices”

During the period, when they were designated as apprentices, they were directed to perform the same work as that of permanent workmen.

4. The petitioner management extended their apprenticeship period by one year. Thereafter, some of the workmen were appointed as “Probationers” and six months period was fixed as a period of probation. During the period of probation also the workmen were directed to do the same work as that of permanent workmen. Though the workmen had worked continuously for four years, the management terminated their service. Though the workmen approached the management on several occasions, their request were not considered. The conciliation process was initiated, the conciliation failed and failure report was issued on 30.06.2006. Therefore, the workmen filed claim petitions seeking a direction to the management to reinstate them in service with back wages, continuity of service and all other attendant benefits. The first respondent allowed the dispute raised by the workmen and directed the management to reinstate them with 25% back wages, continuity of service and all other attendant benefits.



W.P.Nos.27937 to 27958 of 2010

WEB COPY

5. The learned counsel appearing for the petitioner would submit that the Labour Court allowed the dispute raised by the workmen beyond its jurisdiction. It failed to appreciate that in the case of a probationer all that was required to see whether the termination of services was based upon any material. All the workmen had been employed as probationers. There was no dispute also that the Standing Orders enable recruitment of probationers. Their probationary period shall be determined, upon the completion of the period of probation or extended period of probation as the case may be. The workmen accepted their appointment as probationers, their training performance as trainees, prior to engagement as probationers was not at all relevant. All the workmen raised dispute only after delay of one year to twelve years. Though there was no limitation, the workmen within reasonable time ought to have raised the dispute. In fact, after successful completion of apprenticeship period, the workmen were issued appointment letter, thereby appointing them as probationers on the terms and conditions. Further, the workmen had also accepted the extension of probation which was established by relevant exhibits. In fact, all the workmen were given opportunity to improve their services. However, they failed to improve



W.P.Nos.27937 to 27958 of 2010

their services and as such, their probation period was not extended further. If the probationary services were terminated at the end of probationary period, the workmen cannot claim any relief as against the management as the probationary period was terminated either by efflux of time or for unsatisfactory performance or unsuitability.

6. The very purpose of placing workmen on probation is to try during probationary period, to assess their suitability of the job in question for which the workmen were taken on probation. When it was found that the concerned workmen were unsuitable at the end of the probationary period the workmen were relieved. Therefore, it would not amount to the order of discharge and also could not be treated as an order of punishment. The management has got every right to terminate the probationary service when the performance of the probationers were found unsatisfactory.

7. The learned Senior Counsel for the workmen submitted that the termination of their services by the management is retrenchment within the meaning of Section 2 (oo) of the Industrial Dispute Act. From the date of appointment, he had been working continuously, without any



W.P.Nos.27937 to 27958 of 2010

break. Before the termination of their services, they were neither issued any prior notice nor given any compensation in accordance with law by the management. The management also failed to follow the provision laid down under Section 10 of the Industrial Dispute Act. The management also failed to comply with the provision under Section 25F of the Industrial Dispute Act. There was no valid contract of apprenticeship between the workmen and the management and the workmen were not engaged to undergo apprenticeship training pursuant to any contract of apprenticeship. The workmen were not apprentices within the meaning of Section 2(aa) of the Apprenticeship Act.

8. The learned Senior Counsel appearing on behalf of the workmen further submitted that after considering all the facts and materials, the first respondent passed a detailed order and thereby concluded that the workmen are liable to be reinstated with 25% back wages, continuity of service and all other attendant benefits. The workmen were employed by the management on various dates and the management issued appointment orders in writing designating them as “Apprentices” for a period of six months. They were discharging duties of regular employee and they occurred necessary skills, experience and



W.P.Nos.27937 to 27958 of 2010

vehicles, which must be followed while manufacturing the tyre and tubes and as such, it involved high level of skill. The management has been in the practice of engaging individuals first as apprentices or trainees to impart them the specialized knowledge of type of machinery in the factory. Therefore, as a practice, the management engaged persons as apprentices for the purpose of imparting training in various aspects of tyre making and after successful completion of apprenticeship period, they were given probationary appointment, on the terms and conditions stipulated therein. The probationers would be confirmed only after successful completion of probationary period. During the period of apprenticeship, the apprentices are entitled for ESI as per the provisions of the Employees State Insurance Act. Accordingly, the workmen were taken as apprentices on various dates.

11. The order of apprenticeship was issued for a fixed period and the management was at liberty to determine the apprenticeship at any time without assigning any notice and after accepting the terms and conditions, the workmen signed a copy of the order and appointed as apprentice. Thereafter, they were taken as probationers for a period of six months. The service of the probationers were confirmed only after



W.P.Nos.27937 to 27958 of 2010

successful completion of probationary period. In fact, so many apprentices were confirmed only after completion of successful probationary period. The workmen categorically accepted the terms and conditions as stated in the probationary appointment. However, their performance were not satisfied by the management and as such, the probationary service came to an end automatically by efflux of time. Thus, by operation of terms of contract of probation, the workmen ceased to be in the management. Therefore, there was no question of termination on the part of the management for the workmen to raise an industrial dispute. During the probationary period, the management found that over all performance of the workmen was not satisfactory.

12. Though the workmen had taken a specific stand that they were terminated by the management as an act of victimization for joining the trade union activities, the workmen failed to prove the same by substantial evidence. The Hon'ble Supreme Court of India already laid down the law that when probationary services are declared by efflux of time that decision of the management should be based upon material. In the case on hand, Exs.M1 to M10 were produced by the management to show the performance of the workmen. Naturally, the apprentices or



W.P.Nos.27937 to 27958 of 2010

probationers have to work with other workmen. Therefore, the probationers cannot claim the benefits of other permanent employee. In fact, the individuals, those who were served as apprentices or probationers, approached the Labour Court in the year 1993, viz., the workmen herein, the Labour Court held that all were apprentices or probationers and their service of the individuals was probationary in nature and it came to an end by efflux of time. Therefore, the Labour Court rejected the claim made by the individuals and further held that automatic termination of service at the end of the period of probation would not be retrenchment. It was confirmed by the Hon'ble Division Bench of this Court in W.A.No.3755 of 2004. There are several errors apparent on the face of the award passed by the first respondent.

13. Admittedly, the workmen were probationers. Initially, they were appointed as apprentices and thereafter, they were appointed as probationers. Therefore, the only question arose whether the declaration of service at the end of period of probation or extended period of probation was justified or not and whether it was permissible in law. However, the Labour Court concluded that the engagement of the workmen as trainees was not in accordance with the Training Scheme,



W.P.Nos.27937 to 27958 of 2010

which provided for a test was wholly and completely irrelevant. In fact, the workmen accepted their appointment as apprentices and probationers.

Further, Law did not require that when probationary services were declared, the reasons for such declaration should be indicated. The main issue before the Labour Court was the declaration of services and as such, it was necessary for the management to produce the materials in respect of its performance appraisal and the same was done by marking the Exs.M3 & M8. There is no need to indicate the performance of the individuals in the termination letter. If the probationary services were terminated at the end of probationary period, the workmen cannot claim any relief against the management as the probationary period was terminated either by efflux of time or for unsatisfactory performance or unsuitability.

14. The very purpose of placing person on probation is to try during probationary period to assess their suitability of the job in question for which they were taken on probation, when it was found that the workmen were unsuitable at the end of the probationary period, they were relieved. Therefore, it would amount to an order of termination and could not be treated as order of punishment. There is no question of



W.P.Nos.27937 to 27958 of 2010

opportunity to be given to the workmen to improve their services. The termination of services, after expiry of probation period, on review of work cannot be termed as illegal and it would not amount to retrenchment and comes squarely within the ambit of sub-clause (bb) of Section 2 (oo) of the Industrial Disputes Act. Therefore, the question of complying with the provision under Section 25F of the Industrial Disputes Act does not arise.

15. That apart, the workmen raised an Industrial Dispute under Section 2A of the Industrial Disputes Act, 1947 after so many years. The details of date of joining, date of probation, date of termination, number of years taken to raise industrial disputes and the date of filing petitions before the Labour Court, are as follows :-

<i>Sl. No</i>	<i>E.No</i>	<i>Name</i>	<i>Case No</i>	<i>No. of years taken to raise dispute</i>	<i>Date of filing petition at Labour Court</i>	<i>Date of joining</i>	<i>Date of probation</i>	<i>Date of termination</i>
1	3077	Subramaniam M	W.P.No. 27937 of 2010	1	07.10.2005	01.08.2002	01.02.2004	31.07.2004
2	6090	Victor D	W.P.No. 27938 of 2010	1	28.07.2006	02.05.2002	02.11.2003	01.08.2004
3	3082	Madhavan D	W.P.No. 27939 of 2010	1	27.10.2005	01.08.2002	01.02.2004	31.07.2004



W.P.Nos.27937 to 27958 of 2010

Sl. No	E.No	Name	Case No	No. of years taken to raise dispute	Date of filing petition at Labour Court	Date of joining	Date of probation	Date of termination
4	1526	Mahesh D	W.P.No. 27940 of 2010	1	15.11.2006	16.02.2004	16.02.2006	15.08.2006
5	6093	Anbazhagan K	W.P.No. 27941 of 2010	2	20.06.2006	01.08.2002	01.02.2004	31.07.2004
6	1511	Vijayarajan G	W.P.No. 27942 of 2010	1	07.03.2007	16.02.2004	16.02.2006	15.08.2006
7	1631	Saravanan B	W.P.No. 27943 of 2010	2	14.12.2006	02.05.2004	02.05.2006	01.11.2006
8	1520	Hari N	W.P.No. 27944 of 2010	1	15.11.2006	16.02.2004	16.02.2006	15.08.2006

16. In this regard, the learned for the Management relied upon the Judgment reported in **(2008) 12 MAD CK 0039** in the case of ***V.Ravichandran and Others Vs. The Management M.R.F.Limited***, this Court held as follows :

“37. This Court has carefully considered the submissions made by the learned senior counsel appearing for the appellant and the learned counsel appearing for the first respondent and also perused the typed set of documents and also considered the decisions cited by them and keeping the principles laid down in those decisions, this Court is of the view that the award of the Labour Court as confirmed by this Court in writ



petition warrants no interference. A perusal of Ex.M3 series would reveal that the performance of the appellants were periodically reviewed by the different supervisors and they were given opportunities to improve their performance and the period spread over in some cases more than four years. Simply because that the appellants were retained as apprentices or probationers for quite some time, does not mean that they have been exploited by asking them to do work of the permanent workmen. The order of appointment has also indicated that the period of apprenticeship/probation for a fixed time and the management was at liberty to determine the apprenticeship at any time without assigning any reasons or notice. It is not the case of the appellants that they have been misled to sign those agreements and the said contract was unilateral one. The appellants having aware of the contents of the same, had signed it without any prejudice or murmur and also worked in that capacity and in spite of ample opportunities given to them by the management to improve their performance, it was not up to the satisfaction of the management. Therefore, the management in terms of the appointment order, had terminated their services. The plea of victimization raised by the learned counsel appearing for appellants in the opinion of this Court lacks substance and merit for the reason that even as on date, the Trade



Union, is in existence and that the question of victimization is being purely a question of fact, this Court cannot re-appreciate the evidence on that aspect. Moreover, the service of the appellants were not terminated on a single day but it spread over for a period of nearly four years as seen from Ex.M7 termination orders. This Court has also analysed Ex.M3 series and found that the entries with regard to the performance of work done by the appellants and other were periodically reviewed by different supervisors and they recorded their findings with regard to their performance. This Court cannot sit over the decision of the management with regard to the appraisal of the performance on the part of the management. Even then, in view of the submissions made by the learned senior counsel appearing for the appellants we have perused Ex.M3 series and found that there are no infirmity with regard to the appraisal of the performance done by the management”.

17. The Management in terms of the appointment order had terminated their services. Therefore, the plea of victimization lacks substance and merits for the reason that even as on date, the Trade Union is in existence. That apart, the services of the workmen were not terminated on a single day, but it spread over for a period of nine years.



W.P.Nos.27937 to 27958 of 2010

Hence, the above judgment is squarely applicable to the case on hand.

WEB COPY

18. In the light of the above circumstances, the Award impugned in these writ petitions suffers from errors apparent on the face of the record. Therefore, this Court has got jurisdiction to interfere with the Award passed by the first respondent. Accordingly, the Common Award dated 06.09.2010 in I.D.Nos.167, 170, 173 of 2007, 73 to 77 of 2008 passed by the first respondent, is hereby quashed. Accordingly, these writ petitions stand allowed. There shall be no order as to costs.

04.10.2023

Lpp
Index:Yes/No
Internet:Yes/No

To
The Presiding Officer,
Principal Labour Court,
Vellore.

G.K.ILANTHIRAIYAN,J.



WEB COPY



W.P.Nos.27937 to 27958 of 2010

Lpp

Pre-delivery order in
W.P. Nos.27937 to 27958 of 2010

04.10.2023