



*W.A. No. 1160 of 2023*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2023

CORAM

**THE HON'BLE MR. JUSTICE S. VAIDYANATHAN**

**AND**

**THE HON'BLE MR. JUSTICE K. RAJASEKAR**

W.A. No. 1160 of 2023

&

C.M.P. No. 11788 of 2023

Fisheries College and Research Institute,  
Tamil Nadu Veterinary and Animal  
Science University,  
Tuticorin – 628 008.

..Appellant

Vs.

1. R. Shanmugham

2. The Presiding Officer,  
Labour Court, Tirunelveli.

..Respondents

Prayer: Writ Appeal as against the order dated 22.02.2023 passed in  
W.P. No. 4767 of 2004.

For Appellant :: Mr.R. Balasubramanian



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## J U D G M E N T

*(Delivered by S. Vaidyanathan,J.)*

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The present appeal has been preferred against the order of the learned Single Judge dated 22.02.2023 dismissing W.P. No. 4767 of 2004 thereby confirming the award of the Labour Court dated 11.09.2003 in I.D. No. 592 of 1992.

2. The appellant Institute is a Research Oriented Institute and during the course of research activities, casual labourers were engaged to do manual work to assist the scientist and teachers in their research. The 1<sup>st</sup> respondent was engaged by the appellant Institute like other casual labourers and he was working as a daily rated coolie under the appellant from 02.05.1986. According to the appellant, it was only a temporary engagement and not a permanent employment. While so, alleging certain misconduct, the 1<sup>st</sup> respondent was disengaged from service resulting in raising of an industrial dispute, which was initially taken on file as I.D. No. 291/1992 before the Labour Court, Madurai and subsequently, transferred to Tirunelveli and renumbered as I.D. No. 592 of 1992. The Labour Court,



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Tirunelveli, passed an award dated 16.01.1994 in favour of the workman by ordering reinstatement with backwages and continuity of service, which was challenged by the appellant Institute by way of W.P. No. 16809 of 1995 before this Court. The said writ petition was disposed of on 24.06.2003 by remitting the matter back to the Labour Court for fresh consideration. Thereafter, once again, the Labour Court passed an award dated 11.09.2003 allowing the claim of the workman ordering reinstatement without backwages. Aggrieved by the same, the appellant filed W.P. No. 4787 of 2004, which came to be dismissed by the order under challenge confirming the award passed by the Labour Court. Hence, the present writ appeal.

3. The main contention of the appellant was that the employee was employed as a casual labourer and he was not given any permanent employment and that he would not be entitled to any relief as prayed for by him. Further, it was contended that there was no evidence to show that the employee had completed 240 days of continuous service in a calendar year to contend that there was violation of Section 25F of the Industrial Disputes Act, 1947. He would further contend that the appellant Institute is not an



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industry in terms of Section 2(j) of the Industrial Disputes Act, 1947. Apart from that, the employee had attained the age of superannuation and he was 64 years old on the date of the order passed by this Court in the year 2023 and that the question of putting him back into service does not arise. Since the Labour Court had deprived the backwages, the employee would not be entitled to any monetary relief on account of attaining the age of superannuation.

4. Heard the learned counsel for the appellant and perused the materials on record.

5. The case of the employee before the Labour Court and the learned Single Judge was that he joined the service of the appellant Institute on 02.05.1986 on a salary of Rs.18/- per day and that he was continuously working without any break. With effect from 07.08.1992, he was deprived of employment and his request for reinstatement did not yield any result, necessitating him to raise an industrial dispute, which ultimately resulted in the Labour Court passing an award granting reinstatement without



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backwages based on the evidence that was tendered before the Labour Court by the parties concerned. The employee also produced an appointment order dated 29.04.1986, marked as Ex.W2, apart from a certificate with regard to his employment and the termination letter dated 24.10.1991. The Labour Court taking note of the evidence of the parties came to the conclusion that the employee had been serving the appellant Institute from the year 1986 and without any rhyme or reason and without an enquiry, the employee had been disengaged from service. There is categorical evidence by the employee that he had rendered 240 days of continuous service in a period of 12 calendar months. As per Ex.W4, the employee had put in 255 days of service between 1989 and 1990. The Labour Court had taken note of various exhibits produced by the appellant Management namely, Exs. M3 to M142 and came to the conclusion that the employee had rendered sufficient number of days of work to attract Section 25F of the I.D.Act, 1947 and that the employer had failed to comply with the statutory provisions. The finding of fact is that from May, 1986 till August, 1991, the employee had rendered continuous service and that the employer failed to produce all the vouchers, as could be seen from paragraph No. 7 of the



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award. The relevant portion of the said paragraph is extracted hereunder:

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“....நி.சா.1 தன்னுடைய குறக்கு விசாரணை சாட்சியத்தில் 1986 முதல் மனுதாரர் வேலை பார்த்துள்ளார் என்று ஒத்துக் கொண்டுள்ளார். தவிரவும் தற்செயல் தொழிலாளிக்கு வாராவாரம் சம்பளம் கொடுத்திருக்கிறோம் என்றும் அதற்கான வவுச்சார்கள் கிடைத்த விவரத்திற்கு தாக்கல் செய்துள்ளோம் என்றும், மற்றவைகள் வெள்ளத்தில் அடித்துக் கொண்டு போய்விட்டது என்றும், பின்னால் மாண்புமிகு உயர்நீதிமன்றம் இந்நீதிமன்ற முந்தைய 16.11.94 தேதிய தீர்க்கத்தை ரத்து செய்து மீண்டும் விசாரணைக்கு உத்திரவிட்ட பின் அழைத்து குறுக்கு விசாரணை செய்யப்பட்ட போதும் மனுதாரர் மே 86லிருந்து ஆகஸ்டு 91வரையில் வேலை பார்த்துள்ளார் என்றும், எல்லா வவுச்சார்களும் தாக்கல் செய்யவில்லை என்றும் 1993ல் ஏற்பட்ட வெள்ள பெருக்கில் நிறைய ஆவணங்கள் அழிந்து போய் விட்டன என்றும் தொ.சா.ஆ.4, 89-90 முதல் மனுதாரர் 256 நாட்கள் வேலை பார்த்துள்ளார் என்றால் சரிதான் என்றும் தொ.சா.ஆ.9ல் மனுதாரர் வேலையை விட்டு நிற்பதற்கு முன்னால் ஒரு



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வருடத்திற்கு 240 நாட்கள் வேலை பார்த்துள்ளார்

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என்றால் சரிதான் என்றும் ஒத்துக் கொண்டுள்ளார்...."

Further, taking note of the fact that the employee was paid wages from contingent fund, the Labour Court proceeded to order reinstatement without backwages. Though there is an observation in the award in paragraph No.6 that the appellant Institute is a Government Organisation, a reading of the pleadings and the discussion of the Labour Court would make it very clear that the appellant is a University and it comes within the purview of the definition of "industry". Section 2(j) was sought to be amended by the Legislature as early as in 1982 and as on date, the amendment has not come into force. The Apex Court in the decision rendered in JT 1987 (2) 101 (*Miss A. Sundarambal V. Government of Goa, Daman and Diu and Ors.*) has held that University is an 'industry' and teachers alone are not "workmen", which would mean that other staff are employees within the meaning of Section 2(s) of I.D. Act. Though the appellant relied upon the judgment of this Court rendered in *Physical Research Laboratory V. K.G. Sharma* reported in JT 1997 (4) SC 527 to contend that the appellant is not an industry, we are not inclined to accept



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the said contention. One of us (SVNJ) in the judgment dated 10.01.2023 in

W.A. Nos. 116 to 122 of 2023 has categorically held that the larger Bench judgment in ***Bangalore Water Supply & Sewerage Board V. R. Rajappa and Others*** reported in ***1978 AIR 548*** is still good law and the amended provision under Section 2(j) of I.D.Act, which has not come into force, cannot be invoked by the appellant. Since the Labour Court has rendered a finding of fact and the scope of this Court to issue a certiorari is very limited in the light of the judgment of the Hon'ble Supreme Court rendered in ***Syed Yakub Vs. K.S. Radhakrishnan (AIR 1964 SC 477)*** , we are not inclined to interfere with the award.

6. Though it has been contended by the learned counsel for the appellant that since the employee has been deprived of entire backwages, there is no question of payment of backwages prior to the date of superannuation from the date of award, the same cannot be accepted. What the Labour Court has deprived is backwages prior to the date of the award and on and from the date of reinstatement, the employee would be entitled to wages. Since the award had been passed by the Labour Court on



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11.09.2003, the employee would be entitled to wages from that date till he attained the age of superannuation at the age of 58 years or 60 years, whichever is applicable in terms of standing orders and the Rules. The employer has produced the evidence of the employee let in before the Labour Court on 06.10.1993 in I.D. No. 291 of 1992 wherein the employee has stated his age as 35 years and the same is reproduced hereunder:

மனுதாரர் சண்முகத்தின் வாக்குமூலம்

1. சிதம்பரனார் மாவட்டம் தூத்துக்குடி நகரில் வீட்டு  
எண். 19, கீழ் ரதவீதியில் குடியிருக்கும் ராமையா பிள்ளை  
குமாரர் சண்முகம் வயது 35.....

7. The employer is expected to implement the award by paying wages from the date of the award till the date of superannuation within a period of four months from the date of receipt of the order. If he fails to do so, it is open to the employee to approach the Labour Court either for computation under Section 33(C)(2) of I.D. Act or to invoke Section 33(C)(1) for the undisputed wages in the light of the Hon'ble Apex Court's judgment reported in *1997 3 SCC 150 (Fabril Gasosa V. Labour Commissioner)* That apart, it is needless to mention that the employee is



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entitled to make a complaint under Section 29 of I.D. Act against persons falling under Section 32 of the I.D.Act, and the authorities are expected to sanction prosecution taking into account the judgment of the Supreme Court in *Rajkumar Gupta V. Lt. Governor, Delhi reported in 1997 (1) LLJ 994*.

8. In the result, the writ appeal stands dismissed. No costs.  
Connected C.M.P. is closed.

nv

(S.V.N.J.) (K.R.S.J.)  
12.06.2023

To

1. Fisheries College and Research Institute,  
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