



W.A.(MD)No.714 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 14.07.2023

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

W.A.(MD)No.714 of 2014

P.Deva Arul

...Appellant

/Vs./

1.The Presiding Officer,
Labour Court, Tirunelveli.

2.The Management,
Dohnavur Fellowship,
Dohnavur Post, Nanguneri Taluk,
Tirunelveli District,
through its Secretary,
A.R.David Rajamanian.

...Respondents

PRAYER:- Writ Appeal - filed under Clause 15 of Letters Patent Act, to
set aside the order dated 04.11.2013 made in W.P.(MD)No.164 of 2012

For Appellant

:Mr.P.Suresh

for Mr.P.Pethu Rajesh

For R2

:No appearance



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JUDGMENT

(Judgment of the Court was delivered by **DR.ANITA SUMANTH , J.)**

The Writ Petitioner has filed this Writ Appeal challenging an order passed by the Writ Court on 04.11.2013 solely on the quantification of the amount awarded by the Labour Court and confirmed by learned Single Judge as payable to the Petitioner, as compensation.

2.The Petitioner had joined the services of the Dohnavur Fellowship, Tirunelveli District and there is some ambiguity on his date of entry into service. However, that would not be material to decide the issue that arises in this matter as what would be relevant is the date of birth of the Writ Petitioner, which, from records, has been established to be 01.04.1957.

3.This emanates from the extract from the Employees Provident Fund Organisation Register confirming his date of birth as 01.04.1957. A query has also been raised before the concerned authority under the Right to Information Act, who has also confirmed the position that his date of birth is as aforesaid.



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4.In the context of the above position, the relevant facts that the Writ Petitioner was dismissed from service by the Management on 27.09.2003. He raised an industrial dispute in I.D.No.51 of 2005 before the Labour Court, Tirunelveli. The Labour Court, by order dated 27.10.2009, was of the opinion that enquiry had not been held in an appropriate manner and the management was called upon to prove its charges independently.

5.Thereafter, by an award dated 25.08.2011, passed after due enquiry, the dismissal of the Writ Petitioner was held to be illegal. One twist in tale is that, pending the matter before the Labour Court, the Labour Court found that the Writ Petitioner had attained the age of superannuation and thus expressed its inability to reinstate the Writ Petitioner in service.

6.Thus, while holding that the dismissal on 27.09.2003 was bad in law, a sum of Rs.25,000/- was awarded as compensation to the Petitioner. Challenging the award of the Labour Court, the Writ Petition was filed. Learned Judge has, after a detailed discussion, confirmed the



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award of the Labour Court to the effect that the dismissal is bad in law.

To that extent, the finding of the Labour Court is in favour of the Petitioner and has attained finality, since the order of the Writ Court dated 04.11.2013 has not been challenged by the Management.

7. Needless to say, it is incumbent upon the Management to implement that part of the order forthwith, if not already done. Before us, the Writ Petitioner would assail the quantum of compensation awarded as pitiful and inadequate. The learned Judge has noted the same argument and rejected the same, as, in his opinion, the compensation awarded was quite adequate.

8. In fact, the question of compensation would not arise in this matter, since the finding of the Labour Court (rendered in 2011) to the effect that the Petitioner had attained superannuation is itself incorrect. If, as per records, the date of birth of the Writ Petitioner is 01.04.1957, then he would attain superannuation only on 31.03.2015. The records have established unambiguously that 31.03.2015 is, indeed the date of birth of the Petitioner.



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9.The finding of the Labour Court in the Award to the effect that the Writ Petitioner has attained superannuation during the pendency of the matter before it, is thus found to have been rendered in error, and is unsustainable. Though this issue has been touched upon by the learned Judge, who refers to the extract from the Employees Provident Fund Organisation Register, the finding is that there are other materials placed before the Labour Court by the Management to indicate superannuation of the Petitioner from service during the pendency of the matter before the Labour Court.

10.We have perused the Award, particularly paragraph 11 thereof and not find reference to any other evidences that would crystalise the age of the Petitioner to be anything other than 01.04.1957. Paragraph 11 and 13 of the award of the Labour Court are relevant in this regard and are extracted below:

“11)மனுதாரருக்கு 58 வயது பூர்த்தியடைந்து விட்டது என்று எதிர்மனுதாரர் தரப்பில் கூறப்பட்டது. இது மறுக்கப்பட்டதாகத் தெரிய வரவில்லை. முனவிலேயே மனுதாரர் 33 வருடங்கள் பணிபுரிந்ததாகக் கூறியுள்ளார். இந்த



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வழக்கு 2005ல் தாக்கல் செய்யப்பட்டுள்ளது. தற்போது 2011ல் இருக்கிறோம். எனவே மனுவில் சொல்லப்பட்ட 33 வருடங்களைச் சேர்த்தோமானால் 39 வருடங்கள் ஆகிறது. மனுதாரர் வேலைக்கு எந்த வருடத்தில் வந்தார் என்று தெரியாது. 20 வயதுக்குப் பிறகு வந்திருக்கலாம் என்று நாம் அனுமானிக்க முடியும். அதன்படி பார்த்தால் எதிர்மனுதாரர் தரப்பில் சொல்லப்படுவது போல் மனுதாரருக்கு பணி மூப்பை அடையக் கூடிய வயதான 58 கடந்திருக்கும் என்று தெரிய வருகிறது. ஆகையால் அவருக்கு மீண்டும் பணி கொடுக்க வேண்டுமென்று நாம் உத்திரவிட இயலாது.

.....

13)ஏற்கனவே நாம் ஆராய்ந்து மனுதாராரின் பணி நீக்கம் தவறு என்று கண்டிருக்கிறோம். அவர் பணி மூப்பு வயதை அடைந்து விட்டதால் மீண்டும் வேலை கொடுக்க உத்திரவிட இயலாது என்று கண்டிருக்கிறோம். பின் சம்பளம் கிடைக்கத் தக்கதல்ல என்று கண்டிருக்கிறோம். இது போன்ற சூழ்நிலையில் நீதியின் நலன் கருதி மனுதாராரின் பணி நீக்கம் சட்டப்படி செல்லாது எனபதால் அவருக்கு மீண்டும் பணி கொடுக்க உத்திரவிட முடியாது என்பதால் சட்டப்படி இல்லாத பணி நீக்கத்திற்கு இழப்பீடாக மட்டும் தொகை கிடைக்கத் தக்கது என்று இவ்வழக்கு சூழலில் கருதுகிறேன்.□



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11.In the absence of any factual particular or materials that are available before the Labour Court to justify such a conclusion, we proceed on the basis that 01.04.1957 is the date of birth of the Petitioner. In fine, this Writ Appeal is allowed and the order in W.P(MD)No.164 of 2012 dated 04.11.2013 is set aside. The consequence is that the Writ Petitioner would be entitled to all benefits from date of dismissal ie., 27.09.2003 till 31.03.2015, in accordance with law to be computed and paid over within a period of four weeks from date of receipt of a copy of this order. No costs.

[A.S.M.J.] & [R.V.J.]
14.07.2023

NCC :Yes/No
Index :Yes/No
Internet :Yes
cmr

To

The Presiding Officer,
Labour Court, Tirunelveli.



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