

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.258 of 2015
and
M.P.No.1 of 2015

Anakkavoor Panchayat Union,
represented by its Block Development Officer,
Anakkavoor,
Cheyyar Taluk,
Tiruvannamalai District. ... Appellant/Petitioner

Vs.

1.The Presiding Officer,
Principal Labour Court,
Vellore District.
2.K.Vedapuri. ... Respondents/Respondents

This writ appeal is preferred under Clause 15 of the Letters Patent against the order of this court dated 16.8.2012 made in W.P.Nos.22193 of 2012. Writ Petition praying to writ of certiorari calling for the records relating to the order passed in I.D.No.103/2011 dated 13.02.2012 on the file of the Principal Labour Court Vellore the 1st Respondent herein and quash the same.

For Appellant : Mr.M.Digvijayapandian
For Respondents: Mr.V.Ajay Khose
Mr.R.Krishnaswamy for R-2

JUDGMENT

(Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

The instant intra-court appeal is directed against the order dated 16.8.2012 passed in W.P.No.22193 of 2012.

2. The facts in nutshell are that the second respondent was appointed on 10.9.1990 on daily wage basis (NMR) as Night Watchman for Cement Godown against payment under Jawahar Velai Vaippu Thittam (JVVT Scheme) and continued thereafter as daily wage employee. The second respondent filed a claim petition before the Principal Labour

Court, Vellore in I.D.No.103 of 2011 for a direction to the appellant/respondent therein to reinstate him with continuity of service and also payment of backwages on the ground that the Government of Tamil Nadu by G.O.Ms.No.22, dated 28.2.2006 directed regularisation of daily wage employees working in all departments of Government, who have completed 10 years of service as on 1.1.2006. The second respondent had completed more than 10 years of service as on that date. Thereafter, the second respondent was not permitted to sign the attendance register from September, 2007. Thus, the claim petition was filed claiming reinstatement with aforesaid attendant benefits.

3. The Labour Court by award dated 13.2.2012 held that the second respondent was entitled to be regularised with effect from 1.1.2006 as per the aforesaid G.O dated 28.2.2006 and the removal of the second respondent was contrary to the provisions of law. It was further held that the second respondent being the workman, had also completed 240 days in preceding 12 months. Accordingly, the second respondent was ordered to be reinstated in service with continuity of service and also 50% backwages with all other attendant benefits. Thereagainst, the appellant filed the writ petition, questioning the legality and propriety of the award on the file of this court. The learned Single Judge, holding that since the second respondent had already completed more than 10 years before he was removed from service, the decision of the Labour Court was valid in accordance with law and as such, dismissed the writ petition. Now, the appellant is before us questioning the legality and propriety of the order passed by the learned Single Judge.

4. The main contention of the learned counsel for the appellant is that the second respondent was appointed for a particular scheme and after the scheme came to an end, the second respondent was not entitled to continue in service. It was further contended that the said G.O., dated 28.2.2006 is not applicable in the case on hand inasmuch as the appointment of the second respondent on daily wages was not in regular establishment.

5. We have heard the learned counsel appearing for the parties and perused the pleadings and documents appended thereto.

6. The order of appointment was dated 10.09.1990. It is evident from the perusal of the said order that he was appointed as Night Watchman in the Cement godown on daily wage basis. There was no mention of the fact that the appointment of the second respondent was for any time bound project. The fact that salary was adjusted from the scheme does not mean that the appointment was for the scheme. The appellant has improved his case in the counter affidavit by submitting that the appointment was for the time bound scheme. However, no material has been produced in support of the submission that his appointment was only for a particular period of the scheme.

Resultantly, we are unable to agree with the contention of the learned counsel for the appellant that the appointment of the second respondent on daily wages was for a specified period and for a particular scheme.

7. As far as the second contention about the applicability of the G.O., dated 28.2.2006 is concerned, though the copy of the G.O is not on record, however the contention of the learned counsel for the appellant that the said G.O is not applicable is based on the fact that the second respondent was not appointed in regular establishment, but in a time bound scheme. The appellant failed to establish the first limb of argument that appointment of the second respondent was for time bound scheme. Thus, the contention to the extent that the G.O dated 28.2.2006 is not applicable can not be countenanced.

8. The learned Single Judge has considered the entire aspects very carefully and had rightly come to the conclusion that once it has been decided by the Government to regularise all employees working on daily wages after a period of 10 years as on 1.1.2006, there is no reason for the writ petitioner/appellant to deny the said benefit to the second respondent/ employee and to remove him from service in September, 2007, much after he became entitled to be regularised in service. We do not find any infirmity or illegality in the order sought to be impugned in the writ appeal.

9. As a sequel, the writ appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vvk

To

The Presiding Officer,
Principal Labour Court,
Vellore District.

+ 1 cc to Mr.V. Ajoykhose, Advocate SR.13724

+ 1 cc to Mr.M. Digvijaya Pandian Advocate SR.13514

MG(CO)

EU 30.03.2015

W.A.No.258 of 2015