

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2015

CORAM :

THE HONOURABLE MR. JUSTICE T. RAJA

W.P.NO. 7126 OF 2006
and
WPMP NO. 7786 of 2006

The Block Development Officer
Thandarampet Panchayat Union
Thandarampet
Tiruvannamalai District.

... Petitioner

Vs.

1. R. Gandhi
2. The Presiding Officer
Labour Court, Vellore
Vellore District.

... Respondents

PRAYER: This Writ petition is filed under Article 226 of Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records on the file of the 2nd respondent relating to the award passed in I.D. No.132/2003 dated 08.10.2004 and quash the same and pass such further orders.

For Petitioner : Mr. R. Vijayakumar

For Respondents : No Appearance for R1
R- 2 - Court.

O R D E R

This Writ Petition has been filed by the Block Development Officer, Thandarampet Panchayat Union, Thandarampet, Tiruvannamalai District challenging the correctness of the impugned award passed in I.D. No.132/2003 dated 08.10.2004. Learned Labour Court, Vellore, gave a finding on 08.10.2004 stating that though the petitioner therein has worked for 480 days in 24 calender months, without notice or enquiry, has been refused to give employment is illegal and on

that basis directed the Writ Petitioner to reinstate the first respondent in service.

2. When the matter was taken up, it was brought to the notice of this Court that the first respondent Mr. A. Gandhi had already filed a Writ Petition in W.P. No. 21179/2005 under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents namely, the petitioner herein, to reinstate him into service as Night Watchman in Thandarampattu Panchayat Union as per the award passed in I.D. No.132/2003 dated 08.10.2004. But the writ petition was dismissed giving liberty to the Labour Court, the second respondent herein, to resolve the dispute under Section 33 of the Industrial Disputes Act to recover the salary and other backwages.

3. That apart, learned Additional Government Pleader appearing for the petitioner finding fault with the correctness of the impugned award contended that the first respondent Mr. A. Gandhi was appointed as a Night Watchman of a Cement Godown on 30.03.1985 temporarily on daily wages basis and his appointment was made under a scheme called Landless Agricultural Labourers Employment Assurance Scheme in the place of one Mr.Kamaraj. That scheme came to an end on 01.10.1999. After the said scheme came to an end, the petitioner could not be accommodated. Subsequently, the said scheme was also re-named as National Rural Employment Programme but he was not employed continuously for a period of 240 days in a year. After the Landless Agricultural Labourers Employment Assurance Scheme came to an end on 01.10.1999, he was not continuously employed in the subsequent scheme, namely, National Rural Employment Programme. Therefore, any right claimed by the first respondent for his permanent employment was unacceptable but this has not been considered by the Labour Court, Vellore, while entertaining the case in I.D. No. 132/2003.

4. That apart, Learned Labour Court had also failed to consider one another significant aspect that as per Section 33 of the Industrial Disputes Act, the first respondent cannot approach the Labour Court since the petitioner Panchayat Union is not an Industry. As these aspects have been completely over-looked the impugned order is liable to be set aside, he pleaded.

4. But, this Court is not impressed by the argument advanced by Mr. R. Vijayakumar, learned Additional Government Pleader on behalf of the petitioner. A mere reading of the findings given by the learned Labour Court, Vellore shows that the first respondent Mr.A. Gandhi was appointed as a Watchman of a cement godown on 30.03.1985 temporarily on daily wage basis under the scheme called 'Landless Agricultural Labourers Employment Assurance Scheme' in the place of one Mr. M. Kamaraj, who was retained in service even after

the said scheme came to an end, after 1.10.1999. The said scheme was subsequently renamed as National Rural Employment Programme. Therefore, finding fault with the petitioner, the learned Labour Court has held that when the first respondent appointed as a Night Watchman of the Cement Godown on 30.03.1985 was allowed to continue till 2001, he should not have been terminated or refused employment without there being any notice or enquiry. The second finding given by the Labour Court also shows that the writ petitioner had miserably failed to establish that the first respondent had not worked for about 240 days. On the other hand, Mr. A. Gandhi producing all the relevant records issued by the writ petitioner has established his continuous employment from 30.03.1985 till 2001. Therefore, the Labour Court has given a finding that he has worked for more than 480 days in two years continuously. Therefore, when there has been a specific finding that he has worked for more than 480 days in 24 calendar months continuously, this Court is not able to see any infirmity in the impugned order.

5. Therefore, the Writ Petition fails and the same is dismissed. Consequently, the connected Miscellaneous Petition is closed. No order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

avr

To

The Presiding Officer
Labour Court, Vellore
Vellore District.

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