

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2014

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.20790 of 2012
and
M.P.No.1 of 2012

The Management of Nilgiris District,
Co-operative Milk Producers Union,
Udhagamandalam,
Nilgiri District.

... Petitioner

vs.

1.The Presiding Officer,
Labour Court,
Coimbatore.

2.B.Vijayakumar

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorari to call for the records of the first respondent, dated 29.12.2009, and made in I.D.No.315 of 1996, on the file of the Labour Court, Coimbatore, and quash the same.

For Petitioner : Mr.G.Muniratnam

For Respondents : R1-Court
Mr.V.Ajoy Khose for R2

* * * * *

ORDER

The prayer in the writ petition is for issuance of a writ of certiorari to quash the order, dated 29.12.2009, in I.D.No.315 of 1996, passed by the first respondent.

2. The short facts of the case are as follows:

The petitioner Management submits that the second respondent/employee raised an industrial dispute in I.D.No.315 of 1996, before the first respondent, seeking for reinstatement in service with full backwages and continuity of service, alleging that he was working for six years as Mazdoor in Engineering Section of their Management and his last drawn salary was Rs.450/-. During 1995, without assigning any reason he was terminated from service and despite his request, they did not provide him employment. Therefore, on 30.09.1996, he raised conciliation proceedings before the Labour Court, Udhagamandalam, but the same had ended in failure. Aggrieved by the same, he raised the said industrial dispute. In the said industrial dispute, they filed their counter statement stating that the second respondent/employee was engaged temporarily on casual basis as and when necessity arises and as and when he is engaged he

would be paid daily wages. They denied the contentions of the second respondent/employee that he had joined in their Management during 1989 and during 1995 he was terminated. If that be so, he would have raised industrial dispute immediately.

3. Further, the petitioner Management submit that on 07.09.1998, an award was passed dismissing the industrial dispute raised by the second respondent/employee as settled out of Court and as against the said award, dated 07.09.1998, the second respondent/employee filed a writ petition in W.P.No.9238 of 2001, before this Court and this Court, by order dated 28.04.2004, set aside the award, dated 07.09.1998, and remanded back the matter to the Labour Court for fresh disposal in accordance with law and accordingly the same was restored on file. After the said case was restored on file, on 07.10.2009, they filed an additional counter statement stating that from 21.12.1989 to 31.03.1993, the second respondent/employee was engaged as a casual labour in the Civil Section on N.M.R.basis and he was paid Rs.18/- per day till 05.07.1992 and thereafter Rs.21/- per day till 31.03.1993. The work in the Civil Section was completed during March, 1993 and thereafter the second respondent/employee did not turn up for

work and he did not work for 240 days in any calendar year and hence they sought to dismiss the claim made by the second respondent/employee.

4. The petitioner Management further submit that on 13.10.2009, the second respondent/employee filed a rejoinder contending that he was paid Rs.25/- per day at the time of termination from service and he worked in the Civil Section continuously from 31.04.1989 to 10.05.1995. He worked in the effluent treatment plant and also in the boiler room. The work in the Civil Section was continuous and permanent in nature. He worked for 240 days and more in a period of 12 months and for 480 days and more in a period of 24 months prior to his termination. Therefore, he claimed permanency as per the provisions of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981. Hence, they terminated him from service, which is in violation of Section 25(f) of the Industrial Disputes Act, 1947 and hence the termination from service is illegal. The production of N.M.R.Register for the period from 31.04.1989 to 10.05.1995 would prove his continuous service and hence he claimed such entitlement in his rejoinder.

5. Further, the petitioner Management submit that during Trial, on behalf of the second respondent/employee two witnesses were examined as W.W.1 and W.W.2 and three documents were marked as Exs.W1 to W3. On behalf of them, two witnesses were examined as M.W.1 and M.W.2 and 26 documents were marked as Exs.M1 to M26. However, the first respondent, without considering the valid defences and material evidences on record, by the impugned Award dated 29.12.2009, directed them to reinstate the second respondent/employee in service with continuity of service, but without backwages from the date of termination i.e., 10.05.1995. Being aggrieved by the impugned Award, dated 29.12.2009, they have filed this writ petition seeking the relief as stated above.

6. The highly competent counsel Mr.G.Muniratnam appearing for the petitioner submits that the Management did not provide employment to the second respondent, hence initiated Conciliation Proceedings before the Labour Officer, Udthagamandalam on 30.09.1996 and the same ended in failure. Further, the first respondent / Labour Officer had neither given any reason nor issued any charge sheet for conducting an inquiry.

Hence, the employee had filed I.D.No.315 of 1996, on the file of the Labour Court, Coimbatore. Further, the second respondent was engaged temporarily on casual basis as and when necessity arises and he was paid daily wages. Further, on 07.09.1998, an award was passed dismissing the Industrial Dispute Case as settled out of Court. Against the said dismissal order, the second respondent herein has filed a writ petition in W.P.No.9238 of 2001 setting aside the award dated 07.09.1998 and remanded the matter to the Labour Court for fresh disposal according to law. The Management had stated before the Labour Court that the second respondent was engaged as a casual labourer in the civil section on NMR basis during the period from 21.12.1989 to 31.03.1993. He was paid Rs.18/- per day. The second respondent did not turn up for work and he did not work for 240 days in any calendar year. Under the circumstances, the first respondent herein directed the Management to reinstate him which is an arbitrary one. Hence, the highly competent counsel entreats the Court to allow the above writ petition.

7. The highly competent counsel Mr.V.Ajoy Khose appearing for the second respondent submits that the petitioner was working under the writ petitioner since 1989. His monthly salary was Rs.450/-. On 10.05.1995, the Management terminated the employee from service without assigning any valid reasons. The employee worked with the Management continuously for six years. Further, the petitioner continuously performed his duty in the Civil Section which is a work of paramount importance in an affluent treatment plant and boiler room. Further, the employee worked for more than 240 days in a year and as such, he is entitled for conferment of permanent status under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981. The Management terminated the employee from his service is a violation of Section 25(f) of the Industrial Dispute Act. Further, the Labour Court had conducted a comprehensive enquiry and after recording evidence on both sides and on perusing the documentary evidence marked by both parties, the Tribunal has directed the Management to reinstate the employee in service without back wages.

8. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on either side and on perusing the impugned order of the first respondent, it is seen from the impugned order that the Management has clearly admitted that similar workers like that of the petitioner have been made as permanent workers in pursuance of the orders passed by the Deputy Chief Inspector of Factories and the Government of Tamil Nadu. As such, the employee also is entitled to receive the remedy granted by the Labour Court. Hence, the above writ petition is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

27.10.2014
(1/2)

Index : Yes.
Internet : Yes.

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To:

The Presiding Officer,
Labour Court,
Coimbatore.

C.S.KARNAN, J.
r n s

W.P.No.20790 of 2012

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(1/2)