

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.02.2015

CORAM

THE Hon'ble Mr.JUSTICE M. DURAISWAMY

W.P.Nos.21197 and 16846 of 2012

The Commissioner,
Ambur Municipality,
Ambur, Vellore District ... Petitioner in W.P.No.21197/2012

M. Thilagar ... Petitioner in W.P.No.16846/2012

v.

1. The Presiding Officer,
Principal Labour Court,
Vellore District

2. M. Thilagar

... Respondents in W.P.No.21197/2012

1. The Commissioner,
Ambur Municipality, Ambur

2. The Commissioner of Municipal Adminsitration,
Ezhilagam, Chepauk, Chennai-600 005

3. The Secretary to Government,
Municipal Administration and
Water Supply Department,
Government of Tamil Nadu,
Fort St. George, Chennai-600 009

... Respondents in W.P.No.16846/2012

W.P.No.21197 of 2012

Writ Petition filed under Article 226 of the Constitution of India praying this court to issue a Writ of Certiorari to call for the records relating to the order passed in I.D.No.249/2010, dated 22.6.2011 on the file of the Principal Labour Court, Vellore, the 1st respondent herein and quash the same.

W.P.No.16846 of 2012

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Mandamus directing the first respondent to implement the award dated 22.6.2011 passed by the Hon'ble Labour Court, Vellore in I.D.No.249/2010.

RESERVED ON : 28.01.2015

DELIVERED ON : 06.02.2015

For Petitioner in W.P.No.21197/2012
& 1st respondent in W.P.No.16846/2012 : Mr.Dig Vijaya Pandian
Additional Govt. pleader

For petitioner in W.P.No.16846/2012
& 2nd respondent in W.P.No.21197/2012 : Ms.N. Indumathi

For respondents 2 & 3 in WP : Mr. V. Subbiah
No.16846/2012 Spl.Govt. Pleader

ORDER

Challenging the award passed in I.D.No.249 of 2010 on the file of Principal Labour Court, Vellore, the employer, viz., The Commissioner, Ambur Municipality has filed the writ petition in W.P.No.21197 of 2012.

2. The employee has filed the writ petition in W.P.No.16846 of 2012 to issue a writ of mandamus directing the first respondent to implement the award dated 22.6.2011 passed in I.D.No.249 of 2010 on the file of Principal Labour Court, Vellore within a stipulated time.

3. The case of the employee is as follows:-

(i) According to the employee, he was appointed as an NMR worker by the Ambur Municipality and he joined duty on 01.12.1993 on a monthly pay of Rs.3,000/-. He was suddenly retrenched from service orally with effect from 4.4.2006 by the respondent Municipality stating that the employee participated and filed nomination as a substitute candidate for DMDMK for Vaniyambadi Legislative Constituency for the Election held in 2006. On 26.5.2006, a charge memo was issued to the employee and he has submitted his explanation on 1.8.2006 and the Regional Director of Municipal Administration recommended for the reinstatement of the employee into service, since the Municipal Employees Conduct Rules were not applicable to NMR.

(ii) According to the employee, he has rendered more than 480 days of continuous service in a period of 2 years and his services should have been made permanent from the date of appointment as per the mandatory and statutory provisions of section 3 of the Tamil Nadu Industrial Establishment (Conferment of Permanent status to Workmen) Act, 1981. Further, according to the employee, all his juniors were brought into regular Municipal Basic Service with appropriate scale of pay as per the orders of the Government of Tamil Nadu which clearly affects his livelihood and

hits the provisions of article 14, 16, 19 and 21 of the Constitution of India.

(iii) Since the Management failed to reinstate the employee in service, he raised an Industrial Dispute before the Labour Officer, Vellore and the Conciliation Proceedings were ended in failure and he submitted his failure report. Hence, the employee filed a petition to reinstate him in service with continuity of service, back wages and all other attendant benefits.

4. The case of the Management is as follows:-

According to the Management, the employee was only a NMR worker on daily basis and he had worked only for a few days in a month and without any continuity of service and he was paid a fixed pay of Rs.3,000/- per month. The NMR shall be liable to be terminated by the appointing authority at any time without notice and without reasons being assigned. Therefore, the employee is not entitled to get any relief against the Management and that the petition is not maintainable either in law or in facts.

5. Before the Labour Court, on the side of the employee, he was examined as W.W.1, however, no document was marked and on the side of the Management, one witness was examined as M.W.1 and 4 documents Ex.M.1 to Ex.M.5 were marked.

6. The Labour Court, after taking into consideration the oral and documentary evidences of both sides, allowed the petition by directing the Management to reinstate the employee in service with continuity of service and all other attendant benefits, however, found that the employee is entitled to 50% of the back wages only.

7. Aggrieved over the order of the Labour Court, the Management has filed a writ petition in W.P.No.21197 of 2012. The employee has filed a writ petition in W.P.No.16846 of 2012 to implement the award of the Labour Court.

8. Heard Mr. Dig Vijaya Pandian, learned counsel appearing for the petitioner in W.P.No.21197 of 2012 and the first respondent in W.P.No.16846 of 2012, Ms.N. Indumathi, learned counsel appearing for the petitioner in W.P.No.16846 of 2012 and the second respondent in W.P.No.21197 of 2012 and Mr. V. Subbiah, learned Special Government Govt. Pleader appearing for the respondents 2 & 3 in WP No.16846 of 2012.

9. The learned counsel appearing on behalf of the Management submitted that the employee is only a daily wage worker and not a permanent employee, therefore, he is not entitled to be reinstated in service. According to the learned counsel for the Management, the employee, being daily wage worker, has absented for duty for a considerable period and he has not given any explanation for his absence and further more, he has filed nomination as a substitute candidate for a political party in the year 2006. Therefore, according to the learned counsel for the

Management, the award passed by the Labour Court, Vellore is liable to be set aside. In support of his contention, the learned counsel for the Management relied upon an unreported judgement of the Hon'ble Supreme Court made in Civil Appeal No.2726 to 2729 of 2014 (Secretary to Government, School Education Department, Chennai v. R.Govindaswamy and others) wherein, the Apex Court has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. In the said judgement, the Apex Court relied upon a judgement reported in AIR 2011 SC 1193 (State of Rajasthan and others v. Daya Lal and others), wherein it has been held that the courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. Mere continuation of service by a temporary or adhoc or daily wage employee, under cover of some interim order of the court would not confer upon him any right to be absorbed into service, as such, service would be litigious employment.

10. Countering the submissions made by the learned counsel appearing for the Management, learned counsel appearing on behalf of the employee submitted that the employee had worked for more than 240 days in a calendar year and 480 days in a period of 24 calendar months, is entitled to the protection under the Industrial Disputes Act. In support of his contention, the learned counsel for the employee relied upon a judgement reported in 2010(1) LLJ 841 (SC) (Ramesh Kumar and state of Haryana) wherein, the Apex Court held that in case of termination of casual employee what is required to be seen is whether a workman has completed 240 days in the preceding 12 months or not and new plea cannot be raised or entertained by the High Court, if the workman completed service of 240 days continuously in a calendar year, the retrenchment if any, should be in accordance with section 25-F of the Industrial Disputes Act.

11. On a careful consideration of the materials available on record and the submissions made by both the learned counsels and also the judgements relied upon by the learned counsel on either side, it could be seen that in the case of termination of casual employee, what is required to be seen is whether the workman has completed 240 days in the preceding 12 months or not. If sufficient materials are shown that workman has completed 240 days then his service cannot be terminated without giving notice or compensation in lieu of it in terms of section 25-F of the I.D. Act.

In the case on hand, admittedly, no notice was issued under section 25-F of the I.D. Act and no enquiry was conducted prior to termination. The contention of the Municipality that the employee was engaged as daily wage worker cannot stand for the reason there is no distinction between the casual and permanent worker in case of dismissal. Since it was contended by the Management that the employee filed nomination in the year 2006 election for political party is true, the Management should have conducted enquiry against

the misconduct of the employee. When there is sufficient evidence adduced by the employee to show that he was employed for more than 240 days in a calendar year and that he was employed by the Management from 1.12.2003 to 4.4.2006, as rightly held by the Labour Court, the employee is entitled to the provisions of section 25 of the I.D. Act. The Labour Court, taking in to consideration the oral and documentary evidences, came to the conclusion that the employee had worked for more than 240 days in a calendar year.

12. It is settled position that under Article 226 of the Constitution of India, this court cannot re-appreciate the evidence let in before the Labour Court. When the Labour Court has found that the employee had worked for more than 240 days, I find no reason to interfere with the said finding. When the employee had worked for more than 240 days in a calendar year, he is entitled to the provisions of section 25-F of the I.D. Act, which was not followed by the management.

13. The Labour Court has rightly held that the termination is not legal and proper and the same is liable to be set aside and the employee is entitled to get reinstatement of service with continuity of service and all other attendant benefits. The Labour Court also rightly held that the employee is entitled to 50% back wages, following the judgement reported in 2010(1) LLJ 841 (SC) (cited supra).

14. The ratio laid down in the judgment relied upon by the learned counsel for the employee squarely applies to the facts and circumstances of the present case. The judgement relied upon by the learned counsel for the Management is not applicable to the facts and circumstances of the present case. In these circumstances, I do not find any reason to interfere with the award passed by the Labour Court.

15. So far as the writ petition in W.P.No.16846 of 2012 is concerned, the employee has filed the writ petition seeking for a direction to implement the award passed by the Labour Court. Under section 11-B of the I.D. Act 1947, a Labour Court or a Tribunal shall have the power of civil court to execute its award or any settlement as a decree of a Civil Court. When a specific provision is available to the employee to execute the award passed by the Labour Court, I am of the considered view that the present writ petition filed under Article 226 of the Constitution of India, is liable to be dismissed.

16. In these circumstances, both the writ petitions are dismissed. However, liberty is given to the employee to execute the award passed by the Labour Court under section 11-B of the I.D. Act. There shall be no order as to costs.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

Rj

To

1. The Commissioner,
Ambur Municipality, Ambur
2. The Commissioner of Municipal Administration,
Ezhilagam, Chepauk, Chennai-600 005
3. The Secretary to Government,
Municipal Administration and
Water Supply Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009
4. The Presiding Officer,
Principal Labour Court,
Vellore District

1 cc to Mr.M. Digvijayapandian, Advocate, Sr. 6263

W.P.Nos.21197 and 16846 of 2012

VGI (CO)

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