

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.31791 of 2006

P.K.Kumar

.. Petitioner

-vs-

1. The Management
Madhav Marble and Granites
Thopoor, Thopoor Post
Dharmapuri District

2. The Presiding Officer
Labour Court
Salem
(2nd respondent is not a necessary party)

Respondents

..

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, to call for the records and quash the award dated 7.11.2005 made in I.D.No.230 of 2003 on the file of the 2nd respondent, Labour Court, Salem.

For Petitioner :: Mr.Y.Jyothish Chander

For Respondents :: Mr.M.R.Raghavan for R1
R2-Court

ORDER

This writ petition is directed against the impugned award passed by the Labour Court, Salem in I.D.No.230 of 2003 dated 7.11.2005.

2. Learned counsel for the petitioner, assailing the impugned award, submitted that the petitioner-Mr.P.K.Kumar, who joined the services of the first respondent-Management of Madhav Marble and Granites, Thopoor on 1.7.99 and worked till 14.12.2001 with a monthly salary of Rs.1,140/-, was refused employment orally only from 14.12.2001 without even issuing any notice or holding any enquiry. Immediately after the non-employment, the petitioner approached the management many times with a request to offer employment. But the management declined to offer employment. Therefore, the petitioner raised the issue before the Labour Officer, Dharmapuri. Unfortunately the same ended in failure, as a result, he was constrained to file

Industrial Dispute No.230 of 2003 on the file of the Labour Court, Salem seeking reinstatement with continuity of service and backwages. Adding further, the learned counsel submitted that the Labour Court Salem, on incorrect appreciation of the facts, evidence and the materials available on record, ignoring the admission made by the first respondent-Management in their counter affidavit that the petitioner had worked for 104 days in the calendar year 1999, 156 days in the calendar year 2000 and 215 days in the calendar year 2001, wrongly came to the conclusion that the petitioner has failed to establish the claim that he had worked for 240 days. The finding of the Labour Court that the petitioner has not worked for 240 days in a calendar year without even summoning the relevant records from the first respondent-Management is a big failure on the part of the Labour Court. Therefore, the case of the petitioner ought to have been allowed on the basis of the counter affidavit filed by the first respondent, wherein the first respondent-Management clearly admitted that the petitioner was working from 1999 continuously for three years i.e., 1999, 2000 & 2001. Unless the petitioner was allowed to work as a permanent employee, he would not have worked for three years even admittedly from 1999 till 14.12.2001, the day on which the petitioner was refused employment orally by the first respondent-Management. This aspect has been completely lost sight of by the Labour Court, Salem. The learned counsel further stated that the period of 215 days worked by the petitioner during the calendar year 2001 has to be interpreted after excluding Saturdays and Sundays. If Saturdays and Sundays are also included along with 215 days, it goes without saying that the petitioner had worked for 240 days.

3. It is at this point of time, the learned counsel for the first respondent-Management, raising a heavy objection, submitted that the petitioner either in the claim petition or before the Labour Court did not raise this issue that he had worked for 215 days excluding Saturdays and Sundays and he has also not made any oral plea before the Labour Court that the Saturdays and Sundays should be included along with 215 days in the calendar year 2001. Therefore, at this belated stage, when there was a specific and explicit finding given by the Labour Court on the evidence produced by both the parties that the petitioner had not worked for 240 days, it is not open to the learned counsel for the petitioner to say that the averment made by the first respondent in the counter affidavit that the petitioner worked for 215 days in the calendar year 2001 should be taken as excluding Saturdays and Sundays and if the Saturdays and Sundays in the calendar year 2001 are also included, the petitioner had worked for 240 days, can never be accepted.

4. No doubt, the first respondent-Management in their counter affidavit filed before the Labour Court has taken a specific stand that the petitioner had worked for 104 days in the calendar year 1999, again 156 days in the calendar year 2000 and another 215 days in the calendar year 2001. However, it has been specifically pleaded by the first respondent-Management that the petitioner has not

completed the required number of days for validly raising the industrial dispute as per Section 25-B of the Industrial Disputes Act, which goes to show that the petitioner did not work for 240 days. Had the petitioner worked for 240 days in the calendar year 2001, he would have raised the said issue before the Labour Court. But unfortunately, he has neither pleaded nor raised at least orally before the Labour Court. Therefore, in this context, it is necessary to refer to the judgment of the Apex Court in the case of Range Forest Officer v. S.T.Hadimani, 2002-I-LLJ 1053, wherein the Apex Court, while considering an identical and similar issue of termination of service of a workman, held that it is the duty and obligation of the claimant to lead evidence to show that he had worked for 240 days in the preceding year by producing the receipt of salary or wages or letter of appointment. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had in fact worked for 240 days in a year. When no proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for the period was produced by the workman, the petitioner-claimant cannot seek any order.

5. In the light of the above observations, if the case of the petitioner is viewed, a perusal of the claim petition does not throw any light that he has worked for 240 days either in 1999 or 2000 or 2001. Therefore, when the Labour Court, after analysing the evidence on record, had come to the conclusion that the petitioner has miserably failed to establish his case that he had worked for 240 days in any calendar year, this Court may not be in a position to substitute the view taken by the Labour Court, Salem. Accordingly, the writ petition fails and it is dismissed. No costs.

Sd/-
Asst.Registrar (Records)

/true copy/
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Sub Asst. Registrar

SS

To

1. The Presiding Officer
Labour Court
Salem

1 cc to Mr.M.R. Raghavan, Advocate, sr. 6752

1 cc to Mr.Y. Jyothish Chander, Advocate, sr. 6632

W.P.No.31791 of 2006

TS (CO)
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