

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 13.3.2015.

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

W.P.No.21173 of 2002,
W.P.M.P.Nos.29264 and 53054 of 2002
and
W.V.M.P.No.1299 of 2002

The Management of Obli Granites,
Sellapillaikuttai Village,
Omalur Taluk,
Salem District.
rep. by its Partner

... Petitioner

vs.

1. The Presiding Officer,
Labour Court, Salem.

2. Sivamalai
3. T.Veerasingam
4. G.Kannan
5. M.Murugesan
6. R.Thangaraj
7. C.Sellakumar
8. G.Saravanan
9. A.Sakthivel
10. M.Saravanan
11. M.Palanisamy
- 12.M.Sekar

... Respondents
13.

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari to call for the records of the first respondent in I.D.Nos.305, 314, 555, 558 to 562, 564, 735 and 821 of 1998 and quash its award dated 13.7.2001.

For Petitioner : Mr.G.Anand
for M/s.T.S.Gopalan & Co.

For RR 2 to 12 : Mr.S.Ayyadurai

ORDER

This writ petition has been brought by the Management of Obli Granites challenging the correctness of the impugned award dated 13.7.2001 passed in I.D.Nos. 305, 314, 555, 558 to 562, 564, 735 and 821 of 1998 passed by the first respondent Labour Court, Salem on the ground that the Labour Court failed to appreciate that the respondents have failed to establish completion of 240 days and it has been repeatedly held by this court and the Honourable Supreme Court more particularly in R.M.YELLATTI v. ASSISTANT EXECUTIVE ENGINEER ((2006) 1 SCC 106) holding that the requirement of onus of proof of 240 days of continuous service lies on the workman who has to adduce cogent evidence both oral and documentary and mere affidavits or self-serving statements made by workman will not be sufficient and those vital issues have been completely overlooked and resultantly the impugned award was passed directing reinstatement with full backwages.

2. Learned counsel for the petitioner would submit that the Labour Court came to a wrong conclusion that respondents 2 to 12 viz., workmen were permanent employees of the petitioner company, erroneously giving undue importance to Ex.W1 to arrive at the employer and employee relationship between petitioner and respondents 2 to 12. Therefore, a serious mistake has been committed by the first respondent Labour Court giving further finding that Ex.M2 was nothing but an order of termination and such a conclusion is without any basis. The learned counsel appearing for the petitioner further submitted that respondents 2 to 12 were all workmen engaged on contract basis for attending some skilled work in the manufacture of granite and when they carried out the work according to their convenience, on the basis of the volume of work, they have been paid with wages and that they were free to work for any manufacturer of granite factory like the petitioner and that in 1997, when some regular workmen of the petitioner went on strike, the petitioner was not in a position to provide work to respondents 2 to 12. Therefore, they cannot maintain the dispute alleging termination of employment. As respondents 2 to 12 could not continue because of the strike made by the regular workmen of the petitioner, factually, the first respondent ought not to have held that respondents 2 to 12 were employed in the service of the petitioner on permanent basis and their non-employment would amount to retrenchment. The learned counsel for the petitioner would further submit that after the impugned award was passed by the first respondent herein, without prejudice to the stand taken by the petitioner, all the 11 workers returned for work on 1.1.2002 and out of such 11 workers, six of them have left service and settled their dues and as far as the remaining five workmen are concerned, three of them viz., K.Sivamalai, M.Murugesan and G.Kannan were proceeded with disciplinary action and after due enquiry, they were dismissed from service in the year 2003/2004 and subsequently, they raised Industrial Disputes and they

were also dismissed for default. I.D.No.203 of 2005 filed by K.Sivamalai was dismissed on 14.2.2013. I.D.No.44 of 2005 filed by M.Murugesan was dismissed 21.2.2013. I.D.No.477 of 2004 filed by G.Kannan was dismissed on 2.7.2009. Further, insofar as T.Veerasami and C.Selvakumar are concerned, they joined the bandwagon of the 32 workmen of contractor who refused to work and receive wages from the contractor and non-employment of 32 workmen is pending before the Labour Court, Salem. That apart, six workmen, who were reinstated on 1.1.2002, left the service after settling their dues with a sum of Rs.75,000/= towards their claim of backwages in the award impugned in the present writ petition besides the other dues, therefore, with regard to six respondents, as their claims have already been settled, the award passed by the Labour Court may be modified on the basis of settlement entered. The learned counsel for the petitioner further submitted that since a sum of Rs.75,000/= has already been paid to all the six workmen by the impugned award, the same may be modified by fixing a sum of Rs.1,00,000/= to be paid to the other workmen and the matter may be closed amicably.

3. However, Mr.Ayyadurai, learned counsel appearing for respondents 2 to 12 submitted that sofar as the issue relating to reinstatement is concerned, the same has not become infructuous in view of the fact that five workmen have subsequently joined duty and also faced the order of termination and that also became the subject matter of Industrial Disputes before the Labour Court, Salem and hence, the award may be confirmed as they are left without any employment. He further submitted that the first respondent herein has come to the conclusion on the basis of oral and documentary evidence produce by both the parties that they have been wrongly refused employment and hence, the finding with regard to backwages need not be disturbed. Since they were paid at the rate of Rs.6000/= per month, for the entire period from 24.7.1997 to 22.12.2001, the backwages comes to Rs.3,18,000/= except Mr.Murugesan, which comes to Rs.6,32,000/= and therefore, he sought for confirmation of the award with regard to backwages.

4. Heard the parties on both sides. Admittedly, when 11 employees were denied employment, they raised the present I.D. Subsequently, after the award was passed by the first respondent giving the benefit of reinstatement alongwith backwages during the pendency of this matter, the petitioner factory, without prejudice to their rights, have taken back all the 11 workmen. The six workmen, who were reinstated on 1.1.2002, also left the services settling their dues at the rate of Rs.75,000/= towards their claim of backwages. Therefore, keeping in mind the long passage of time from the date the impugned award was passed by the Labour Court and that the petitioner factory settled the dues of six other workmen at the rate of Rs.75,000/=: this court, to meet the ends of justice, directs the petitioner factory to pay a sum of Rs.1,25,000/= each to respondents 2, 3, 4, 5 and 7 towards full & final settlement.

5. In view of the above, the writ petition stands disposed of with the above direction. No costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssk.

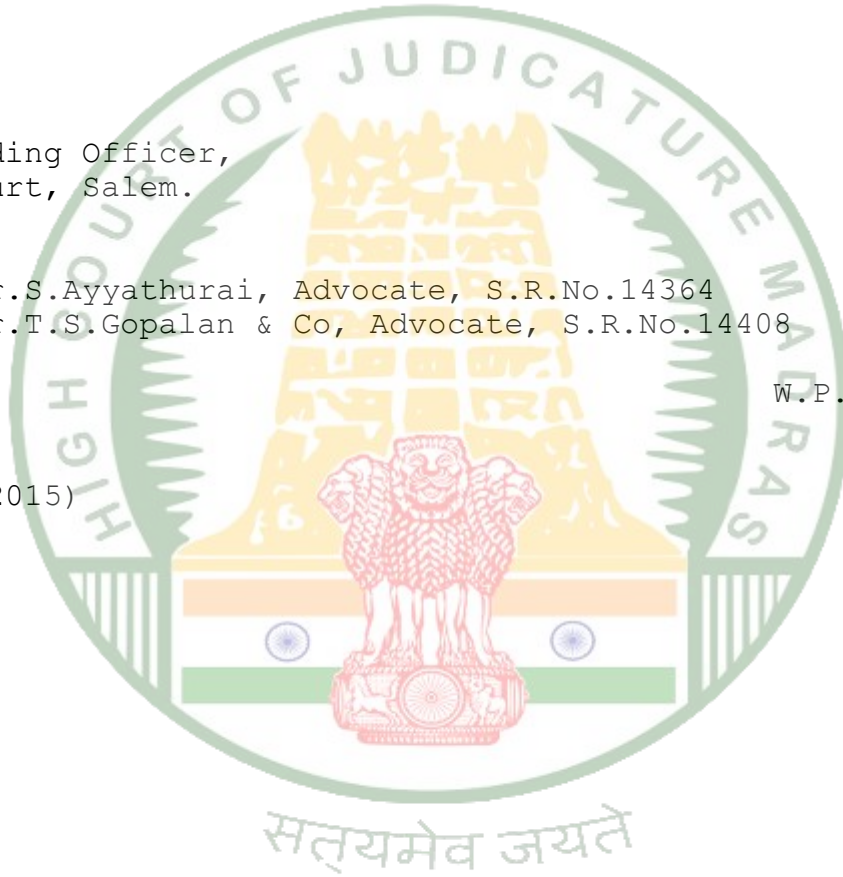
To

The Presiding Officer,
Labour Court, Salem.

+1cc to Mr.S.Ayyathurai, Advocate, S.R.No.14364
+1cc to Mr.T.S.Gopalan & Co, Advocate, S.R.No.14408

W.P.No.21173 of 2002

SR(CO)
CA(26/05/2015)



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