

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.11931 & 11932 of 2003

M.Manickam ... Petitioner in WP.11931/03
R.Jeeva ... Petitioner in WP.11932/03

Vs.

1. The Presiding Officer,
Labour Court, Salem - 636 007.
2. The Management of Jawahar Mills Limited,
rep. by its Managing Director,
Salem 636 005. ... Respondents in both WPs

Prayer : Petitions filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records from the 1st respondent relating to the Award made in I.D.Nos.235 and 348 of 1992 dated 04.09.2002 and quash the said Award and direct the 2nd respondent to reinstate the petitioners with continuity of services, backwages and all other attendant benefits, award costs.

For Petitioners : Mr.S.Ayyathurai
For Respondents : Mr.S.Jayaraman

ORDER

Heard Mr.S.Ayyathurai, learned counsel for the petitioners and Mr.S.Jayaraman, learned counsel for the respondents Management.

2.These two writ petitions have been filed challenging the common award passed by the Labour Court dated 04.09.2002 in I.D.Nos.235/1992 and 348/1992. The petitioners/workmen raised the dispute claiming that their non-employment was not justified and they are entitled to be reinstated with continuity of service and backwages.

3.The specific case of the petitioners/workmen is that the nature of work done by them was permanent and continuous and they have completed five years of continuous service since 1978. However, the Management did not maintain attendance register and payment of wage register for them and the Management would give them time cards every week and at the end of the week that cards were taken back from them. This

according to the petitioners/workmen was an unfair labour practice. When the dispute was raised before the Labour Officer, the Conciliation Proceedings ended in a failure and therefore, the petitioners approached the Labour Court and raised the disputes.

4.The respondent Management filed a counter statement contending that the petitioners had not put in 240 days in a period of 12 calendar months and the petitioners and other casual employees used to work in some other establishment, when they were not engaged by the respondent Management. Further, it was stated that there was no Employer - Employee relationship and therefore, the disputes are liable to be dismissed in-limni. The other allegations made by the petitioners that they were working as casual workmen from 1978 was denied as being false but it was admitted that they were engaged as casual workers from 1983 as and when contingency arises. It was further stated that the Government refused to refer the dispute and therefore, the workmen raised individual disputes before the Labour Court.

5.Before the Labour Court, the two workmen examined themselves as P.W.1 and P.W.2 and marked 19 documents as Exs.P.1 to P.19. However, there was no oral evidence on behalf of the Management but documents were marked as Exs.R.1 to R.99. The Labour Court framed the following issues for consideration.

"1.Whether the non-employment of the petitioners in I.D.No.235/92 and 348/92 is justifiable?

2. Whether the petitioners are casual labours?

3. To what relief the petitioners are entitled to?"

Subsequently, the Government of Tamil Nadu having referred the dispute, the following issues were also framed.

"1.Whether the non-employment of the petitioners Manickam and Jeeva is justified; if not, to what relief they are entitled to?

2.To compute the relief, if any, awarded in terms of money, if it can be so computed?"

6.Initially the case was pending before the Labour Court, Coimbatore and an award was passed which was challenged before this Court and this Court by order dated 25.03.1998 held that

the award is not sustainable and set aside the matter and remanded the same to the Labour Court, Salem as the case by then had been transferred to the said Court and it is the said Court which passed the impugned award.

7. After hearing the learned counsel for the parties and perusing the materials available on record, it is to be pointed out that the Labour Court has not discussed the evidence placed by both the parties and has not given a finding as to how it is satisfied that based on the documents produced, it has been established that the petitioners were only casual labourers. In fact, the discussion starts from paragraph 8 of the award. Paragraph 8 states the case of the petitioners/workmen; Paragraph 9 places on record the submissions of the respondent; Paragraph 10, the Court has referred to the decisions relied on by the respondent Management and Paragraph 11 alone appears to be the finding of the Labour Court. However, even in paragraph 11 the Labour Court has only stated that on perusal of records, it seems that the petitioners were engaged as casual labourers, they have engaged only for temporary period to fulfil statutory obligations of production of yarn and since they were engaged as casual labourers the question of violation of Section 25F, 25B and 25C of the Industrial Disputes Act does not arise. However, the Labour Court has not given reasons as to why on perusal of the records it was convinced that the petitioners were only casual labourers. This finding was essential because the Labour Court ought to have assigned reasons as to how it was satisfied that the petitioners were only casual labourers. The petitioners have produced 19 documents of which one of the document as Ex.P.11 which is an ESI card. The Labour Court has not rendered any finding on the effect of the said document. That apart, the Labour Court has also not given any finding as to what is the effect of the payment registers produced by the Management viz., Exs.R.1 to R.99. Failure to render a finding on these aspects, renders the impugned award as a non-speaking award and devoid of reasons. This is sufficient to hold that the impugned award is unsustainable in law.

8. Accordingly, the Writ Petitions are allowed and the impugned orders are set aside and the matter is remanded to the Labour Court for fresh consideration and to pass a reasoned award on merits and in accordance with law as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CCC)

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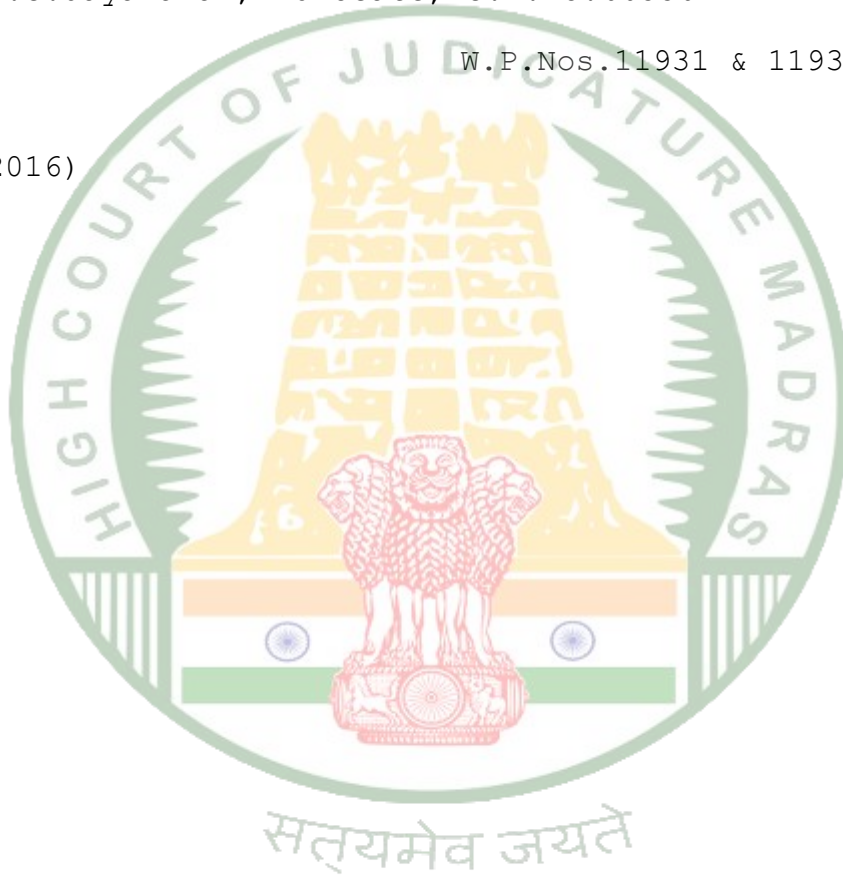
The Presiding Officer,
Labour Court,
Salem - 636 007.

+2cc's to Mr.S.Ayyathurai, Advocate, S.R.No.66230 & 66231

+1cc to Mr.S.Jayaraman, Advocate, S.R.No.66336

W.P.Nos.11931 & 11932 of 2003

VGI (CO)
CA(06/01/2016)



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