



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.06.2015

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.3167 of 2011 and

MP(MD)No.1 of 2011 and MP(MD)No.1 of 2014

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The Management of Agricultural College
and Research Institute,
represented by its Dean,
Madurai 625 104.

... Petitioner

Vs.

1. The Presiding Officer,
Labour Court,
Madurai.

2.M.Duraipandian

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the first respondent in Award dated 30.09.2009 passed in I.D.No.19 of 1986 and quash the same.

For Petitioner : Mr.A.Thirumurthy

For R2 : Mr.K.Suresh Kumar

Date of reserving the Order : 30.03.2015

Date of pronouncing the order : 10.06.2015.

ORDER

The petitioner has come up with this writ petition to call for records of the first respondent, in Award dated 30.09.2009, passed in I.D.No.19 of 1986 and quash the same.

2. The petitioner management has challenged the impugned award of the first respondent, dated 30.09.2009 made in I.D.No.19 of 1986.

Facts of the case:-

i)The management is running a Press for its administration and the same is not for commercial purpose. The second respondent was engaged as a Casual Labour, to work in the Press. He was engaged as and when necessity arises depending upon the availability of the work. The second respondent is not a permanent worker. He was not appointed as per Rules and Regulations of University and he was not sponsored by the Employment Exchange. The second respondent committed various misconducts like threatening Press Assistant and also illegally perusing the records of university, which were on the table of Press Assistant. For the above misconduct, the petitioner did not engage the second respondent from 12.03.1985. According to the petitioner, he is only a casual employee and therefore, no enquiry need to be conducted and no notice need to be issued to the second respondent.

On the other hand, the second respondent contended that from 1978, he is working as Composer on daily wages of Rs.7/- per day. The petitioner paid this salary to other workers also. The

petitioner did not regularize the service of the second respondent and similarly placed workers. Therefore, many of the workers joined Social Workers Union and raised demand through Union. The petitioner did not like the act of the worker and threatened them not to join the union. The petitioner threatened that workers will be terminated if they continue their union activities. The second respondent resigned from the union. 6 workers continued to be members of union and their services were terminated.

iii) They raised I.D.No.8 of 1983 before the first respondent. The second respondent gave evidence on behalf of workers in the said I.D. For that reason, the petitioner terminated the services of the second respondent. The second respondent raised I.D.No.19 of 1986. The petitioner contested the same. The first respondent, by award dated 05.08.1988, ordered reinstatement of the petitioner with continuity of service and back-wages. The petitioner filed W.P.No.1352 of 1989, challenging the said award. This Court, by order dated 05.03.1988, set aside the award of the first respondent and remitted the matter to the first respondent to give a finding as to whether the misconducts alleged by the petitioner were proved or not.

iv) On remand, the petitioner let in evidence both oral and documentary to prove the misconduct alleged against the second respondent. The second respondent also examined himself to prove that he was working continuously from 1979 and therefore, terminating his service without any enquiry and notice is bad in law.

v) The first respondent considering the materials on record, rejected the evidence let in by the petitioner to prove the misconduct alleged against the second respondent on the ground that no specific misconduct was alleged in the counter statement. The first respondent took note of the fact that the Press in which the second respondent was working was closed and the second respondent had already attained the age of superannuation and directed the petitioner to pay back-wages and terminal benefits. The petitioner has filed the present writ petition challenging the award dated 30.09.2009 made in I.D.No.19 of 1996.

3. The learned counsel for the petitioner contended that:-

I) The first respondent failed to consider the facts that the second respondent was not appointed as per rules and regulations of the petitioner Institute and he was not appointed through Employment Exchange.

ii) The first respondent, on erroneous reason, rejected the evidence of M.W.1, who spoke about the misconduct committed by the second respondent. The first respondent failed to consider the documents marked to prove the misconduct.

Iii) The reasoning given by the first respondent for rejecting the evidence of M.W.1 and M.W.2 is invalid and contrary to law. This Court remanded the matter to the first respondent to give a finding as to whether the misconduct alleged against the second respondent was proved or not. On such direction only, the petitioner was let in evidence to prove the misconduct that the

second respondent threatened the workers. The petitioner, in paragraph 10 of the counter statement filed in the ID, has specifically stated that the second respondent threatened the co-workers and unauthorisedly perused the registers and records kept in the University, while the press Assistant was away.

iv) The first respondent erred in holding that the petitioner did not specifically allege the misconduct in the counter statement.

v) The first respondent erred in holding that the petitioner is an industry, the first respondent failed to see that the main object of the petitioner is only to impart education in agriculture and carry out research work in respect of agricultural products and technologies.

vi) The object of establishing printing press is only for internal purpose of the petitioner and it is not for making any profit and printing press run by the petitioner is not commercial in nature.

Vii) The first respondent failed to see that the second respondent is only a casual worker and therefore, the services put in by the second respondent cannot be counted as qualifying services, for payment of retirement benefits under the Tamil Nadu Pension Rules.

4. The learned counsel for the petitioner relied on the following judgments:-

"I) Order dated 01.03.2013 in W.P.(MD)No.6807 of 2005 in paragraph 6 of the order reads as hereunder:-

6. Heard the submissions. No doubt, the petitioner was originally appointed as Child Welfare Organiser on 1.7.82. When she was working in the Child Welfare Centre, Palapalayam, Rasipuram Block, Namakkal District, the petitioner's daughter is said to have undergone a surgery for appendicitis in the year 2003. It is not even averred in the affidavit on what date and in which hospital the petitioner's daughter underwent the surgery for appendicitis. Secondly, the petitioner has not even filed the order of appointment to show before this Court that she was appointed permanently or to show before this Court that though she was appointed temporarily, subsequently any order of regularising her service were passed in her favour in order to get the protection under Article 311. No doubt, a Child Welfare Organiser appointed by way of Government Order is entitled to have the protection of Article 311 on the ground that such person is holding a civil post. But in the present case, nowhere in the typed set filed in support of the writ petition, the petitioner has filed any order to show that the petitioner was at any point of time regularised in the said post. Therefore, this Court is not in a position to agree with the prayer for regularisation of service of the petitioner as well as the Government Order passed on 01.03.2013 in W.P.(MD)No.6807 of 2005. The petitioner is not entitled to regularisation of service. The Government Order passed on 01.03.2013 in W.P.(MD)No.6807 of 2005 is set aside. The petitioner is entitled to the benefits of regularisation of service from the date of her appointment on 1.7.82. The Government Order passed on 01.03.2013 in W.P.(MD)No.6807 of 2005 is set aside. The petitioner is entitled to the benefits of regularisation of service from the date of her appointment on 1.7.82. When the Government had passed G.O.Ms.No.4,



Social Welfare and Nutritious Meal Project Department dated 09.01.1995 mandating that any staff who is absent for more than six months can be removed from service, the respondent has rightly acted upon the said Government Order. It is not the case of the petitioner that the petitioner had challenged the correctness or validity of the G.O.Ms.No.4 dated 09.1.95. Therefore, the judgments relied upon by the learned counsel for the petitioner cannot be made applicable to the facts of this case. Moreover, in the place of the petitioner, another person has also been appointed. Therefore, it is very difficult to dislodge the new incumbent, who has also not been impleaded as necessary party to the writ petition. The reason being that the writ petition seeking an order setting aside the order of appointment of the new incumbent without impleading that person and without issuing any notice whatsoever, cannot be allowed by this Court. On this ground also, the writ petition is liable to be dismissed for, when a counter affidavit was filed five years ago stating that a new person was appointed in the place of the petitioner, no step was taken to implead the new appointee.

2) (2006) 9 Supreme Court Cases 124 (Chief Engineer, Ranjit Sagar Dam and another vs. Sham Lal) in paragraph 8 of the judgment reads as hereunder:-

8. In R.M.Yellatti V. Asstt. Executive Engineer the decisions referred to above were noted and it was held as follows:

"17. Analysing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforesaid Judgments, we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given years. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily-wages earners, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (the claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately depends thereafter on the facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant workman



will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the Labour Court unless they are perverse. This exercise will depend upon the facts of each case.

The above position was again reiterated in a recent judgment in *ONGC Ltd., v. Shyamal Chandra Bhowmik*. "

3) 2007(3) LLN 51 (Uttaranchal Development Corporation v. M.C. Joshi) in paragraph 10 of the judgment reads as hereunder:-

"10. In *Haryana State Electronics Development Corporation v. Mamni* (2006(3) L.L.N.802), this Court directed payment of compensation. Similar orders were passed in *North-Eastern Karnataka Rt. Corporation v. Ashappa* (2006(3) L.L.N.180) and *Uttar Pradesh State Road Transport Corporation v. Man Singh* (2006(4) L.L.N.809). In *Man Singh* (vide supra) it was held, in Paras.7 and 8, at page 810.

"7. The respondent admittedly raised a dispute in 1986, I.e., after a period of about 12 years. It may be true that in an appropriate case, as has been done by the Labour Court, delay in raising the dispute would have resulted in rejection of his claim for back-wages for the period during which the workman remains absent as has been held by this Court in *Gurmail Singh v. Principal, Government College of Education and others* (2000 (2) L.L.N.405. But the discretionary relief, in our opinion, must be granted upon taking into consideration all attending circumstances. The appellant is a statutory corporation. Keeping in view the fact that the respondent was appointed on a temporary basis, it was unlikely that he remained unemployed for such a long time. In any event, it would be wholly unjust at this distance of time, I.e., after a period of more than 30 years, to direct reinstatement of the respondent in service. Unfortunately, the Labour Court or the High Court did not consider these aspects of the matter.

8. Keeping in view the particular facts and circumstances of this case, we are of the opinion that instead and in place of the direction for reinstatement of the respondent together with back-wages from 1986, ~~in the interests of~~ justice would be sub-served if the appellant is directed to pay a sum of Rs.50,000 to him. Similar orders, we may place on records, have been passed by this



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Court in State of Rajasthan v. Ghyan Chand (2006(4) L.L.N.645) State of Madhya Pradesh v.Arjunlal Rajak (2006 (2) L.L.N.842), Nagar Mahapalika (now Municipal Corporation) v.State of Uttar Pradesh and others (2006(3) L.L.N.710) and Haryana State Electronics Development Corporation, Ltd., v.Mamni (2006(3) L.L.N.802) (vide supra)

4) 1995(1) SCC 638 (Madhya Pradesh Hasta Shilpa Vikas Nigam ltd., vs. Devendra Kumar Jain and others) in paragraphs 5 & 7 are reads as hereunder:-

"5.A plain reading of these who orders will go to show that the appointments were made purely on temporary basis and their services were liable to be terminated at any time without notice or assigning any reason. In the case of appointment on temporary basis a servant who is so appointed does not acquire any substantive right to the post, even though the post itself may be permanent and it is an implied term of such appointment that it may be terminable at any time and without notice. A temporary government servant does not become a permanent government servant unless he acquires that capacity by force of any rule or he is declared or appointed as a permanent servant. In the present case there is no rule under which the respondents may be deemed to have become permanent by force of such rule nor they were so declared by any subsequent order of the appellant-Company to have acquired that status. On the contrary the respondents all along continued to be temporary and according to the terms of the order of appointment their services could be terminated at any time without any notice or assigning any reasons. In such a case it is not necessary to follow the formalities contemplated by Article 311 of the Constitution. In these facts and circumstances the High Court was not right in holding that the respondents were entitled for being heard before passing the said order of termination of their services and that the order of termination was bad in law on that account.

7,It may be pointed out here that the appellant-Corporation is a government company fully financed by the State Government and that being so the Government would be very much concerned to see that any project which is not economically beneficial for the Corporation and which is likely to result in any loss should not be given effect to. The Government, therefore, would be justified in issuing instructions that no appointments of any staff in connection with the said project will be made without the approval of the Board of Directors of M.P.Hasta Shilpa Vikas Nigam Limited and passed the order to that effect which has been filed as Annexure-B in this appeal. But it appears that the High Court ignored the said order of the State Government while observing that no material in



support of the contention that the Government has issued instructions not to make appointment was produced by the appellant."

5. Per contra, the learned counsel for the second respondent contended that the second respondent was continuously working from 1978 and he was terminated from service only because he gave evidence in I.D., on behalf of 6 workers terminated earlier by the petitioner. The second respondent has not committed any misconduct and no charge, no enquiry and no finding was given against the second respondent. Even without any prior notice, the second respondent was sent out of employment on 12.03.1985. No notice or compensation as per Section 25(F) of ID Act was paid. The non-employment of the petitioner is only victimization of the second respondent. The learned counsel for the second respondent relied on the decision reported in 2010(2) SCC 543(Ramesh Kumar vs. State of Haryana) wherein in paragraph 18 reads as hereunder:-

"18. It is to be noted in the case of termination of casual employee what is required to be seen is whether a workman has completed 240 days in the 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. The High Court failed to appreciate that in the present case the appellant has completed 240 days in the preceding 12 months and no notice or compensation in lieu of it was given to him, in such circumstances his termination was illegal. All the decisions relied on by the High Court are not applicable to the case on hand more particularly, in view of the specific factual finding by the Labour Court. "

6. Heard the learned counsel appearing for the petitioner and the second respondent.

7. I have carefully perused the materials on record and consider the arguments of both sides and judgments relied on by them.

8. From the materials on record, it is seen that the petitioner has examined P.W.1, P.W.2 to prove the misconduct alleged against the second respondent. This evidence was let in as this Court by order dated 05.03.1988, in W.P.No.1352 of 1989, had remanded the matter to the first respondent to give a finding whether the petitioner has proved the misconduct alleged against the second respondent. The first respondent erred in rejecting the evidence of P.Ws.1 & 2 on the ground that they have not been examined earlier in the ID before remand by this Court. The first respondent also erred in holding that the petitioner did not allege the misconduct in their counter statement.

9. On the other hand, in paragraph 10 of the counter statement filed in the I.D., the petitioner has stated the misconduct committed by the second respondent. In view of this averment

only, this Court, by order dated 05.03.1988 remanded the matter to give a specific finding as to whether the petitioner has proved the misconduct alleged against the second respondent. On remand, the first respondent gave opportunity to the petitioner as well as to the second respondent to let in fresh evidence.

10. Having been done so, it is not open to the first respondent to reject the evidence let in by the petitioner after remand on the ground that P.Ws.1 & 2 were not examined before the remand. A reading of the evidence of P.Ws.1 & 2 and the documents marked, clearly proved the misconduct alleged against the second respondent. Therefore, the impugned award of the first respondent ordering the back-wages and terminal benefits is set aside. Admittedly, the second respondent was working from 1978 as a casual worker. As per the judgment reported in 2010(2) SCC 543 (*Ramesh Kumar v. State of Haryana*), if a casual employee had completed 240 days in the proceeding 12 months, then he is entitled to the benefit of provision of Section 25(F) of Industrial Disputes Act. The petitioner failed to apply the said provision. In the present case, the second respondent was not engaged from 12.03.1985 and the dispute is pending from the year 1986 onwards. As held by the Hon'ble Apex Court, in the judgment reported in 2007(3) LLN 51 (*Uttaranchal Development Corporation and M.C.Joshi*), it is unlikely that the second respondent remains un-employed from 12.03.1985 onwards. The second respondent is an IT trained composer and therefore, it cannot be held that he would not have been employed elsewhere. Taking into consideration the press, in which the second respondent employed was closed, the petitioner is a Government organisation and an educational institution and second respondent had attained age of superannuation pending I.D.No.19 of 1996, it will be in the interest of justice, a lump sum payment is ordered to be paid to the second respondent instead of back-wages and terminal benefits.

11. In view of the facts stated above, the impugned award of the first respondent is set aside. The petitioner is directed to pay a sum of Rs.1,00,000/- to the second respondent. The writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub-Assistant Registrar

To

The Presiding Officer, Labour Court, Madurai.

Copy to:[- The Record Keeper/Section Officer,

Madurai Bench of Madras High Court, Madurai

+One cc to M/s.K.Suresh Kumar, Advocate, SR.No.29747

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Delivery Order in

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10.06.2015