

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2016

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE Dr.JUSTICE P.DEVADASS

W.A.No.706 of 2015
and
M.P.No.1 of 2015

The Commissioner,
Ambur Municipality,
Ambur, Vellore District.

..Appellant

Vs.

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

2.M.Thilagar

.. Respondents

This writ appeal is preferred under Clause 15 of Letters Patent against the order dated 06.02.2015 passed in W.P.No.21197 of 2012.

W.P.No.21197 of 2012:-

Writ Petition filed under Article 226 at 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.

For Appellant : Mr.M.Digvijayapandian

JUDGMENT

(The Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

The instant appeal is directed against the order dated 6th February, 2015 passed in W.P.No.21197 of 2012. The second respondent herein, while working as NMR worker in the appellant municipality, was removed from service with effect from 4th April, 2006. He was served with charge memo dated 26th May, 2006

for the allegation that he participated and filed nomination as a substitute candidate for DMDK in Vaniyambadi Legislative Constituency for the election held in 2006. The second respondent / workman submitted his explanation on 1st August, 2006, denying the charge. Without holding proper enquiry, the workman was removed / retrenched from service, as aforesated.

2 Feeling aggrieved, an industrial dispute was raised by the workman before the Principal Labour Court, Vellore District, Vellore. The learned Presiding Officer, by Award dated 22nd June, 2011, held that the impugned retrenchment was bad for non compliance of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short "I.D. Act"). Accordingly, the order of retrenchment was set aside with reinstatement, continuity of service and 50% backwages.

3 Feeling aggrieved, the appellant herein / management filed the writ petition, questioning the validity and legality of the Award. The main ground raised by the appellant was that before passing the impugned removal order dated 4th April, 2006, the workman was given a show cause notice and as such, the finding of the labour court was erroneous.

4 The learned Single Judge, upholding the findings recorded by the Labour Court, came to the conclusion that once it is established that the workman has completed 240 days in the preceding 12 months, the workman is entitled to retrenchment notice, as contemplated under Section 25-F of the I.D. Act or payment in lieu of such notice. Accordingly, the award was upheld.

5 According to the learned counsel for the appellant, the management had issued a notice on 26th May, 2006. The said notice was the show cause notice and not being satisfied with the reply given by the workman, the workman was removed from service.

6 Be that as it may, if the notice is the show cause notice or charge memo on the allegations and the explanation is not satisfactory, the management cannot terminate or remove the employee without holding proper enquiry. In the case on hand, indisputably, the retrenchment order was passed on 4th April, 2006. Thereafter, the charge memo on the basis of certain allegations was issued on 26th May, 2006 after the second respondent workman was retrenched. The Labour Court has held that retrenchment order was passed without complying with the mandatory requirement of provisions of Section 25-F of the I.D. Act. It is not a case of the management-appellant that any retrenchment notice or any payment in lieu of such notice was

given to the workman before 4th April, 2006. Certain notices were issued after retrenchment order was passed.

7 At this stage, relying on a judgment passed in Incharge Officer and another Vs. Shankar Shetty¹, by the Supreme Court of India on 31st August, 2010, the learned counsel for the appellant submits that in the event of non compliance of the provisions of Section 25-F of the I.D. Act, the workman-second respondent herein may be compensated in lieu of reinstatement. In the case of Shankar Shetty (supra), the workman failed to prove that he had worked continuously for 240 days in the calendar year preceding his termination. However, the learned Single Judge held that the provisions of Section 25-F of the I.D. Act was attracted and as such, the termination of the workman was held as illegal. Considering the aforesaid facts, the order of the learned Single Judge was set aside and compensation to the tune of Rs.1 lakh in lieu of reinstatement was directed.

8 The said ratio is not applicable to the instant case when the workman had established that he had worked for 240 days in the calendar year preceding his retrenchment / termination. The appellant management had not taken this contention before the Writ Court and as such, it is not proper to consider the submission of the appellant at the appellate stage.

9 The order sought to be impugned in this appeal rendered by the learned Single Judge is just and proper in the given facts of the case, warranting no interference. Resultantly, the writ appeal stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

sd/-

Assistant Registrar (Cs-VI)

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Sub-Assistant Registrar

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To

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

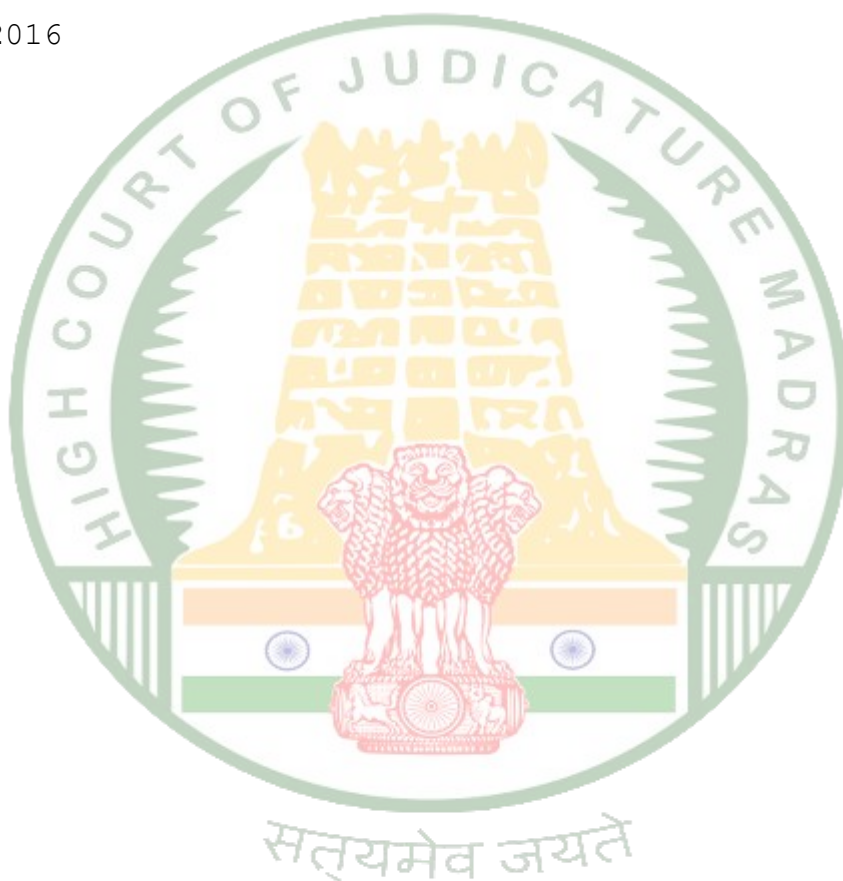
1 Civil Appeal No.7213 of 2010.

2.The Commissioner,
Ambur Municipality,
Ambur, Vellore District.

+1 CC to MR.M.Digvijayapandian Advocate. SR.NO.3866

W.A.No.706 of 2015

CO-AK
JD 08/02/2016



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