

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.04.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.7126 of 2010

and

M.P.No.1 of 2010

M.P.Nos 1 to 3 of 2014

and

M.P.Nos.1 to 3 of 2015

The Management,
Arignar Anna Zoological Park,
Vandalur, Chennai - 600 048.

...Petitioner

Vs.

1. R.Elumalai

2. The Presiding Officer,
II Additional Principal Labour Court,
High Court Campus,
Chennai - 104.

....Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records on the file of the second respondent in I.D.No.449 of 2005, dated 21.12.2009, and to quash the same.

For Petitioner : Mr.N.Inbanathan
Government Advocate
for Mr.S.N.Kirubanandam,
Special Government Pleader

For Respondent-1 : Mr.K.V.Ananthakrishnan

Respondent-2 : Labour Court

O R D E R

This Writ Petition has been filed by the petitioner, challenging the award passed by II Additional Principal Labour Court, Chennai, in I.D.No.449 of 2005, dated 21.12.2009.

2. Heard Mr.N.Inbanathan, learned Government Advocate for the petitioner and Mr.K.V.Ananthakrishnan, the learned counsel for first respondent.

3. The petitioner is the Management, and first respondent is the workman, and they shall be referred as such, through out this judgment and order.

The case of the workman:-

4. The workman joined the service of the Management on 02.06.1980 as animal keeper (Lion) and subsequently, he was working as Gardener. He has put in 7 years of continuous service. Whiles, a criminal case was registered against him for offence under Section 302 of the Indian Penal Code, which ultimately ended in acquittal by the Trial Court, by judgment, dated 12.08.1989. In the meantime, due to the pendency of the criminal case, he was removed from service on 27.09.1989, and at the relevant point of time, he was paid Rs.240/- as monthly salary. After he was acquitted in the criminal case, he gave a representation to the Management to reinstate him in service. Since this request was not complied with, he approached the General Secretary of the Labour Union, who raised the industrial dispute in I.D.No.477 of 1997, on behalf of six employees, who were similarly placed as that of the workman herein. The workman was under the impression that his name was also included in the said dispute raised by the Workers' Union. In the said dispute, award was passed on 19.12.2003 in favour of the workmen. When the workman perused the award passed in I.D.No.477 of 1997 after obtaining copy of the same from the Labour Union Leader, he came to know that his name was not included in the dispute. Therefore, the workman approached the Labour Commissioner on 21.02.2005 for initiating conciliation proceedings, and since the conciliation proceedings failed, he was constrained to raise individual dispute, which was taken on file in I.D.No.449 of 2005. With these averments, the workman challenged his non employment, and sought for reinstatement in service with full backwages, and all other attendant benefits.

Case of the Management:-

5. The workman failed to produce any document and proof before the Assistant Commissioner of Labour to prove his claim that he had worked in the Zoo from 02.06.1980, and even for argument sake, it is accepted that he joined the service on 02.06.1980, and was removed from service on 27.09.1989, there is a delay of 18 long years to raise the dispute, and such a belated claim should be rejected. Further, in the earlier dispute raised by the Labour Union, on behalf of six workmen, viz., the dispute in I.D.No.477 of 1997, the workman herein was not a party, and the contentions raised by the workman that his name was left out, cannot be accepted.

6. Before the Labour Court, the workman examined himself as W.W.1 and marked nine documents, as Exs.W.1 to W.9. On the side of the Management, neither any oral evidence was let in, nor any document was marked.

7. The Labour Court, taking note of the documents produced by the workman and his oral evidence, and the counter statement of the Management, framed the following two issues for consideration:-

- i) Whether the petitioner is entitled to reinstatement in service with backwages, continuity of services and other attendant benefits?
- and
- ii) To what relief, the petitioner is entitled to?

8. After referring to the crucial documents, such as a) Ex.W.1, the certificate issued by the Assistant Conservator of Forest, b) Ex.W.2, workers list of Arignar Anna Zoological Park, Vandalur, c) Ex.W.3, the judgement of the Criminal Court acquitting the workman, d) Ex.W.4, representation made by the workman for reinstatement after the judgment of the Criminal Court and e) Ex.W.5, award passed in I.D.No.477 of 1997, wherein, other coworkers, who were removed on account of the criminal case, were directed to be reinstated, passed the impugned award. The Labour Court noted that the Management had not produced any oral evidence to rebut the stand taken by the workman.

9. Thus, the Labour Court, taking into consideration the documents placed by the workman, and the fact that the workman has rendered seven years of continuous service, held that the workman is entitled to the relief of reinstatement in service with full backwages and attendant benefits. Furthermore, the Labour Court took into consideration the award passed in I.D.No.477 of 1997, in which, benefit was granted to other six co-employees, who were similarly placed as that of the workman herein, and when the workman approached the Authority to grant similar benefit, he was not granted the same, which necessitated the workman to individually raise the dispute, after approaching the Labour Officer for conciliation proceedings. That apart, the Labour Court also took into consideration that the acquittal was honourable acquittal, it cannot cause any stigma on the workman.

10. The Labour Court also considered the question of delay, which was raised by the Management. Thus, in para No.16 of the award, the Labour Court took into consideration the pendency of the criminal case, and the judgment of the Criminal Court, by which, the other co-employees were acquitted, and other factual aspects, and came to the correct conclusion that

there is no inordinate delay, and it cannot be put against the workman, who is a poor, and hailing from a down trodden Society, who is just an animal keeper.

11. In the light of the above reasons assigned by the Labour Court, which are cogent and proper, no interference is called for in this Writ Petition. Accordingly, the Writ Petition fails and it is dismissed. During the pendency of the Writ Petition, the Management have themselves complied with the portion of the impugned award, thereby, appointing the workman as Sweeper Cum Scavenger, in the existing vacancy, by passing orders in G.O.(2D) No.14, dated 11.02.2016. Though it is stated that this appointment is subject to the outcome of the Writ Petition, since this Court dismissed the Writ Petition, the workman is entitled to hold the said post till he attains superannuation. Now, the only issue for consideration would be payment of backwages, continuity of service and other attendant benefits. Since the award of the Labour Court has been confirmed by this Court, the first respondent/workman is at liberty to execute other portion of the award by filing appropriate application before the Labour Court, Chennai. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar (CSII)

True Copy

Sub-Assistant Registrar

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To
The Presiding Officer,
II Additional Principal Labour Court,
High Court Campus,
Chennai - 104.

+1 cc to Special Government Pleader sr.24863

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