

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2016

CORAM

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.12472 of 2010
& M.P.No.1 of 2010

Gokilam

...Petitioner

Vs.

1. The Management
Tamil Nadu Civil Supplies Corporation
Cuddalore.
2. The General Manager
Tamil Nadu Civil Supplies Corporation
Head Office, 42/12, Thambusami Salai
Kilpauk, Chennai 10.
3. The Presiding Officer,
The Labour Court,
Cuddalore.

....Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying to issue a writ or order in the nature of certiorarified mandamus or any other appropriate writ calling for the records of the third respondent dated 23.12.2009 in ID 1/2007, quash the same and direct respondents 1 and 2 to reinstate the petitioner as sweeper in the Kattumannarkoil branch with continuity service from 05.06.2005 and pay her backwages.

For Petitioner: Mrs.R.Meenal

For Respondents: Mr.C.Munusamy for R1 & R2
R3 Labour Court

O R D E R

The prayer in the writ petition is for writ of certiorarified mandamus calling for records of the third respondent dated 23.12.2009 in Industrial Dispute 1/2007, quash the same and direct respondents 1 and 2 to reinstate the petitioner as Sweeper in the Kattumannarkoil Branch with continuity of service from 05.06.2005 and pay her backwages.

2. The case of the petitioner is that, she was appointed as sweeper on 15.06.2001 by the respondents at Kattumanarkoil godown. Her initial salary was fixed as Rs.500/- per month. She claimed that she had been working continuously from the date of appointment for more than 240 days in every calendar year. She had made many representation to the respondents to permanent her as the respondents employee. Thereafter the petitioner had met several higher officials of the respondents organisation. This was misconstrued by the quality inspector who was incharge of the godown. Therefore on 05.06.2005 when the petitioner went into the godown as usual to do her work, she was orally informed that she was terminated from service. No prior notice was given to the petitioner for such termination. When the said action of termination was questioned, it was replied that he acted upon as per the instruction of the first respondent.

3. It is the further case of the petitioner that in place of the petitioner, one Uthranam and her daughter Lalitha were appointed which made the petitioner to cause legal notice on 04.01.2006 to the respondents requesting them to reinstate the petitioner with backwages. Since no reply was received from the respondents, the petitioner had raised an Industrial Dispute on 27.01.2006. Subsequently, on 06.02.2006 the petitioner was given a reply by the respondents stating that, there was no vacancy for sweeper post at Kattumannarkoil godown. Therefore she could be offered to serve at Manalur Circle godown which was not agreeable to the petitioner as it is 35 Kms away from her village where she is residing. The respondents knew well that the petitioner had to spend Rs.30 per day on bus fare to reach Manalur. Knowing all these facts the respondents purposely asked the petitioner to join the Manalur godown. Therefore the petitioner was not in a position to accept the said offer to join at Manalur godown and hence raised the Industrial Dispute which was numbered as I.D.1/2007 before the third respondent, Labour Court.

4. The said I.D. was conducted before the third respondent, Labour Court and ultimately by the impugned award dated 23.12.2009 the third respondent Labour Court had dismissed the said Industrial Dispute which order is impugned herein, as aggrieved by the same, the petitioner has come out with the present writ petition with the aforesaid prayer.

5. Heard both sides.

6. The learned counsel appearing for the petitioner would contend that no doubt the petitioner was appointed of course orally as a sweeper to work at Kattumannarkoil godown of the respondents organisation. She had been working from 15.06.2001. Since the petitioner had been working for more than 240 days in every calendar year and such work was continued for two, three

years, the petitioner had requested for permanency of job for which, when the petitioner approached the higher officials of the respondents organisation, that was the case for the quality inspector of the organisation to get annoyed, resulting, the petitioner was terminated orally on 05.06.2005. Thereafter all these efforts as referred above even though having been taken on the side of the petitioner, none of them had yielded fruitful result. Ultimately ID was raised. The Labour Court had not appreciated the evidence especially the Management witness MW1 to depose before the Labour Court stating that the relevant records to show the name of the petitioner who found place in the register, to establish the case of the petitioner, had not been produced. Without considering these aspects and also the other evidences which establishing the circumstances under which the petitioner was terminated orally, the third respondent Labour Court passed an erroneous order dismissing the ID of the petitioner.

7. The learned counsel for the petitioner further contended that, if at all the petitioner had not been working at the Kattumannarkoil Godown of the Respondents organisation, the respondents need not have issued order dated 06.02.2006 permitting the petitioner to join as sweeper at Manalur Godown. Inorder to drive the petitioner from the Kattumannarkoil Godown for the reasons best known to them, the respondents have given orders to the petitioner to join at Manalur godown knowing fully well that Manalur is 35 kms away from her village where she is residing. All these actions on the part of the respondents, would certainly establish the case of the petitioner that she had been working at the respondents organisation in Kattumannarkoil godown as sweeper in more than one calendar year continuously and therefore the learned counsel for the petitioner would contend that the petitioner would be entitled to get a relief as raised in the industrial dispute. Therefore in that view of the matter, the interference of this Court is very much essential and the writ petition has to be allowed.

8. Per contra, the learned counsel for the respondents 1 and 2 would contend that the petitioner was not at all appointed at any point of time as Sweeper at Kattumannarkoil godown or any other work place of the respondents organisation. The petitioner had requested by way of her representation dated 27.04.2005 to the respondents 1 and 2 to consider her case for giving an appointment as Sweeper at Kattumannarkoil godown. Since there was no post of Sweeper available in the said godown, the respondents having considered to comply with the petitioner's request had issued a communication on 06.02.2006 requesting her to join as Sweeper at Manalur godown. The petitioner on receipt of the same, instead of joining at Manalur godown, had refused to join and straight away came to the Labour court by raising an I.D without any basis.

9. The learned counsel for the respondents would further contend that in the Labour court Ex.W.1. to Ex.W7 on the side of the petitioner and Exs.M1 to M5 on the side of the respondents, were produced, wherein Ex.M.1 was work allocation register for the period from 01.09.2000 to 31.12.2004. Ex.M.2 was Attendance Register for the period from 01.01.2002 to 31.12.2002. Ex.M.3 was the Attendance Register for the period from 01.01.2004 to 31.12.2004. Ex.M.4 was the Attendance Register for the period from 01.01.2005 to 31.12.2005 and Ex.M.5 was the Work Allocation Register for the period from 01.09.2004 to 01.04.2007. All these documents were produced before the Labour Court and the Labour court, after considering the same, has given its finding in detail, stating that the case of the petitioner was not proved and therefore, the Labour Court has rightly rejected the claim of the petitioner by the impugned order. Therefore, the same is fully justified and also sustainable and hence, no interference is warranted in the impugned order. Therefore, the learned counsel for the respondents 1 and 2 submitted that the writ petition has to be dismissed.

10. This Court have considered the rival submissions made by the respective counsel, as well as the material placed before this Court for perusal.

11. The definite case of the petitioner is that she had been working at Kattumannarkoil godown of the respondents organisation as sweeper from 15.06.2001 to 05.06.2005, the date on which the petitioner claimed to have been orally terminated by the respondent. Inorder to support her claim the petitioner has not produced any document either appointment order or termination order or any other documents if, for getting monthly salary of Rs.500/- as claimed by the petitioner. Even the documents which were produced before the Labour court on the side of the petitioner ie., from Ex.W1 to Ex.W7 are not the documents to support the claim of the petitioner to prove that the petitioner had worked for four years between 2001 to 2005. Whereas the documents produced by the respondents side Ex.M.1 to Ex.M.5 are work allocation register as well as attendance register for the relevant time provided to the said godown of the respondents organisation. The third respondent, Labour court has given a detailed findings at para 15 and para 16 of the impugned judgment of the Labour court which is as follows:-

" The registers filed by the respondent did not contain the names as Uthiranam or Lalitha. Since the respondent filed relevant registers Exs.M.1 to M.5 no question of presumption if any will arise.

Ex.M.1 is the work allocation register for the month of August 2004 shows that only 4 persons were employed and the petitioner's name did not find a place.

Ex.M.2 is the attendance register of the respondent Kattumannarkoil branch from 01.01.2002 to 31.12.2002. As per the evidence of the petitioner that she was employed under the respondent from 15.06.2001. But in the attendance register the name of the petitioner did not contain during all those months and there was no posting as a sweeper and only 8 persons were employed normally. Ex.M.3 is the attendance register from 01.01.2004 to 31.12.2004. It did not contain the name of the petitioner. Ex.M.4 is the attendance register from 01.01.2005 to 31.12.2005. It did not contain the name of the petitioner. Ex.M.5 is the work allocation register at page no.86 watchman work allocation for April 2007 was made. It shows that there is no post of sweeper under the respondent. By this document it is clear that there is no post of sweeper in the respondent and the petitioner did not work under the respondent from 15.06.2001 to 05.06.2005".

From the above findings of the Labour court it would become clear that there is no iota of evidence to show that the petitioner had worked at the godown of the respondents organisation during the relevant period. Even in respect of oral evidence none has come out in favour of the petitioner. None of the witnesses examined by both sides, the petitioner's claim that she worked at the respondents godown had been accepted or admitted except the claim of the petitioner who herself depose before the Labour court as her side witness.

12. In the absence of documentary as well as oral evidence to support the claim of the petitioner that she had worked four years continuously in respondents organisation as sweeper the Labour court has rightly come to a conclusion that the petitioner has not proved her case and therefore she is not entitled for reinstatement with continuity of service, backwages and other attendant benefits and therefore ID was dismissed.

13. This Court finds no infirmity or irregularity in such findings given by the third respondent, Labour court and therefore this Court, feels that no interference is warranted to the impugned order.

14. Accordingly this Court dismiss the writ petition. However since the petitioner is a women and had been offered with the post of sweeper atleast at Manalur godown of the respondents organisation long back ie., year 2006 and which offer had been not utilised by the petitioner, it is open to the petitioner now to make a claim of getting any job like sweeper if the petitioner is advised to do so to the respondent organisation and if such representation is made from the side of the petitioner to the respondents organisation it is for the respondent organisation to take a pragmatic view and decide the same and if possible the request of the petitioner may be

considered subject to the availability of any vacancy or situation at the respondents organisation. No costs. Connected Miscellaneous petition is also closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1. The Management
Tamil Nadu Civil Supplies Corporation
Cuddalore.
2. The General Manager
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Head Office, 42/12, Thambusami Salai
Kilpauk, Chennai 10.
3. The Presiding Officer,
The Labour Court,
Cuddalore.

+1 cc to Mrs.R.Meenal,advocate,sr.65636

+1 cc to Mr.C.Munusamy,advocate,sr.65462.

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