

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2016

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THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P. No.39433 of 2015 &
M.P.No.1 of 2015

K.Suresh

[PETITIONER]

Vs

1 The Administrative Officer
Film Division
Government of India
No.24, Dr.Deshmukh Marg
Mumbai-400 026.

2 The Branch Manager
Film Division Ministry of Information and
Broadcasting
Government of India
35 Haddow Road, Shastri Bhavan,
Chennai-600 0006.

[RESPONDENTS]

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue Writ of Mandamus to direct the respondents to regularize the services of the petitioner under them as Group D Mazdoor or any other appropriate post in pursuance of the findings made in the order of W.P.No.23097 of 2002 dated 08.02.2013 as confirmed by the Honourable Division Bench in W.A.No.870 of 2013 dated 07.08.2014.

For Petitioner :Mr.S.Senthilnathan

For Respondents:Mr.Su Srinivasan
Asst.Solicitor General of India

O R D E R

Heard Mr.S.Senthilnathan, learned Counsel appearing for the petitioner and Mr.Su Srinivasan, learned Assistant Solicitor General of India accepting notice for the first respondent, and with their consent the Writ Petition is taken up for final disposal.

2.The petitioner has filed this Writ Petition praying for issuance of a writ of mandamus to regularise the service of the petitioner under them as Group D Mazdoor or any other appropriate post in the light of the findings rendered by this Court in W.P.No.23097 of 2002 dated 08.02.2013 and confirmed by the Hon'ble Division Bench in W.A.No.870 of 2013 dated 07.08.2014.

3.The petitioner moved the Central Government Industrial Tribunal cum Labour Court (CGIT) against his termination from service. The Labour Court framed a question as to whether the action of the Management of Films Division, Madras in terminating the services of the petitioner with effect from 1.8.1988, is proper, legal and justified? and rejected the Claim Petition by an award dated 30.5.2001. Challenging the same, the petitioner filed a writ Petition before this Court in W.P.No.23097 of 2002. The said writ petition was allowed by this Court by an order dated 08.02.2013. The operative portion of the order reads as follows:

"9.....Therefore, the petitioner is entitled for regularisation and he cannot be terminated. This aspect which goes to the root of the matter has not been properly appreciated by the Labour Court. Further, the decision of the Division Bench of this Court, relied on by the second respondent/Management that the employee will not get the regularisation automatically, it is to be seen that in the case on hand, the workman himself worked for two years and hence, the Judgment cited by the second respondent will not in any way helpful for the present facts of the case. Therefore, I am of the view that the order passed by the Central Government Industrial Tribunal-cum-Labour Court, Chennai, has to be set aside.

10.Accordingly, the Writ Petition is allowed and the impugned order is set aside. The second respondent/Management is directed to reinstate the petitioner forthwith and the backwages has to be paid within a period of two months from the date of receipt of a copy of this order. No costs.

4.The respondents being aggrieved by the decision rendered by the Writ Court, preferred a Writ Appeal before the Hon'ble Division Bench in W.A.No.870 of 2013. Before the Hon'ble Division Bench, the respondents fairly submitted that the 185 days was counted excluding the Sundays and National Holidays and even assuming that the National Holidays and Sundays can be

counted along with 185 days of actual days, the petitioner has worked within one year, the learned single Judge was not justified in ordering backwages, particularly, when no pleading was made either in the Claim Petition or in the affidavit filed in the writ petition regarding non employment of the petitioner during the period of dis-engagement, which was from 14.6.1988.

5.The petitioner who was the respondent before the Hon'ble Division Bench, resisted the appeal by contending that he was not employed elsewhere during the said period and the order of the learned Single Judge is in order. Reliance has been placed on the decision of the Hon'ble Supreme Court in the case of DEEPPALI GUNDU SURWASE v. KRANTI JUNIOR ADHYAPAK MAHAVIDHYALA [(2013) 10 SCC 324]. The Hon'ble Division Bench after considering the case of the parties, held that the direction issued by the Labour Court directing reinstatement of the petitioner is just and proper. With regard to the plea of backwages, the Hon'ble Division Bench modified the order by observing that during the period of non-employment, the petitioner is not entitled for backwages. Accordingly, the order passed in the writ petition was modified for granting backwages to the first respondent from 8.2.2013, to the date from which the learned single Judge passed the order. The operative portion of the order passed by the Hon'ble Division Bench, reads as follows:

"8.In so far as that portion of the order directing payment of backwages is concerned, the law on the subject prior to 12.08.2013 was that the person claiming backwages should plead and prove that he was not gainfully employed. The said position was changed only by the Judgment of the Hon'ble Supreme Court dated 12.08.2013. Admittedly, the first respondent/workman has not pleaded his non-employment either in the claim petition before the labour Court in October 1995 or in the affidavit filed in support of the writ petition No.23097 of 2002, which was filed in March 2002. Thus, no occasion arisen to verify as to whether the 1st respondent was gainfully employed during the non employment period.

9.In view of the above findings, the order of the learned Single Judge is modified by granting backwages to the 1st respondent from 08.02.2013, the date of which the learned Judge had passed the order. In other respects, the order of the learned Single

Judge is confirmed. The appellant is directed to comply with the modified order of this Court within a period of two weeks from the date of receipt of a copy of this order."

Though the Hon'ble Division Bench fixed a time limit for payment of backwages, the same has not been complied with till date. Further, the petitioner has been reinstated as a daily casual labour. Now the plea raised by the petitioner is with regard to his regularisation.

6.The learned Assistant Solicitor General on instructions submitted that in the light of the decision of the Hon'ble Supreme Court, the petitioner's case could be considered under the provisions of the relevant regulations, which provides for regularisation of contract labourers and for which purpose, a minimum period of three months is required.

7.In the light of the factual position as stated above, the stand taken by the respondent is untenable. The writ court by an order dated 08.02.2013 in W.P.No.23097 of 2002, ordered that the petitioner is entitled for regularisation and he could not have been terminated and this aspect of the matter was held to have been not properly appreciated by the Labour Court and therefore, the award of the CGIT was set aside. Hence, at this stage of the matter, it will be too late for the respondents to now state that they will continue to keep the petitioner as a daily casual labourer.

8.Accordingly, there will be a direction to the respondents to regularise the services of the petitioner in terms of the observations/directions issued by the writ court in its order dated 08.02.2013 in W.P.No.23097 of 2002 as confirmed by the Hon'ble Division Bench in W.A.No.870 of 2013 dated 07.08.2014, within a period of four months from the date of receipt of a copy of this order.

The Writ Petition is allowed on the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

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2 The Branch Manager
Film Division Ministry of Information and
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Chennai-600 0006.

+1 cc to Mr.S.Senthilnathan, Advocate, sr.28

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kra 25.01.2016



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