

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2016

Date of Reserving the Judgment	Date of Pronouncing the Judgment
08.12.2016	16.12.2016

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
and

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.A.Nos.1434 to 1443 OF 2016 &

CMP 18113 to 18131/2016

1.The Superintending Engineer
TWAD Board, T.K.Circle
Santhinagar, Palayamkottai
Tirunelveli 627 002.

2.The Executive Engineer
TWAD Board, RWS Division
Nagercoil.

... Appellants/Petitioners
in all Was

-vs-

1 M. Natesan
2 K. Thangappan
3 D. Sundaraj
4 R. Pramushu
5 S. Ponnaian
6 N. Muthusamy Nadar
7 V. Sathyadass
8 N. Jesudhas
9 S. Johnson
10 V. Harris

1st Respondent in WA.1434/2016
1st Respondent in WA.1435/2016
1st Respondent in WA.1436/2016
1st Respondent in WA.1437/2016
1st Respondent in WA.1438/2016
1st Respondent in WA.1439/2016
1st Respondent in WA.1440/2016
1st Respondent in WA.1441/2016
1st Respondent in WA.1442/2016
1st Respondent in WA1443/2016

11 The Presiding Officer
Labour Court, Tirunelveli

2nd Respondent in
WA.Nos.1434 to 1443/2016

Writ Appeal filed under clause 15 of the Letters Patent against the Judgment dated 29.04.2013 made in W.P.Nos.23720 of 2002 to 23724 of 2002 and WP.Nos.23807 to 23809 and 23811 & 23812/2002 Prayer in WP.Nos.23720 to 23724; 23807 to 23309,23811 & 23812/02; Writ Petitions are filed under Article 226 of the constitution of India, for the issuance of a writ of certiorari to call for the records made in the impugned Award I.D.No. 408/92,411/92,415/92,413/92,414/92,412/92 and 410/92 respectively on the file of the Labour Court Tirunelveli (I.D.No.291/91,290/91,298/91,296/91,297/91,295/91,294/94,288/91, 292/91,289/91,293/91, respectively on the file of additional Labour Court (Madurai Camp at Nagercoil) the 2nd respondent herein 12.04.2000 and quash the same.

For Appellants : Mrs.S.Thamizharasi in all Wps
For Respondents : Mr.M.Muthpandian - R1 in All Wps

C O M M O N J U D G M E N T

S.M.SUBRAMANIAM, J.

These Writ Appeals arose out of a common order made in W.P.Nos. 23720 to 23724 & 23807 to 23812 of 2002, dated 29.04.2013.

2.The facts in nutshell are that the respondents/workmen were appointed as NMRS on daily wage basis in R.W. Division of TWAD Board at Nagercoil, through the District Employment Exchange. Subsequently, they were removed from service, on account of the closure of R.W.Division at Nagercoil, without notice. Aggrieved over the same, the respondents/workmen raised Industrial Disputes under section 2A (2) of the Industrial Disputes Act, before the Labour Court, Madurai and later the same was transferred to Tirunelveli and renumbered.

3.The appellants in the Writ Appeals filed Writ Petitions challenging the award of the Labour Court, mainly on the ground that the respondents/workmen, failed to prove that they were in continuous employment for 240 days preceding their respective dismissal from service. Further ground was raised that under section 25-F of the I.D.Act, non-engagement of the respondents/workmen amounts to retrenchment under the I.D.Act. Then, it was stated that as the respondents/workmen were engaged as N.M.Rs on daily wage basis, no right had accrued to

them and hence the order of the Labour Court was perverse.

4.The learned single Judge considering the facts and circumstances of the case, passed a common order in all those Writ Petitions on 29.04.2013, with a categorical finding that the appellants being Tamil Nadu Water Supply and Drainage Board, a Government of Tamil Nadu Organisation, is expected to maintain permanent register for appointment as well as for payment of salary.

5.Though it is a case of the appellants that the respondents/workmen were appointed on daily wages and they have not worked continuously for 240 days, they have not produced any documents to prove the same. The workmen also had not produced any documents to show that they have worked continuously for 240 days. The Labour Court after analysing all the above aspects, ordered for reinstatement of the workmen with full backwages. The learned Judge, while disposing of the Writ Petitions, modified the order of the Labour Court by reducing the backwages from 100% to 50%. Further, it was recorded that some of the workmen attained the age of superannuation and that they have already received their respective retirement benefits, while some of the workmen had died and in those cases, the respective legal heirs were entitled to get the monetary benefits of the concerned workmen.

6.Challenging the order passed in the Writ Petitions, the present Writ Appeals have been filed, mainly on the ground that the respondents/workmen have not produced any documents to show that they have worked continuously for more than 240 days, and therefore, 50% of the backwages awarded by the learned single Judge is erroneous. Further, the findings recorded by the Labour Court was also questioned by the appellants.

7.In this regard, this Court has showed anxious consideration with regard to the findings of the Labour Court. In paragraph No.48 of the common award passed on 12.04.2000, the Labour Court had categorically stated that the respondents/workmen have adduced oral evidence and filed documents to show that all of them have been appointed through Employment Exchange and had served continuously for 480 days, within a period of two years. Further, during the pendency of the case before the Labour Court, the respondents/workmen were removed from service, which is in violation of principles of law.

8.Further, the Labour Court found that the appellants who were the respondents before the Labour Court have not produced any documents to show that the respondents/workmen had not worked for 240 days in a year. Though the Attendance Register, the Salary Certificates and other relevant documents

were in the possession of the Appellant/Management, the same were not marked as documents nor any evidence was adduced before the Labour Court. Further, the Labour Court found that the documents filed by the respondents/workmen as Exs 7, 8 & 9, would show that the respondents/workmen proved their employment and the length of service, therefore, the removal of the respondents/workmen from service, were incorrect and not in accordance with law.

9.The Labour Court has considered all the documents filed by the respondents/workmen and categorically made a finding that the appellant/Management has not filed any documents, despite the fact that they were in possession of the Attendance Register and Salary Register of the respondents/workmen. Such being the factum of the case, there is no error on record, both in the order of the Labour Court as well as in the common order passed in the Writ Petitions by the learned single Judge. The learned single Judge, has rightly appreciated the findings of the Labour Court and the omissions on the part of the appellants in producing the relevant documents before the Labour Court, which were in possession of the appellant/Management.

10.Before us, the learned counsel appearing for the respondents in the Writ Appeals filed a typed set of papers, in which they have submitted the order passed by the Executive Engineer of the

Tamil Nadu Water Supply and Drainage Board in Proceedings No.520/A1/2013 dated 18.11.2013. According to the said order, the respondents/workmen were reinstated in service by implementing the award of the Labour Court and seven of them have already retired from service and only two out of a total of nine workmen namely M.Natesan and P.Johnson are in service. Further, two workmen namely, V.Muthusamy and P.Muthukrishnan, were died on 18.09.2004 and 26.08.2002 respectively. That apart, the learned counsel appearing for the respondents/workmen admitted the fact that the retirement benefits had already been paid to the workmen who had attained the age of superannuation, and also in respect of the persons who had died some payments had been made to their legal heirs.

11.Under these factual circumstances, this Court is of the firm opinion that there is no infirmity in the order passed by the learned single Judge in the Writ Petitions dated 29.4.2013, and therefore, is not inclined to consider the grounds of Appeal filed by the appellants.

12.In the result, the Writ Appeals are devoid of merit and are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpa

To

1.The Presiding Officer
Labour Court, Tirunelveli.

2 The Superintending Engineer
TWAD Board, T.K. Circle,
Sanghi Nagar, Palayamkottai
Tirunelveli 627 002

3 The Executive Engineer
TWAD Board, RWS Division
Nagarcoil

+lcc to Mr.S. Thamizharasi, Advocate, S.R.No.73700
+lcc to Mr.M. Mushupandian, Advocate, S.R.No.73588

NRJK (CO)
md(03/01/2017)

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W.A.Nos.1434 to 1443 OF 2016

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