

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.Nos.16502 to 16504 of 2001

Santhi ... Petitioner in W.P.16502/2001
Kalaiselvi ... Petitioner in W.P.16503/2001
J.Baskaran ... Petitioner in W.P.16504/2001

Vs

1.The Presiding Officer
Industrial Tribunal
City Civil Court Buildings
Chennai.

2.Indian Institute of
Handloom Technology
rep by its Secretary, Salem.

3.Office of the Development
Commissioner for Handlooms
(Enforcement Wing)
rep. by Deputy Development Commissioner
for Handlooms
Ministry of Textiles
Udyog Bhavan, New Delhi.

4.Regional Development Officer
for Handlooms
Regional Enforcement Office
Weavers Centre
C1-B, Rajaji Bhavan, Besant Nagar
Chennai-90

... Respondents in all WPs

Writ Petitions filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus, calling for the records relating to Award dated 19.12.2000 passed by the 1st respondent in I.D.Nos.24, 16 and 17 of 1996, quash the same and direct the respondents 2 to 4 to reinstate the petitioners with continuity of service, back wages and other attendant benefits.

For Petitioners : Mr.L.Chandrakumar

For R2 to R4 : Mr.S.Arockiam
Central Government Standing
Counsel

O R D E R

These petitions have been filed to issue a writ of certiorarified mandamus, calling for the records relating to Award dated 19.12.2000 passed by the 1st respondent in I.D.Nos.24, 16 and 17 of 1996, quash the same and direct the respondents 2 to 4 to reinstate the petitioners with continuity of service, back wages and other attendant benefits.

2. Santhi [petitioner in W.P.No.16502/2001] and Kalaiselvi [petitioner in W.P.No.16503/2001] were temporary hands working as Stenographers in the Regional Office of the Development Commissioner for Handlooms [Enforcement Wing], Coimbatore. Similarly, Baskar, petitioner in W.P.No.16504/2001 was also a temporary hand working as Driver in the same Organisation. It appears that their services were dispensed with some time in the year 1991, pursuant to which, they raised Industrial Disputes before the Regional Labour Commissioner(C), Chennai. A notice dated 28.09.1994, was sent by the Regional Labour Commissioner to the Director, Indian Institute of Handloom Technology, Salem with regard to the grievance raised by the trio. It appears that on 26.10.1994, Santhi, Kalaiselvi and Baskaran were offered fresh employment as Stenographers and Driver respectively on the following conditions:

2. Terms of appointment are as follows:

- i) The appointment is purely adhoc for a period of one year and will not confer any claim or title to regular employment.
- ii) The appointment may be terminated at any time without assigning any reason.
- iii) The appointment carries with it the liability to serve any part of India.
- iv) The appointee will be subject to all the rules and instructions of Government in force from time to time. He/she will also be subject to the discipline and rules of office including office timing in force from time to time.

3. The appointment will be further subject to:-

- i) Production of a certificate of fitness from the competent medical authority i.e. Civil Surgeon in District Hospital/Government Hospital/Municipal hospital etc.
- ii) taking of an oath of allegiance/faithfulness to constitution of India in the presence form.
- iii) Two character certificates signed by the M.P. or Gazetted Officer not related to her/him.

4. It may please be stated whether the candidate is serving or is under obligation to serve another Central Department, a State Govt. or local authority.

3. The trio received the communication, but each one of them sent individual communications dated 12.11.1994 to the employer, which is worth extracting:

"Though I thank you for the order referred to above I am unable to accept or agree to the terms in your letter for the reasons given below.

1. The above referred order appoints me as a fresh appointee.

2. I was illegally terminated on and from 30.09.91 and hence I have claimed re-instatement with continuity of service and backwages.

But your order mentions that I will not be entitled for continuity of service and backwages which is not acceptable to me as I have suffered without employment for the last several years.

Though the Asst. Labour Commissioner's (Central-Madras) letter to your head office recommending my reinstatement does not mention anything about the continuity of service and backwages and it is a implied one. Because once the non-employment is not justified the normal remedy is reinstatement with backwages and continuity of service. This is the verdict of the Apex Court of our country.

But, I am prepared to join duty without prejudice to my claim for continuity of service and backwages and pursuing my non-employment Dispute pending before the Asst. Labour Commissioner, Madras (Central) confining the dispute in respect of continuity of service and backwages."

4. Thereafter, they followed it up with individual telegrams dated 26.11.1994, which reads as follows:

"REF YR TELEGRAM. UNLESS SERVICE CONTINUITY AND BACKWAGES IS GIVEN WE DO NOT WANT TO ACCEPT INTERIM OFFER."

5. In short, they refused to join the services, unless their service continuity was given. This was rejected by the employer, pursuant to which, the trio commenced conciliation proceedings, which ended in failure and the matter was

referred to the Industrial Tribunal for adjudication. The Industrial Tribunal by a common order dated 19.12.2000, rejected the claim of the petitioners, challenging which the petitioners are before this Court.

6. Learned counsel for the petitioners submitted that the petitioners had worked for about five years prior to 30.09.1991 and when their services were abruptly stopped, they raised Industrial Disputes and that after the Conciliation Officer had issued notice, the respondent made the aforesaid offer on 26.10.1994. Learned counsel further submitted that the petitioners had only stated that their previous services should be reckoned and that they should not be treated as new entrants, as that would cause undue prejudice to their rights.

7. Per contra, Mr.S.Arockiam, learned Central Government Standing Counsel for Handlooms sought to justify the order passed by the Industrial Tribunal.

8. This Court gave its anxious consideration to the rival submissions.

9. Admittedly, the respondents 2 to 4 are Central Government controlled Offices and appointment to various posts in those offices, perforce be through a proper selection process. It is trite that the Heads of the Departments do have power to make certain ad hoc appointments, taking into consideration the exigency of services. In those circumstances, the petitioners were employed as Stenographers and Driver. Admittedly, their services were dispensed with on 30.09.1991, pursuant to which, they had raised Industrial Disputes, as stated above. However, the subsequent offer of re-employment dated 26.10.1994 does not refer to the Conciliation proceedings at all. Perhaps, the employer in retrospect would have decided to show more indulgence to the petitioners by offering them the ad hoc appointment. The offer of appointment very clearly states that it is purely ad hoc for a period of one year and that it will not confer any claim or title to regular employment. Instead of accepting the offer, the petitioners sought to accept it with caveats and brought about their own ruin. This has been discussed vividly by the Industrial Tribunal and the relevant paragraph is extracted herein below:

"44. It is pertinent to note that in pursuance of the call for interview issued for the claimants in I.D.Nos.16/96, 18/96, 24/96 and 79/95 they have not appeared. Similarly, in pursuance of the appointment order issued to the claimants in I.D.Nos.17/96 and 19/96 they have not joined. Instead what they did was to make a written pro-test. Kalaiselvi has stated through Ex.21 that although she had received as interview notice dt. 16.2.94 what she was

entitled is for automatic re-employment as per Section 25 F of the Industrial Disputes Act 1947. She said that she could not appear for the interview and test. In the same manner, the other claimants also neither attended the interview nor accepted the re-appointment. Again they have effectively made a representation through Ex.W8 and W9 marked in I.D.No.16/96 reiterating the fact that they are not accepting the interview or re-appointment order. Even now they say that they are entitled for not only reinstatement, but for a permanent regularisation. They cannot refuse to undergo the procedure of regular recruitment provided in rules."

10. This Court does not find any infirmity in the conclusion arrived at by the Industrial Tribunal warranting interference in exercise of the powers under Article 226 of the Constitution of India.

In the result, these petitions are devoid of merits and the same are dismissed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gms

To

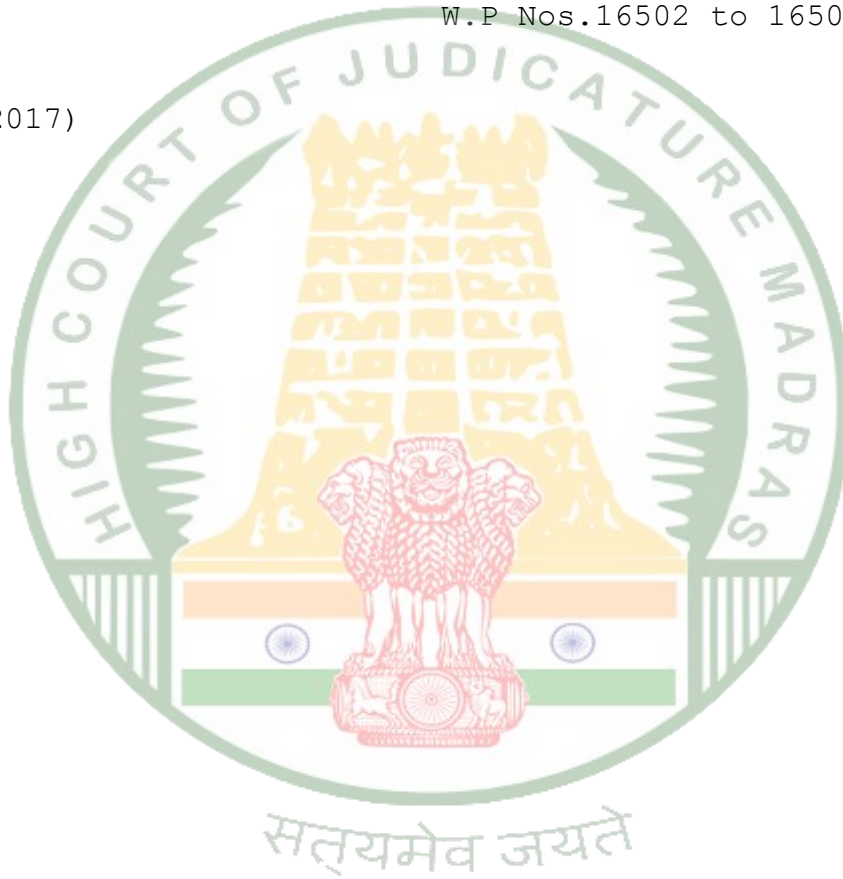
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Chennai-90.

+lcc to Mr.S.Arockiam, Advocate, S.R.No.72011
+lcc to Mr.L.Chandrakumar, Advocate, S.R.No.72094

W.P Nos.16502 to 16504 of 2001

RK(CO)
CA(05/01/2017)



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