



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :25.02.2016

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE C.T.SELVAM

W.A.(MD) Nos.298 and 299 of 2016
and CMP (MD) Nos.1693 and 1695 of 2016

- 1.The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
No.31, Kamarajar Salai,
Chepauk, Chennai.
- 2.The Executive Engineer,
Tamil Nadu Water Supply and Drainage Board,
RWS Division, 7, Ganesh Nagar,
Melur Road, Madurai.
- 3.The Assistant Executive Engineer,
Tamilnadu Water Supply and Drainage Board,
RWS Division, Theni. ... Appellants in both appeals

Vs.

- 1.The Presiding Officer,
Labour Court, Madurai.
- 2.Nagaraja Rao ... Respondents in both appeals

COMMON PRAYER : Writ Appeals filed under Clause 15 of the Letters Patent, praying to set aside the order dated 09.12.2014 passed in W.P.(MD) Nos.9194 of 2009 and 6435 of 2010 on the file of this Hon'ble Court.

Prayer in WP(MD). 9194/ 2009 :

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records relating to the award dated 17/12/2008 passed in I.D.No. 282 of 2001 on the file of the Second Respondent Presiding officer, Labour Court, Madurai, and to quash the same.

Prayer in WP(MD). 6435/ 2010 :

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a WRIT OF CERTIORARIFIED
all for the records relating to the award dated 17.12.2008 passed in I.D.No.282/2001, on the file of the fourth respondent Presiding Officer, Labour Court, Madurai, and to quash



the same in so far as the denial of 50% back-wages to the petitioner and consequently direct the Respondent Management to pay full back wages to the petitioner.

For Appellants : Mrs.Porkodi Karnan
For 2nd Respondent : Mr.S.M.Mohan Gandhi

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COMMON JUDGMENT

(Order of the Court was made by **C.T.SELVAM, J.**)

The appellants have filed this Writ Appeal, challenging the common order of learned Single Judge in W.P.(MD) Nos.9194 of 2009 and 6435 of 2010, on 09.12.2014.

2.Since these appeals arise out of a common order and the parties and issues involved are the same, they are disposed of by this common judgment.

3.Nagaraja Rao, the 2nd respondent in both appeals was appointed as a Watchman on 10.02.1988, under the control of RWS Section-I, Andipatti, through Employment Exchange, on daily wage basis. On 31.10.1990, the Water Management Scheme and its workers were transferred from Tamilnadu Water Supply and Drainage Board to Local Bodies. On the ground of poor financial position, the local bodies refused to accept the workers. Challenging the same, 2nd respondent and others filed Writ Petition (MD) Nos.3815 to 3832 of 2015 and obtained an interim order against relieving them from service. Of them, 11 were taken into service by the first appellant as fresh appointees but the 2nd respondent was not provided employment. Request of 2nd respondent there towards was rejected by the first appellant on 23.06.2000. Subsequently, in contempt petition filed by him, this Court advised the 2nd respondent to raise an industrial dispute before the Labour Court. Accordingly, he filed I.D.No.282 of 2001 before the Labour Court, Madurai.

4.Before the labour Court, it was the contention of the appellants/respondents that the 2nd respondent was temporarily appointed only for a specific scheme and he continuously worked only for 89 days. The scheme was handed over to the management of local bodies. Since as on 31.10.1990 there was no employment in the said scheme, the 2nd respondent was not provided employment. On 24.04.1996, as per the directions of National Water Supply and Drainage Board, daily wages employees were absorbed on certain conditions. Petitioner had not availed the said opportunity. The Industrial Disputes Act does not apply to the 2nd respondent. They sought dismissal of the claim petition.

<https://hcservices.ecourts.gov.in/hcservices/>
5.The 2nd respondent examined himself and marked 16 documents. On the side of appellants one Govindarajan was examined and one document was marked. The Labour Court partly allowed the petition,



directing the appellants to provide employment to the 2nd respondent with continuity of service and to pay 50% of the back wages.

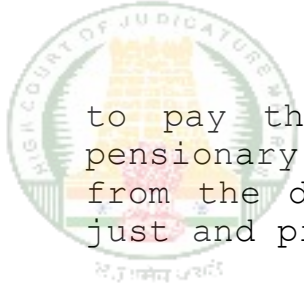
6. Challenging the same, the appellants filed W.P.(MD) No.9194 of 2009 and the 2nd respondent filed W.P.(MD) No.6435 of 2010 with respect to the denial of 50% back wages. Learned Single Judge, considering the position that the appellants have not explained why the petitioner alone was singled out and was not considered for reinstatement along with similarly placed employees and that during the pendency of the Writ Petitions, the 2nd respondent herein attained the age of superannuation, directed appellants to notionally reinstate the 2nd respondent in service with service benefits and 50% of the monetary benefits and to pay the entire monetary benefits, including retirement-cum-pensionary benefits, due to him within a period of twelve weeks from the date of receipt of a copy of the order. The said order is under challenge in these Writ Appeals.

7. We have heard learned counsel on either side and perused the materials available on record.

8. Mrs. Porkodi Karnan, learned counsel for the appellants contended that the second respondent was employed only for a particular project and on completion thereof, he had been dismissed from service. Since the nature of employment was not a permanent one, he did not fall within the definition of workmen under Section 2(s) of the Industrial Disputes Act and could not seek reinstatement with back wages. Second respondent could not insist on his employment in an other project. Learned counsel contended that both learned Single Judge as also the Labour Court had arrived on erroneous findings which are liable to be set aside.

9. We have heard Mr. S. Mohan Gandhi, learned counsel for second respondent on the above submissions.

10. We find that in passing the order under challenge, learned Single Judge has taken note of the factual finding of the Labour Court regards the second respondent having put in sufficient service towards claiming permanency and that in not having been provided employment while others similarly placed have been so provided, the second respondent had been discriminated against. Following the principle of no work no pay, the Labour Court, in the facts of the present case has taken a reasoned decision in permitting 50% backwages to the 2nd respondent. Learned Single Judge has found no reason to interfere. Neither do we. In circumstances, where the 2nd respondent has attained superannuation, the decision of the learned Single Judge, directing appellants to notionally reinstate the 2nd respondent in service with service benefits and 50% of the monetary benefits and



to pay the entire monetary benefits, including retirement-cum-pensionary benefits, due to him within a period of twelve weeks from the date of receipt of a copy of that order is found to be just and proper.

11. Finding no merits, these writ Appeals shall stand dismissed. No costs. Consequently, connected Miscellaneous Petitions shall stand dismissed.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

The Presiding Officer,
Labour Court, Madurai.

+ 1 CC TO M/S.LAKSHMI GOPINATHAN, ADVOCATE IN SR NO. 10909
+ 1 CC TO MR.S.M.MOHAN GANDHI, ADVOCATE IN SR NO. 10922

SJ

TE/PEK/SAR-I : 02/06/2016 : 4P/4C

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