

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2017

CORAM

THE HON'BLE Mr.JUSTICE V.PARTHIBAN

W.P.No.210 of 2012

- 1.M.Dharmalingam
- 2.C.Perumal
- 3.C.Karuppasamy
- 4.G.Yosadha
- 5.G.Thavamani
- 6.M.Dhanapal
- 7.A.Subramanian
- 8.N.Chitra
- 9.N.Vasanth @ Poonkodi
- 10.K.Poonkothai
- 11.M.Rajendran
- 12.G.Palanisamy
- 13.S.Chenniappan
- 14.C.Thuyavan
- 15.K.Sekaran
- 16.S.Gopal @ Gopalakrishnan
- 17.P.Marimuthu
- 18.V.Eswari

... Petitioners

Vs.

- 1.I.R.T.Perundurai Medical College & Hospital,
Rep. by its Addl.Director,
Sanatorium P.O.
Perunthurai & Taluk,
Erode District.

- 2.The Presiding Officer,
Labour Court,
Salem.

- 3.Perundurai Medical College & Hospital Uliyergal
Munnettra Sangam,
[Reg No.232/Periyar]
Rep.by its President
Perundurai Medical College & Hospital,
Sanatorium P.O.
Perunthurai & Taluk,
Erode District.

... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for entire records connected with award dated 02.09.2009 in I.D.No.133 of 2002, passed by the second respondent-Labour Court and quash the same only to the extent that the same has omitted to provide the relief of regularization to the petitioners herein and consequently direct the first respondent-Hospital to regularize the services of the petitioners in their respective posts held by them within a time frame fixed by this Court.

For Petitioners : Mr.S.Sathia Chandran
For Respondents : Mrs.Kala Ramesh for R1
No appearance for R3

ORDER

Heard Mr.S.Sathia Chandran, learned counsel appearing for the petitioners and Mr.Kala Ramesh, learned Counsel appearing for the first respondent.

2.The petitioners have approached this Court for seeking the following relief,

"To issue a Writ of Certiorarified Mandamus, to call for entire records connected with award dated 02.09.2009 in I.D.No.133 of 2002, passed by the second respondent-Labour Court and quash the same only to the extent that the same has omitted to provide the relief of regularization to the petitioners herein and consequently direct the first respondent-Hospital to regularize the services of the petitioners in their respective posts held by them within a time frame fixed by this Court. "

3. The case of the petitioners is as follows:

According to the petitioners, they were working as casual labourers from 1992 onwards in various posts such as attender, Female Nursing Orderly, cook and plumber etc., in the first respondent Medical College and Hospital. In spite of their long years of service as casual labourers, their services were not regularised by the first respondent. In the said circumstances, through their union, the petitioners approached the Government seeking to regularise their services in the respondent college and Hospital.

4. While approaching the Government, there were 67 workmen represented by Perundurai Medical College & Hospital Uzhiyargal Munnettra Sangam. The government has referred the matter for adjudication before the Labour Court, Salem, with the following terms of reference,

"Whether the claim of the petitioner union to regularize the 67 workman in the respondent Medical College and Hospital Management is justifiable? If so, from which date they have to be regularized?"

5. The dispute was numbered as I.D.No.133 of 2002. When the dispute was pending before the Labour Court, Salem, a memo was filed by the petitioner union on 07.08.2009, confining the relief of regularization only in respect of 40 persons named by the union, leaving out the other 27 persons who were originally a part of the reference made by the Government to the Labour Court. On the basis of the memo and after the adjudication of the dispute, the Labour Court has passed an award on 02.09.2009, directing the regularization of the 40 workmen registered in the above said memo.

6. The Management aggrieved by the award passed by the Labour Court, challenged the same in W.P.No.8725 of 2010. During the pendency of the writ petition before this Court, the first respondent entered into 18(1) settlement with 40 workmen covered under the award and regularized their services. On the regularization of the 40 workmen in 2011, the present petitioners came to know that their names got deleted from the list submitted by the union before the Labour Court. In the said circumstances, the petitioners herein have moved this Court challenging the award of the Labour Court in I.D.No.133 of 2002, dated 02.09.2009.

7. Insofar as the omission of the names before the Labour Court is concerned, the learned counsel appearing for the petitioners at the outset, would submit that the omission of the names of the petitioners from the list, originally submitted at the time of the reference by the Government is illegal and arbitrary, since the Labour Court has no power to enlarge or curtail the terms of reference made before it. Moreover, in the instant case, no notice have been sent to the 27 workers whose names were omitted from the list of persons submitted by the union in the year 2009. No consent has been taken from the omitted workers including the petitioners herein exempting them for pursuing their remedy before the Labour Court. In that view of the matter, the omission by the union and the subsequent award by the Labour Court, only in respect of the abridged list containing only 40 names cannot be considered to be a valid award.

8. The contention raised by the learned counsel for the petitioners has considerable force, particularly, the original terms of the reference pertain to the regularization of services of the 67 workmen and therefore, the Labour Court has completely misdirected itself and erred in accepting the memo filed by the union by omitting the names of the 27 persons including the petitioners herein. Since, the acceptance by the Labour Court of the memo filed by the union by deleting the names of the 27 workers

02.09.2009, only in respect of 40 workmen and not granting such a relief to other 27 persons or not adjudicating their claim either is bad in law and the same is liable to be interfered with. This Court finds that there is some justification in the submission made by the learned counsel appearing for the petitioners.

9. Upon notice, the learned counsel appearing for the first respondent entered appearance and filed a counter affidavit. According to her, many of the workmen have died and some of them left from service. However, be that as it may, it has to be seen that whether the right of the petitioners can be negated and curtailed when their names were originally found in the order of reference by the Government to the Labour Court. In the instant case, their right was sought to be negated illegally and unjustly and in view of the same, their claim was not adjudicated by the Labour Court for regularisation of the services.

10. The learned counsel for the petitioner would submit that as far as the present writ petition is concerned, the petitioner Nos.14, 16 and 17 are no more, therefore, they are not pursuing the present writ petition. In the light of the above discussion, this Court has no hesitation in allowing this writ petition as prayed for. In the said circumstances, the impugned award passed in I.D.No.133 of 2002, dated 02.09.2009, is set aside, only insofar as it omits the name of the 27 persons herein for application of the award. In the circumstances, the I.D. Stands restored and remanded back to the Labour Court. The second respondent is directed to adjudicate the claim of the petitioners herein on the basis of the award passed by the Labour Court to the 40 workmen on 02.09.2009 and in case this petition also was similarly placed, the same award is to be passed by the Labour Court in respect of these petitioners also. The Labour Court shall complete the proceedings within a period of four months from the date of receipt of a copy of this order.

11. With the above direction, the writ petition is allowed. No costs.

sd/

ASSISTANT REGISTRAR

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

To

1. The Presiding Officer,
Labour Court,
Salem.

+1 CC to Mr.S.SATHISH CHANDRAN, Advocate Sr.No.62555
+1 CC to Mr.KALARAMESH, Advocate Sr.No. 62734

W.P.No.210 of 2012

GJ (CO)