

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.12.2017

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.18666 of 2010 &
M.P.No.1 of 2010

Cheyar Panchayat Union,
Rep. By its Commisioner,
Cheyyar,
Vellore District

.. Petitioner

Vs.

1.C.Munisamy

2.The Presiding Officer,
Labour Court,
Vellore District.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for issuance of a writ of Certiorarified Mandamus, to call for the records relating to the order dated 07.10.2009 made in I.D.No.199/07 on the file of Principal Labour Court, Vellore and to quash the same and direct the second respondent herein to proceed as per law.

For Petitioner.. Mr.D.Srinivsan

For Respondents.. Mr.Ajay Khose for R1
R2-Court

ORDER

The petitioner has approached this Court seeking the following relief:

''to issue a writ of Certiorarified Mandamus, to call for the records relating to the order dated 07.10.2009 made in I.D.No.199/07 on the file of Principal Labour Court, Vellore and to quash the same and direct the second respondent herein to proceed as per law.''

2.The first respondent/workman was employed as Night Watchman from 30.06.1986 for the warehouse maintained by the petitioner-Union. According to the petitioner, the first respondent/workman was paid daily wages. He was employed only

under the scheme called 'SGRY' Scheme which was promoted by the Government. It appears that some questions were raised on the appointment of the first respondent and therefore, he was ultimately terminated from service on 04.05.2007. According to the averments contained in the affidavit filed in support of the writ petition, the District Collector has raised queries about the appointment of the first respondent/workman and hence, he was terminated from service.

3.As against the termination order, an Industrial Dispute was raised by the first respondent/Workman in I.D.No.199 of 2007 before the Second respondent/Labour Court. The Labour Court, after adjudicating all issues between the Management and the Workman, had passed an award on 07.10.2009, granting reinstatement with continuity of service, with 50% backwages and other attendant benefits. The said award is now challenged in the present writ petition.

4.Learned counsel for the petitioner would submit that the first respondent/workman was only employed under the Scheme and the said project was wound up in 2006 and therefore, his service was also terminated. The appointment order dated 13.06.1986, also discloses that he was appointed under the scheme. Therefore, he would contend that the Labour Court has completely erred in holding that the termination is illegal and void. According to him, the Labour Court has not appreciated the nature of employment of the first respondent/workman with the petitioner union and Section 25-F of Industrial Disputes Act, 1947, need not be followed.

5.Per contra, the learned counsel for the first respondent/workman would submit that the first respondent/workman was employed for more than 20 years, the nature of the employment cannot not said to be permanent. Even though the appointment order mentions about the project, the employment was not time bound. He would submit that the Labour Court has rightly held that the non-employment of the first respondent/workman without following mandatory procedure particularly Section 25(F) of the I.D. Act, had vitiated the order of termination. Therefore, the findings of the lower Court are well considered and do not call for any interference.

6.Learned counsel appearing for the petitioner would draw the attention of this Court to the findings of the Labour Court at Paragraphs-10, 11, 13 of the order, wherein, the Labour Court had discussed the dispute between the workman and the management and finally, held that the first respondent/workman is entitled to reinstatement with continuity of service and 50% back wages. The findings of the Labour Court in the above said paragraphs are extracted below:

10. However, Ex.W2 appointment order dated 30.06.1986 had been issued by the commissioner, Cheyyar Panchayat Union after due proceedings. There is reference to letter dated 23.1.1986 from Project Officer D.R.D.A.Thiruvannamalai District. Consequently, the appointment of the petitioner had been done after taking a conscious decision to appoint a person, and it had also been done under proper proceedings of the commissioner acting in accordance with the letter from the Project Officer. Needless to point out, the Project officer, D.R.D.A. Of any District was the Additional Collector of the said district. Consequently, the petitioner had been appointed by the Commissioner, Cheyyar Panchayat Union acting under instructions from the competent Authority of Thiruvannamalai District. Having appointed the petitioner, it is not open to the respondent to contend that there is no employer and employee relationship. Consequently, I hold that the petitioner had been under employment of the respondent. Ex.W3 is G.O.Ms.No.22, dated 28.2.2006. According to this G.O., employees working on daily wages were to be regularized on completion of 10 years of service. The petitioner was appointed in 1986. AS on the date of the G.O., in the year 2006, he had put in more than 20 years of service.

11. Further on facts, it is seen that the petitioner had been in continuous service from 1986. If he is to be terminated, the respondent should have followed the procedure as stipulated in Section 25-F of Industrial Disputes Act 1947. The pre-condition for Section 25-F is satisfaction of the requirements under Section 25-B of the said Act. If such a worker has to be retrenched, then he has to be paid on one month's notice pay and retrenchment compensation.

12. The contention that the scheme under which the petitioner was actually employed had been closed down cannot be a grant to prevent denial of the relief to the petitioner. There are no charges framed against the petitioner. I hold that the petitioner had been employed under the respondent. Further the letter Ex.M4 goes against the G.O., Ex.W3. Consequently, the letter Ex.W3 cannot have any basis and on that ground also, hold that the petitioner is entitled for reinstatement. The issue No.1 is answered accordingly in favour of the petitioner.

13.Issue No.2:- Even though reinstatement is ordered, the petitioner being a daily wages worker and having been appointed by proceedings of the commissioner as seen in Ex.W3 cannot seek entire back wages on such reinstatement. There is no specific pleadings that he had not been employed elsewhere. At the same time, he had also not faced any charges during his period of employment. Consequently, with respect to issue no.2 I hold that it will serve interests of justice if the petitioner is granted reinstatement with 50% back wages and with continuity of service and other attendant benefits. Issue No.2 is answered accordingly.

15.Finally, an award is passed granting reinstatement with continuity of service, with 50% back wages and other attendant benefits.

7.Learned counsel for the first respondent also placed reliance upon the decision dated 11.03.2015, made by a Division Bench of this Court in W.A.No. 258 of 2015, wherein under similar circumstances, it was observed as follows:

"6.The order of appointment was dated 10.09.1990. It is evident from the perusal of the said order that he was appointed as Night Watchman in the Cement godown on daily wage basis. There was no mention of the fact that the appointment of the second respondent was for any time bound project. The fact that salary was adjusted from the scheme does not mean that the appointment was for the scheme. The appellant has improved his case in the counter affidavit by submitting that the appointment was for the time bound scheme. However, no material has been produced in support of the submission that his appointment was only for a particular period of the scheme. Resultantly, we are unable to agree with the contention of the learned counsel for the appellant that the appointment of the second respondent on daily wages was for a specified period and for a particular scheme."

8.Learned counsel for the first respondent would submit that even in the present case, the first respondent was appointed under the Scheme, it is not time bound employment. Therefore, in all fours, the order of the Labour Court is justified and the Labour Court has rightly ordered reinstatement with continuity of service and 50% of back wages.

9.This Court is in full agreement with the submissions made by the learned counsel for the first respondent. As extracted above, the Labour Court has given a threadbare finding on the

dispute between the workman and the management, after taking note of all the materials and facts placed on record. The findings of the Labour Court are justified and do not warrant interference by this Court. The Labour Court has also given a well considered reasoning for the benefit of granting 50% of backwages to the first respondent/workman. On the whole, the award of the Labour Court is a well considered, supported by sound reasoning and materials and therefore, the same does not call for any interference by this Court.

10. For the above said reasons, this Court finds no merit in the writ petition and therefore, the same is dismissed. The petitioner Union is directed to implement the award of the Labour Court dated 07.10.2009, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Presiding Officer,
Labour Court,
Vellore District.

+1 cc to Mr.D.Srinivasan Advocate sr 87263
+1 cc to Mr.V.Ajay Khose Advocate sr 87342

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W.P.No.18666 of 2010 &
M.P.No.1 of 2010

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