

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 27.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
Writ Petition No.19020 of 2003

The Management
Kumbakonam Municipality
Kumbakonam

..Petitioner

Vs

1. Stalin Josephraj

2. The Presiding Officer,
Labour Court, Cuddalore.

3.Tmt.N.Leema Rose
(impleaded as R3 vide
order dated 27.02.2017
in WMP.No.5095/17)

..Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified mandamus to call for the records pertaining to the order of the 2nd respondent in I.D.No.53 of 1996 dated 31.12.2002 and quash the same.

For Petitioner : Mr.K.Rajkumar
For Respondents : Mr.S.N.Ravichandran (R1)

O R D E R

1.1 It is the case of Stalin Josephraj/1st respondent that he was working as a Technical Assistant, Grade III in the Kumbakonam Municipality on NMR basis from 27.12.1991 and his last drawn monthly wages was Rs.1,530/-; that on 30.09.1994, the petitioner/Management orally terminated him from service, pursuant to which, he raised an Industrial Dispute before the Labour Officer and on the failure of the conciliation proceedings, the Government referred the matter to the Labour Court, Thanjavur, wherein the case was taken on file as I.D.No.53 of 1996.

1.2 The contention of the Stalin Josephraj/1st respondent is that he had worked for 342 days in the year 1992, 338 days in the year 1993 and 260 days in the year 1994.

1.3 The petitioner/Management filed a counter affidavit, refuting the allegations made by Stalin Josephraj/1st respondent. The Management did not deny the employment of Stalin Josephraj/1st respondent, but contended that he was not a

workman within the meaning of Section 2(s) of the Industrial Disputes Act (hereinafter referred to as "the Act"). They also denied the contention of Stalin Josephraj/1st respondent that he had worked for 342 days in the year 1992, 338 days in the year 1993 and 260 days in the year 1994.

1.4 The Labour Court framed the following issues:

(i) Whether Stalin Josephraj/1st respondent was a workman within the meaning of Section 2(s) of the Act?

(ii) Whether there has been retrenchment in terms of Section 25(f) of the Act? and

(iii) To what relief Stalin Josephraj/1st respondent would be entitled to?

1.5 Before the labour Court, Stalin Josephraj/1st respondent examined himself as W.W.1 on 28.01.1999. He was not cross examined by the Management. Therefore, the labour Court had passed an ex-parte award on 28.01.1999 in favour of Stalin Josephraj/1st respondent and directed his reinstatement with backwages.

1.6 Pursuant to the said ex-parte award dated 28.01.1999, the petitioner/Management filed an application to set aside the ex-parte award, which was allowed by the labour Court. Once again, Stalin Josephraj/1st respondent was examined in Chief on 17.07.2001. In the Chief Examination, he marked exhibits in support of his claim. Though several adjournments were given, the petitioner/Management did not cross examine Stalin Josephraj/1st respondent. Therefore, his evidence was closed. Thereafter, further opportunities were given to the Management to adduce evidence. When the Management did not come forward to adduce evidence, the labour Court, once again passed an award on 31.12.2002, directing reinstatement of Stalin Josephraj/1st respondent with backwages, challenging which, the petitioner/Management is before this Court.

2. At the time of admission on 11.07.2003, this Court has passed the following order in WPMP.No.23822 of 2003:-

"Interim stay and Notice". Subsequently, after Stalin Josephraj/1st respondent had entered appearance, this Court has passed the following order on 11.09.2003:-

"Interim stay granted on 11.7.2003 is made absolute on the conditions the petitioner deposits the entire back wages within four weeks from today and complying with 17(B) obligation. On such deposit, the first

respondent/workman is permitted to withdraw fifty percent of the amount deposited. The rest of the fifty percent has to be deposited in a nationalised Bank and the interest accrued thereon can also be withdrawn by the first respondent/workman once in six months".

3. Thereafter, the petitioner/Management has filed WMP.No.45166 of 2003 for extension of time to comply with the earlier order dated 11.09.2003 and this Court, on 23.01.2004, has passed the following order:-

"Heard both sides.

Time is extended by three weeks from today, for complying with the order dated 11.09.2003".

4. When the matter was taken up for hearing, it was reported before this Court that Stalin Josephraj/1st respondent died on 03.02.2017. His wife has filed WMP.No.5095 of 2017 to implead herself as the 3rd respondent in the present writ proceedings, being the legal heir of the deceased Stalin Josephraj/1st respondent, which is allowed by this Court today.

5. Heard Mr.Rajkumar, learned counsel for the petitioner/Management and Mr.S.N.Ravichandran, learned counsel for the legal heir of the deceased Stalin Josephraj/1st respondent.

6. Mr.Rajkumar, learned counsel for the petitioner/Management strongly relied upon the Judgment of the Hon'ble Supreme Court in the case of Secretary, State of Karnataka vs. Umadevi reported in {2006 (4) SCC 1}, wherein, the Hon'ble Supreme Court has stated that back door entry into Government service cannot be permitted and all appointments must be made only in the manner known to law through proper recruitment process and therefore, the learned counsel submits that the order of the labour Court is void.

7. Per contra, Mr.S.N.Ravichandran, learned counsel for the legal heir of the deceased Stalin Josephraj/1st respondent strongly refuted the above contention.

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

9. It is true that in Uma Devi's case cited supra, the Hon'ble Supreme Court has clearly stated that there cannot be any back door entry into Government service. In the case on hand Stalin Josephraj/1st respondent had raised a valid Industrial Dispute before the authorities, wherein, he contended that he had worked on Nominal Muster Roll under the Kumbakonam

Municipality from 1992 to 1994 and that he had also given the number of days that he had worked for the said period. According to him, he had worked for 342 days in the year 1992, 338 days in the year 1993 and 260 days in the year 1994. In support of his contention, he had marked exhibits, WW1 series namely the receipts issued by the Management for having employed him for various periods.

10. Mr. Rajkumar, learned counsel for the petitioner/Management contended that even going by the receipts produced by him, he has not establish the fact that he has worked for number of days required for regularisation.

11. On a perusal of exhibits WW1 series, it clearly reflect the number of days Stalin Josephraj/1st respondent was working, as asserted by him and in the absence of petitioner/Management adducing any contra evidence, it cannot be stated that the labour Court should have disbelieved the version of Stalin Josephraj/1st respondent.

12. As regards Umadevi's case, relied on by the learned counsel for the petitioner/Management, it is true that in the said case, the Hon'ble Supreme Court has clearly stated that there should not be any back door entry. However, in this case, it has not been denied by the Management that Stalin Josephraj/1st respondent was employed by them as Technical Assistant, Grade III. But, their only contention was that he had worked on certain schemes and on the discontinuation of the Schemes, his services were dispensed with. In support of this plea, the petitioner/Management did not adduce any evidence. Therefore, it must be borne in mind that the labour dispute was raised in the year 1994; the matter was referred to the Labour Court in the year 1996; the Management was set ex parte once on 28.01.1999 and the said ex parte order was set aside; once again, enquiry commenced before the Labour Court and second time also the Management did not effectively participate in the enquiry and adduce any contra evidence. That apart, it is seen that the Management has also not deposited 17B wages, which was directed to be deposited by this Court vide order dated 11.09.2003.

13. Now that Stalin Josephraj/1st respondent is dead and his widow has entered appearance, this Court is of the view that this is not a fit case for judicial intervention.

14. It is represented that the petitioner/Management had deposited the entire backwages and only 50% amounting to Rs.85,680/- was withdrawn by Stalin Josephraj/1st respondent, as could be seen from the receipt dated 08.11.2004 issued by the

labour Court, Cuddalore. In view of the same, the legal heir of Stalin Josephraj/1st respondent is entitled to withdraw the remaining amount with accrued interest. Further, the petitioner/Management is directed to pay the backwages and all terminal benefits of the deceased Stalin Josephraj/1st respondent to his legal heir, within a period of eight weeks from the date of receipt of a copy of this order.

15. Accordingly, writ petition stands dismissed with the above directions. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

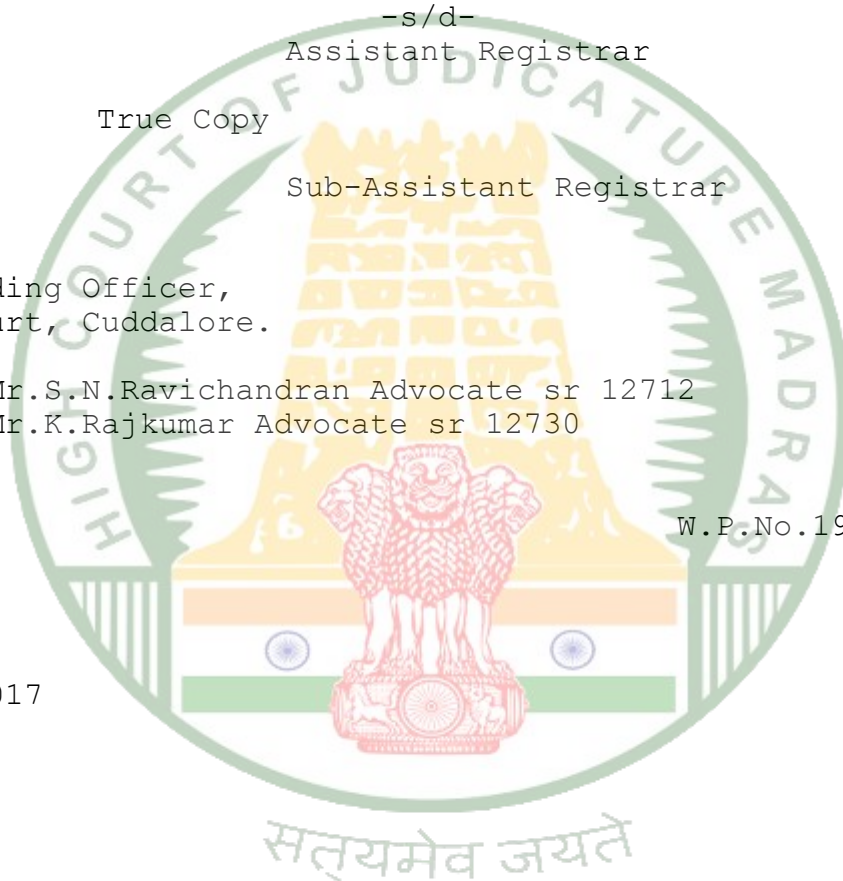
The Presiding Officer,
Labour Court, Cuddalore.

+1 cc to Mr.S.N.Ravichandran Advocate sr 12712

+1 cc to Mr.K.Rajkumar Advocate sr 12730

W.P.No.19020 of 2003

lrs(co)
aa01/03/2017



WEB COPY