

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2018

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

Writ Petition No.20307 of 2004
& WPMP No.24436 of 2004

The Management,
Tamil Nadu Water Supply and Drainage Board,
Cuddalore ... Petitioner

Vs.

1. Kanayiram
2. The Presiding Officer,
Labour Court, Cuddalore ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records made in impugned award dated 28.05.2003 made in I.D.No.5 of 1998 on the file of the second respondent.

For Petitioner : Mr. Arockiaraj

For Respondents : Mr. S.Saravanakumar, for R-1,

O R D E R

The Labour Court has passed an award setting-aside the order of termination dated 09.02.1994 and reinstating the workman along with the continuity of service and 50% of back-wages. This order is under challenge by the Management, in this writ petition.

Brief facts:-

2. By the order dated 20.03.1985, the workman joined as a watchman on 25.03.1985. He was removed from service without assigning any reason, on 28.02.1991. On demand being made, he was put in service by the order dated 03.03.1993 and he joined service on 01.04.1993. After a period of 10 months, again he was orally terminated from service. According to the workman, the provisions of Section 25-F of the Industrial Disputes Act, 1947, was not followed. The termination was termed illegal, as there was no show cause notice issued, no charges framed and no domestic enquiry conducted. The workman preferred a complaint

before the Conciliation Officer and as the conciliation failed, a failure report was filed by the Conciliation Officer.

2.1. According to the case of the Management, the workman was purely engaged on temporary basis and the tenure would end at the completion of the project. In other words, the engagement was based on project basis and once the project concludes, the workman has no right to ask for continuance in the employment. According to the Management, the workman was engaged on NMR basis, on and from 25.03.1985, as Watchman. After the project was over, he was not employed further. He is only discharged from service and not dismissed from service. Only for the purpose of Thiruvannainallur Project, he was assigned duty and after the end of that project, he was discharged from service on 28.02.1991. Therefore, in the absence of proof to show that in the period of two years, the workman was engaged for 480 days continuously, the case of the workman will not stand scrutiny to law. Therefore, the order of disengagement / order of discharge passed by the Management has to be upheld.

3. The Labour Court has framed the following two issues:-

- (i) Whether the oral termination dated 09.02.1994 is valid?
- (ii) Whether the workman has to be reinstated along with continuity of service and back-wages?

4. The Labour Court had the benefit of 12 documents which were marked on the side of the workman and the evidence of each one of the witnesses on either side. The Labour Court, on a consideration of the materials placed before it, along with the evidence, came to the conclusion that the oral termination was against the provisions of Section 25-F of the Industrial Disputes Act and therefore, the order of termination is liable to be set-aside.

5. The Management has chosen to challenge that order on the following grounds:-

(i) The appointment of the workman was on temporary basis for a water supply scheme and thereafter, the workman was discharged on 28.02.1991.

(ii) There is no evidence to show that the workman was continuously working from 01.04.1993 and terminated on 09.02.1994.

(iii) The decision reported in 2001 (1) LLJ 596 (Hindustan Machine Tools and others v. M.Rangareddy and others) does not apply to the case of the workman.

6. So far as the third ground is concerned, it is necessary to look into the dictum laid down in the said case, viz., 2001 (1) LLJ 596 (referred to supra) which reads thus:-

"This Court, in the case of State of Haryana & Ors. Vs. Piara Singh & Ors. (supra) considered the question of regularisation of ad hoc, work-charged employees and casual labour. Therein this Court observed: " So far as the work charged employees and casual labour are concerned the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell say two or three years - a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this court security of tenure is necessary for an employee to give his best to the job . In this behalf, we do commend the orders of the Govt. of Haryana (contained in its letter dated 6.4.90 referred hereinbefore) both in relation to work-charged employees as well as casual labour." "

6.1. From the dictum laid down, it is clear that the case of the workman is squarely covered by the above decision.

7. The learned counsel appearing for the workman relied upon the common order passed in W.P.No.3815, 3816 to 3832 of 2005, which is a dispute relating to the case of the workman who were employed in the water supply and draining scheme and for the maintenance of the scheme. It has been held in the said case that the very object of the Tamil Nadu Act 4 of 1971 by which TWAD Board was established was with a view to conceive, execute and maintain water supply schemes. When the scheme provides for not only execution but also for maintenance, then TWAD Board cannot run away from reality by saying that on the closure of one scheme the worker will be left high and dry and they will be sent out with the start of another scheme. This Court has also pointed out the stand taken in cases of this nature where the contention was that the workman was recruited through Employment Exchange and they are experienced in maintaining the scheme. With this observation, the award passed by the Labour Court for reinstatement has been confirmed.

7.1. This order of the learned Single Judge has been challenged before the Hon'ble Division Bench in Writ Appeal Nos.726 to 743 of 2007. The view expressed by the learned Single Judge has been confirmed and the writ appeal has been

dismissed with modification only in respect of the back-wages payable.

8. So far as the award passed by the Labour Court is concerned, the Labour Court has taken note of the admission made by the Management that the workman was working from 01.04.1993 to 09.02.1994. As per the decision reported in 1985 (52) FLR 494 (H.P.Singh v. Reserve Bank of India) the holidays, Saturdays and Sundays have to be included while calculating the period of work. The Management has taken steps to regularize the services of other workmen who have completed 480 days of service continuously, within a period of two years. There is no evidence to show that the engagement of the workman was for a limited period and for a specific work. The workman is not a seasonal worker.

9. The Labour Court, on consideration of the materials placed before it, has given a positive finding that the workman has completed the period of 240 days of work, within a period of one year. The termination was also found to be against the provisions of Section 25-F of the Industrial Disputes Act, as there was no prior notice as well as there was no payment of compensation. As the termination was found to be against the provisions of Section 25-F, the Labour Court has ordered reinstatement. The finding of fact that is not found to be perverse is to be upheld.

10. In view of the above reasonings, the writ petition has to be dismissed and it is dismissed and the findings rendered by the Labour Court is confirmed. No costs. Consequently, the connected WPMP is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

srk
To

The Presiding Officer, Labour Court, Cuddalore.

+2cc to Mr.M.Arokiaraj, Advocate sr.72293
+1cc to M/S.S.Saravanakumar, Advocate Sr.71953

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srg 15/02/2019