

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2018

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

W.P.No.25706 of 2004

1.The Management

Administrative Engineer

Tamil Nadu Water Supply and Drainage

Board (Rural), Erode.

2.The Managing Director

Tamil Nadu Water Supply and Drainage

Board, 31, Kamarajar Salai, Chennai 600 005. .. Petitioner

Vs

1. Mr.P.Samuel

2. The Presiding Officer

Labour Court, Salem.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records made in the impugned award dated 08.10.2003 in I.D.No.225 of 1997 on the file of the labour court, Salem.

For Petitioner : Mr.M.Arokiaraj
For Respondents : Mr.M.Muthupandian
R2 - Labour Court

O R D E R

This writ petition has been filed by the management, challenging the award passed by the labour court, Salem in I.D.No.225 of 1997 dated 08.10.2003. The labour court has passed an award stipulating that the non employment of the workman is not justified and there was also direction to the management to reinstate the workman in service within two months from the date of the order, with continuity of service and other benefits, but without backwages. This order is challenged by the management in the present writ petition.

2. Learned counsel for the workman would submit that persons who have been similarly placed have filed writ petitions in W.P.Nos.12863, 12992 to 12995 etc., of 1994 and by an order dated 19.01.1996, this Court, while disposing of the writ petitions, has considered the effect of non compliance of the provisions of Section 25F(a) and (b) of the Industrial Disputes Act dealing with retrenchment. The action of the management in

terminating the services of the NMR workers, without complying with the provisions of Section 25F(a) and (b) of the Industrial Disputes Act has been extensively dealt with by this Court. That was a case pertaining to 30 workmen who have been terminated by the management. This Court while dealing with the definition of "Retrenchment" as contemplated under Section 2 (oo) of the Industrial Disputes Act along with Section 25F(a) and (b) of the Industrial Disputes Act, has held as follows.

"Section 25F(a) provides that no workman employed in an industrial establishment shall be retrenched by the employer until the workman has been given one month notice in writing. Section 25F(b) provides that no workman employed in any industry shall be retrenched by the employer, unless a compensation which shall be equivalent to fifteen days' average pay for every completed year of service is given. Non compliance with the mandatory conditions and its precedents prescribed under Section 25-F of the Act would make the order of termination void ab initio. Such workmen are entitled to reinstatement with continuity of service and back wages.

3. Learned counsel for the workman would submit that the case of this workman is exactly covered by the factual aspects of the case cited supra and therefore the award of the labour court ordering reinstatement has to be confirmed.

4. Per contra, learned counsel for the petitioner / management submits that there is no proof to show that the nature of work was purely adhoc and it was project based; and on completion of the project, the workman would not be entitled to continue in service. He further submits that by the very nature of the work, the order for reinstatement cannot be made. It is an admitted fact that the first respondent herein / workman had been working with the management / petitioner from 01.03.1993 to 21.01.1994. It is the further contention of the management that it is the case of abandonment of work by the workman and not termination by the management. It is pertinent to note that this issue also has already been dealt in detail by the labour court.

5. At this juncture, learned counsel for the workman submits that he joined the service of the management on 01.03.1993 and he was terminated on 21.01.1994 and therefore he had completed the period of service covering 240 days. He further submits that even otherwise, the persons who have been similarly placed and those who have not completed 240 days have been ordered to

be reinstated on the ground that statutory provisions before termination have not been followed, and on that ground the workman in the present writ petition is also eligible for reinstatement.

6. The fact that similarly placed persons have been reinstated consequent to the order of this court, is not in dispute. In other words, the order dated 19.01.1996 made in W.P.Nos.12863, 12992 to 12995 etc., of 1994 has been complied with by the management.

7. Under the circumstances, the well considered order passed by the labour court cannot be interfered with. The first respondent / workman is ordered to be reinstated. With regard to continuity of service, and the same shall be considered only for the calculation of terminal benefits at the time of superannuation. The order of the labour court awarding no backwages requires no interference and it is confirmed. The writ petition is disposed of on the above terms.

KST

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Presiding Officer
Labour Court, Salem.

+1cc to Mr.M.Muthupandian, Advocate SR.NO.71885

+2cc to Mr.M.Arokiaraj, Advocate SR.NO.72292

VGII(CO)

sm:22.11.2018

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