

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.07.2018

CORAM
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.22355 of 2008

The Management,
Salem District Co-operative Milk Producers
Union Limited,
Rep.by its General Manager,
Sithanur,
Dhalavaipatty,
Salem - 636 302.

... Petitioner

Versus

1.A.Chinnarasu
2.The Presiding Officer,
Labour Court,
Salem.

... Respondents

Petition filed under Article 226 of the Constitution of India, seeking Writ of Certiorari, to call for the records pertaining to the award passed by the 2nd respondent in I.D.No.563 of 2004 dated 05.12.2007 and quash the same.

For Petitioner : Mr. V.Raghupathi

For R1 : Mr.K.V.Shanmuganathan

ORDER

The petitioner/Management has come forward with this writ petition praying to issue a writ of Certiorari to quash the award dated 05.12.2007 passed by the 2nd respondent/Labour Court in I.D. No. 563 of 2004.

2. The case of the first respondent is that he was appointed as daily wage employee on 18.02.1993 and he joined the petitioner- management on 21.05.1993 as Night Watchman. However, on 09.02.2002, the first respondent was orally removed from service and his representations sent to the Management for re-employment, have not been considered. Therefore, the first respondent has filed I.D. No. 963 of 2004 claiming reinstatement with all attendant benefits.

3. The Management resisted the case of the first respondent by contending that the first respondent worked only for 84 days and thereafter, he stopped attending duty on his own without any intimation or prior permission. The first respondent abandoned his work and did not attend duty for about 5 years. However, the Rasipuram Milk procurement officer appointed the first respondent as Night Watchman orally on humanitarian grounds but he became disabled by sustaining injuries outside the work place in a road accident during February 2002. That being the case, during January 2002, the Man Power Rationalization Committee recommended for reduction of man power strength in the Milk Procurement Union. Hence, the first respondent was relieved from the service and stopped from attending the job with effect from 09.02.2002 and the job of security or watchman was entrusted to Ex.Servicemen as per the recommendation of the Committee. The re-employment of the first respondent as Night Watchman in 1997 was only on humanitarian grounds and he cannot seek for regularisation of service.

4. Before the Labour Court, the first respondent examined himself as RW1 and Exs. R1 to R10 were marked. On behalf of the Management, Exs. P1 to P8 were marked. On a perusal of oral and documentary evidence, the Tribunal held that the non-employment of the first respondent by citing abolition of the post is, unjustified and the first respondent is entitled for reinstatement with full backwages with continuity of service.

5. The learned counsel for the petitioner submits that the award passed by the Labour court declaring the non employment of the first respondent as illegal, is unjustified and reinstating him with continuity of service and back wages, is unsustainable.

6. The first respondent raised dispute before the Labour Officer and inspite of his best efforts, the Management did not agree to appoint the first respondent herein, in terms of the suggestion made by the Labour Officer and the Labour Officer issued a failure report to the first respondent herein, wherein Ex.P1 to P4 and R1 to R5 and P8 were also marked and the petitioner has also filed documents Ex.R1 to R10. The petitioner would contend that the first respondent was employed in the said society as a Daily wage employer on 18.02.1993 and the first respondent herein was posted in the Rasipuram Milk Sales society on 29.03.1997. The Management removed him from service orally on 09.02.2002 and at that time, no notice was issued and hence, he filed a petition under Section 2A(2) of the Industrial Disputes Act, before the Labour Court.

7. It could be seen from the award that the first respondent herein had met with a road accident outside the company and he sustained injury and became disabled. After 5

years, he was appointed by the Rasipuram Milk procurement Officer as a Night Watchman. The Watchman duty was entrusted to Ex.Servicemen and he was appointed as a Night Watchman only on humanitarian grounds from 28.03.1997. Since the date of his appointment into service, he attended work only for 5 years. The first respondent was discharged, as his post was abolished and the claim of the petitioner cannot be considered.

8. It could be seen that the daily wage employees were appointed through the Employment Exchange. The first respondent was appointed as a daily wage employee with effect from 19.05.1993. Since the first respondent met with an accident, he could not continue to do work as before. Hence, he was posted in the Rasipuram Milk Sales Society as Night Watchman on 29.03.1997. He worked in the above said post without any disturbance. Thus, after the said post is abolished, he was stopped from service. The first respondent was not appointed by the Managing Director or by the Milk procurement Society and his earlier work with the Milk procurement Society was irregular. Hence, the first respondent's re-employment cannot be considered. As per Section 25-B of the above Act, on account of accident or sickness etc., the first respondent shall be deemed to continue in service. The contention raised by the Management, was not accepted by the Labour Court. It is not the case of the petitioner that the first respondent had not worked for 240 days. The proceedings relating to denial of employment was issued on 09.02.2002. The appointment beyond the cadre strength can be made only by the Government after relaxing the provisions under Sections 170 and 182 of the Tamil Nadu Co-operative Societies Act, 1983 and the regulation of service in respect of the Statutory rules, has been questioned before the Apex Court. The Apex Court has held that the said order is not in accordance with law. Such appointment made in deviation from the procedures laid down under the above said Rules is in violation of the statutory rules and it could not be cured by taking recourse to regulation.

9. This Court is of the view that the first respondent's case is different. Hence the above said case is referred is not applicable to the first respondent, since the first respondent was appointed through Employment Exchange and it was not an irregular appointment. Therefore, the first respondent was appointed in irregular vacancy as Night Watchman. The Management's contention is that subsequently the post of Watchman was abolished on account of restructuring of man power. Hence, the first respondent cannot claim the post on the basis of regularisation, even though he was appointed through Employment Exchange cannot be accepted.

10. For the reasons stated above, this Court is inclined to interfere with the order passed by the Labour Court.

Accordingly, there shall be an order that the first respondent shall be reinstated into service from the date of receipt of copy of this order, without continuity and without back wages in the principle of, "no work, no pay". The Writ Petition is allowed to the extent indicated above. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

klt

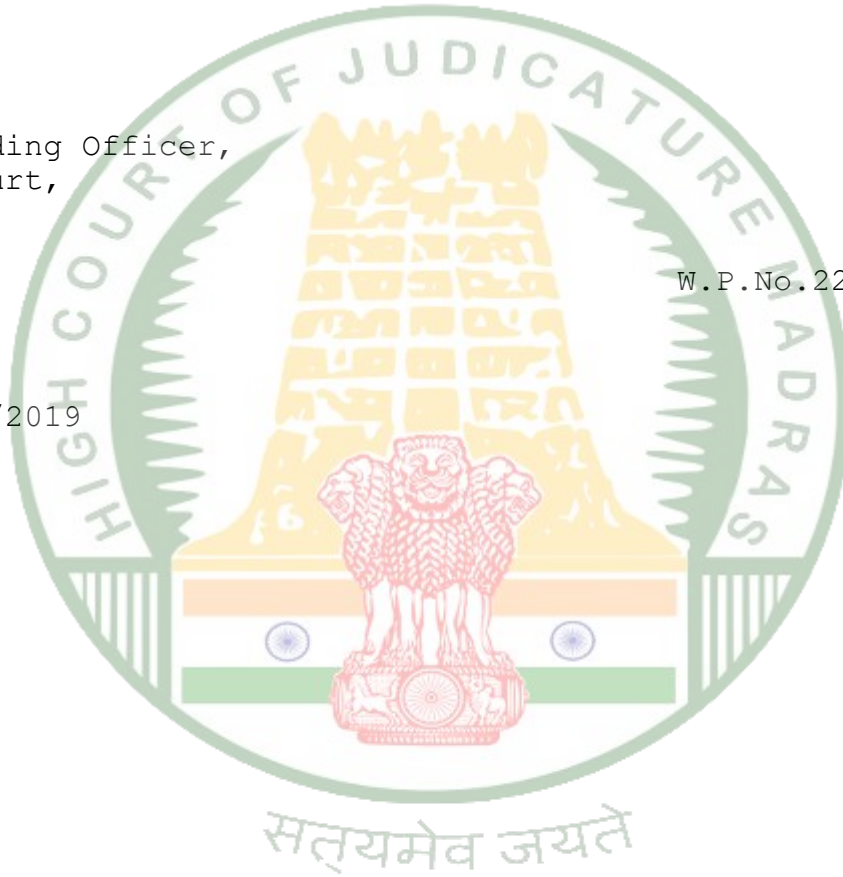
To

The Presiding Officer,
Labour Court,
Salem.

W.P.No.22355 of 2008

SPD(CO)

rrs 02/01/2019



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