

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2018

C O R A M

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

WP.No.3177 of 2016

and

WMP.Nos.2609 of 2016 & 11420 of 2017

P.Santhamurthy

...Petitioner

Vs.

1.The Govt of Puducherry,
Rep. by its Secretary,
Labour Department, Puducherry

2.The Labour Officer (Conciliation),
O/o Labour Officer (Conciliation),
Labour Department Complex,
Gandhi Nagar, Puducherry

3.M/s.M.S.Swaminathan Research Foundation,
Represented by Executive Director,
Taramani, Chennai 600 030

... Respondents

PRAYER

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the third respondent dated 08.01.2016 and quash the same and consequently direct the 3rd respondent to forbear him from altering the service conditions of the petitioner in any manner including discontinuance of service as Senior Scientist at M S Swaminathan Research Foundation or failing to provide employment in any manner without getting permission under Section 33 of the Industrial Disputes Act, 1947, in the Industrial Dispute raised by the petitioner which is pending conciliation before the 2nd respondent as dispute regarding termination of the Petitioner's service and further direct the 2nd respondent to conciliate and effect settlement and if no settlement is forthcoming to submit failure report under Section 12(4) of the Industrial Disputes Act and in turn direct the 1st Respondent to refer the dispute for adjudication before the competent Industrial Adjudicator.

For Petitioner : Mr.Stalin Abhimanyu

For Respondents : Mr.G.Anand for
M/s.T.S.Gopalan & Co For R3

O R D E R

The relief sought for in this writ petition is to quash the order passed by the third respondent in proceeding dated 08.01.2016 and direct the third respondent to forbear him from altering the service conditions of the writ petitioner in any manner including discontinuance of service as Senior Scientist at M S Swaminathan Research Foundation.

2. The learned counsel for the writ petitioner made a submission that the writ petitioner was terminated from service without following the procedures as contemplated. Thus, the writ petitioner was constrained to move the present writ petition.

3. However, the dispute raised by the writ petitioner under the provisions of the Industrial Disputes Act, 1947 was negatived by the competent authorities. In this regard, the learned counsel for the third respondent submitted an order dated 21st July 2017 issued by the Additional Secretary to Government(Labour) by stating that the writ petitioner is not a workman under the provisions of the Industrial Disputes Act, 1947. As per Section 2 (s) (iv) of the Industrial Disputes Act, 1947, workman does not include any such person " who being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature". The learned counsel for the writ petitioner states that the said order has been filed in WP.No.22536 of 2017.

4. May that it be, this Court is of an opinion that the writ petitioner was holding the post of Senior Scientist. Prima facie the post of Senior Scientist cannot be considered under the category of labourer or workman under the provisions of the Industrial Disputes Act, 1947. However, now, it is brought to the notice of this Court that the third respondent filed an affidavit stating that the socio economic project has been secured in Wynad, Kerala. If the petitioner is willing and make a request in writing, the same will be placed before the appropriate authority for positive consideration. Such a statement is made by the Executive Director of the third respondent.

5. Thus, it is left open to the writ petitioner to submit appropriate request application to accommodate him in any one of the suitable position which is available in the third respondent organisation. In the event of submitting any such application by the writ petitioner, the third respondent is directed to consider the same and pass orders on merits and in accordance with law and as per the submissions made by them in the additional affidavit

6. With these observations, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary,
The Govt of Puducherry,
Labour Department, Puducherry
- 2.The Labour Officer (Conciliation),
O/o Labour Officer (Conciliation),
Labour Department Complex,
Gandhi Nagar, Puducherry
- 3.The Executive Director,
M/s.M.S.Swaminathan Research Foundation,
Taramani, Chennai 600 030

+1cc to M/s.T.S.Gopalan & Co, Advocate sr.no.32668
+1cc to Mr.Stalin Abhimanyu, Advocate sr.no.31411

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nr 17/05/2018