

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 13.04.2018

CORAM

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P. No.35382 of 2003,
W.P.M.P. No.16954 of 2006,
W.P.M.P. No.11328 of 2004
and W.P.M.P. No.186 of 2014

- 1.The Executive Engineer,
Irrigation and Public Health,
Public Works Department,
Karaikal.
 - 2.The Assistant Engineer,
Medium Irrigation (North),
Public Works Department,
Karaikal.
 - 3.The Assistant Engineer,
Medium Irrigation (South),
Public Works Department,
Karaikal
-Petitioners

Vs.

- 1.The Presiding Officer,
Labour Court, Karaikal.

2.C.Balakrishnan

सत्यमेव जयते ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records from the file of First Respondent in I.D.7/2001 wherein the impugned order dated 28.10.2002 was passed and quash the same and permit continuance of disciplinary enquiry as against the Second Respondent on the basis of the alleged misconduct as per law.

For Petitioner : Mr.J.Kumaresan
Government Advocate (Pondicherry)

For Respondent : Court (For R1)
M.Gnanasekar (For R2)

ORDER

The Petitioners in this Writ Petition are authorities of the Irrigation and Public Health, Public Works Department of the Union Territory of Pondicherry at Karaikal. The Second Respondent was engaged as casual labour by the Petitioners. The Second Petitioner had issued the following order dated 11.06.1999 to the Second Respondent:-

"Thiru C.Balakrishnan, Casual Labourer, Irrigation and Public Health Division, Public Works Department, Karaikal was dealt with departmentally on the following charges.

- (i) He has entered the Assistant Engineer's chamber unauthorisedly on 09.02.1999.
- (ii) Unauthorisedly absent from duty from 26.02.1999.

His act is not conducive to allow him to continue in C.L.R. Service. His absence has caused hindrance of public services for which he was posted.

Therefore the undersigned, under the provisions contained in the scheme "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993" of the G.O. Ms. No.20 dated 05.04.1995, hereby gives one month's notice dispensing him from service. He is also given opportunity to express his defence during the notice period. If no reply statement is received it will be presumed that he has nothing to express and orders will be passed accordingly."

The Second Respondent had raised an industrial dispute bearing I.D. No.7 of 2001 before the Labour Court, Karaikal challenging the aforesaid order and for consequential reliefs.

2. Though the Petitioners entered appearance through their counsel in the proceedings before the Labour Court, they did not file their counter and adduce evidence despite several opportunities granted. Ultimately relying on the evidence of the Second Respondent, the Labour Court by award dated 28.10.2002 in I.D. No.7 of 2001 came to the conclusion that the Second Respondent had been terminated in violation of the principles of natural justice and had not satisfied the conditions for valid retrenchment under Section 25-F of the Industrial Disputes Act, 1947, and as a consequence thereof, the Second Respondent was directed to reinstated in the service with full backwages. The Petitioners have challenged the said award in this Writ Petition.

3. The learned Counsel appearing for the Petitioner submitted that since the award of the Labour Court was an *exparte* order, as the Petitioners had not filed their counter and no evidence was led by them in those proceedings, that award may be set aside and the matter remitted back to the Labour Court for determination of the matter afresh.

4. On the contrary the learned Counsel for the Second Respondent submitted that it is evident from the order dated 11.06.1999 passed by the Second Petitioner that it is punitive in nature and the Second Respondent had not been given any opportunity of hearing by the way of disciplinary proceedings and as such the Labour Court was justified in setting aside that order and directing reinstatement in service of the Second Respondent with full backwages. It is further brought to the notice of this Court by the learned Counsel for the Second Respondent that by order dated 17.08.2004 in W.P. M.P. No. 42999 of 2003 and 11238 of 2004, the interim stay of the impugned award of the Labour Court was made absolute on condition that the Petitioner deposits the entire amount of backwages as awarded by the Labour Court and also complied with the requirements of Section 17-B of Industrial Disputes Act, 1947. It is stated that in pursuance thereof the Second Respondent has been receiving wages under Section 17-B of the Industrial Disputes Act, 1947, and it would not be necessary for this Court to set aside the award of the Labour Court and remit the matter for fresh hearing and instead the Petitioners may reinstate the Second Respondent into service without backwages and he has also made an endorsement to that effect.

5. Having regard to the aforesaid submissions made by both sides, it is evident from the admitted case of the parties that the Second Respondent was engaged as casual labour by the Petitioners, which is governed by the Casual Labourers (Grant of Temporary Status and Regularisation) Scheme of Government of India, 1993, and that the disciplinary proceedings taken by the Petitioners against the Second Respondent had not been completed before the order of termination dated 11.06.1999 had been passed by the Second Petitioner against the Second Respondent. The Labour Court in the impugned award has arrived at a factual finding that the conditions for valid retrenchment under Section 25-F of the Industrial Disputes Act, 1947, had not been satisfied and on that basis, has ordered reinstatement with full backwages. In view of the fact that the Second Respondent had been receiving wages under Section 17-B of the Industrial Disputes Act, 1947, during the pending of this Writ Petition, the Counsel for the Second Respondent

has submitted that the Second Respondent would give up the claim for backwages if he is reinstated in the service and he had also made an endorsement to that effect. In this factual backdrop no useful purpose will be served at this distance of time to set aside the impugned award of the Labour Court and remitting the matter for disposal afresh. Instead it would be appropriate to modify the impugned award of the Labour Court by retaining the direction for reinstatement in service with continuity of service and other consequential benefits but deny payment of actual backwages from the date of termination till date of reinstatement, as agreed by the Counsel for the Second Respondent. However, after such reinstatement, it will also be open to the Petitioners to proceed further with the disciplinary proceedings that were earlier initiated against the Second Respondent, if required, and complete the same in accordance with law. It is made clear that the backwages paid to the Second Respondent under Section 17-B of Industrial Disputes Act, 1947, during the pendency of the Writ Petition shall not be recovered from him. The Petitioner shall be reinstated in service within a period of 10 days from the date of receipt of copy of this order.

6. In the result, the impugned award of the Labour Court is modified on the aforesaid terms and the Writ Petition is disposed of accordingly. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

vjt

To

1.The Presiding Officer,
Labour Court, Karaikal.

2..The Executive Engineer,
Irrigation and Public Health,
Public Works Department,
Karaikal.

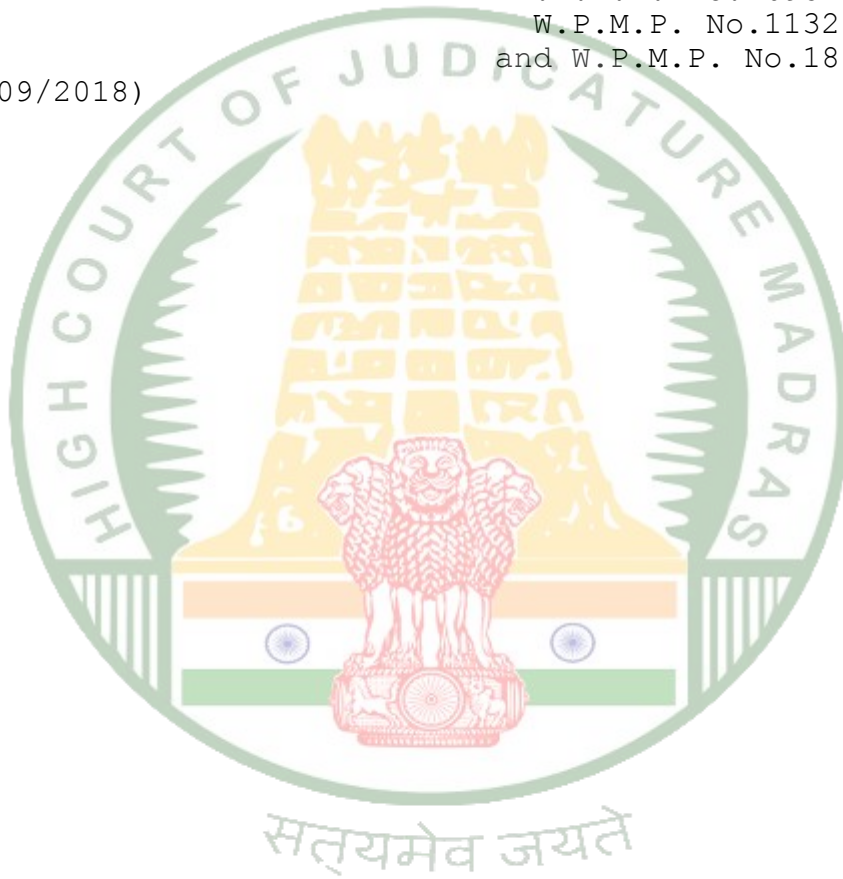
3.The Assistant Engineer,
Medium Irrigation (North),
Public Works Department,
Karaikal.

4.The Assistant Engineer,
Medium Irrigation (South),
Public Works Department,
Karaikal .

+1 CC TO GOVERNMENT PLEADER SR.NO. 28258
+1cc to Mr.M.Gnanasekar , Advocate SR.No. 28306

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ASK(17/09/2018)



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