



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P (MD)No. 11954 of 2015
and
M.P (MD)No. 1 of 2015

The President,
Kodarankulam Village Panchayat,
Ambasamudram Taluk,
Tirunelveli District.

.. Petitioner

Vs.

1.N.Ganapathy

2.The Presiding Officer,
Labour Court,
Tirunelveli.

.. Respondents

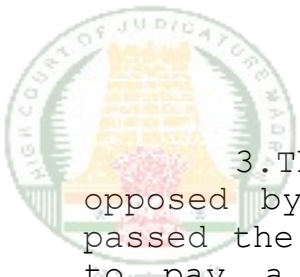
PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the second respondent in C.P.No.77/2013, dated 09.12.2014 and quash the same.

For Petitioner	: Mr. S.Kumar
For Respondent No.1	: Mr. V.Angusamy
Respondent No.2	: Labour Court

O R D E R

The first respondent herein filed C.P.No.77 of 2013 before the Labour Court, Tirunelveli, claiming the arrears of Dearness Allowances payable to him.

2.The case of the petitioner is that he had worked as overhead pump operator from 1992 to September 2003. According to him he was paid a consolidated pay of Rs.600/-. The District Collector, Tirunelveli had issued proceedings dated 03.11.2009, stating that for such overhead pump operators dearness allowance is to be paid for the period from 01.04.1992 to 31.10.2003. Based on such proceedings, the petitioner had sent representations. Since it was not favourably responded to, he filed C.P.No.77 of 2013 before the Labour Court, Tirunelveli.



3. The said petition filed by the first respondent herein was opposed by the petitioner/Panchayat. The Labour Court, however, passed the impugned order dated 09.12.2014, directing the Panchayat to pay a sum of Rs.26,100/- with interest at the rate 7.5%. Questioning the same, the writ petition has been filed by the Panchayat.

4. The learned counsel appearing for the Panchayat contended that the Claim Petition under Section 33 C (2) of Industrial Dispute Act is maintainable only to enforce a preexisting right. In this case, the very existence of such right has been strongly contested and that therefore according to him the Labour Court should have dismissed the Claim Petition as not maintainable. He also drew attention to various improbable circumstances obtaining in this case. For instance, the sons of the first respondent herein namely Thiru. G.Saravanan also filed C.P.No.78 of 2013, claiming that he was working for the period from 1996 to 30.02.2003. The said Claim Petition was not pressed. He also contended that the deposition of the C.W.2, who was the Panchayat President during the period 1996 to 2001 cannot inspire confidence. He wanted this Court to set aside the order passed by the Labour Court.

5. Heard the learned counsel on either side.

6. It is true that the petition under Section 33(C) (2) of the Industrial Dispute Act cannot be maintained in this respect of a contested matter. But then the dispute must be a bona fide one. The specific case projected by the first respondent herein is that he worked as the overhead pump operator for 1992 to 2003. It is quite possible that in villages such tasks are shared. These are all social realities. To a very specific question posted by the Court as to who was actually working as overhead pump operator if the petitioner did not work in the said capacity, the learned counsel for the Panchayat could only answer that the records are not available for the period prior to 2007. The records may not be available but then the incumbent Panchayat President ought to be in position to say who was actually working. There was deafening silent on the part of the Panchayat Management in this regard. If the Panchayat Management had specifically stated that so and so was actually working as a overhead pump operator and not the first respondent herein during the relevant period, then this Court can definitely come to the conclusion that a real dispute had arisen and thus the present Claim Petition is not maintainable. Such a stand has not been taken in this case. Therefore, this Court is of the view that the petitioner on a balance of probability has made out his case and the labour Court rightly allowed the Claim Petition filed by the first respondent herein.

7. It is also to be noted that what has been directed to paid is a sum of Rs.26,100/- with interest at the rate of 7.5%. There is



no merit in this writ petition. The writ petition stands dismissed.
No costs. Consequently, M.P. (MD). No. 1 of 2015 is closed.

Sd/-

Assistant Registrar (CS-II)

WEB COPY

/True Copy/

Sub Assistant Registrar

To:

The Presiding Officer,
Labour Court,
Tirunelveli.

ORDER MADE IN
W.P. (MD) .No.11954 of 2015
20.02.2018

kmi

JM/SV/SAR 4/17.07.2018/3P/2C