

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.Nos.3277 to 3285 of 2000
and 2196 to 2201 of 2002
W.M.P.Nos.1150 to 1157 of 2007

The Assistant Engineer (PWD),
Ground Water Section,
Panangattucherry,
Chengai - MGR District 603 102... Petitioner in WPs 3277
to 3285/2000

S.Albert ...Petitioner in WP.2196 of 2002
K.Narayanasamy ...Petitioner in WP.2197 of 2002
R.Sekar ...Petitioner in WP.2198 of 2002
P.Valliappan ...Petitioner in WP.2199 of 2002
D.Thulasi ...Petitioner in WP.2200 of 2002
N.Guna ...Petitioner in WP.2201 of 2002

Vs.

S.Albert ...1st Respondent in WP.3277/2000
R.Sekar ...1st Respondent in WP.3278/2000
P.Selvaraj ...1st Respondent in WP.3279/2000
N.Guna ...1st Respondent in WP.3280/2000
M.Srinivasalu ...1st Respondent in WP.3281/2000
P.Valliappan ...1st Respondent in WP.3282/2000
D.Thulasi ...1st Respondent in WP.3283/2000
K.Narayanasamy ...1st Respondent in WP.3284/2000
R.Venu ...1st Respondent in WP.3285/2000

The Presiding Officer
Principal Labour Court
Chennai

...2nd Respondent in WP.Nos.3277
to 3285/2000

1.The Presiding Officer
Principal Labour Court,
High Court, Campus,
Chennai-104

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2.The Assistant Engineer
Public Works Department
Ground Water Section
Panangattucherry
Kancheepuram District
Pin Code-603 102

...Respodnent in
WPNo.2196 to 2201 of 2002

Prayer in WP.Nos.3277 to 3285 of 2000:Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the 2nd respondent herein, the Presiding Officer, Principal Labour Court, Chennai in I.D.No.539 of 1993, ID.No.540 of 1993,541 of 1993,542 of 1993,543 of 1993,544 of 1993,545 of 1993,546 of 1993 and 547 of 1993 respectively. dated 25.03.1999 and quash the same.

Prayer in WPs.2196 to 2201 of 2002:Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling upon the production of the records relating to the award dated 25.03.1999 made in I.D.NO.539 of 1993,546 of 1993,540 of 1993, 544 of 1993, 545 of 1993 and 542 of 1993 respectively, passed by the 1st respondent herein, quash the same and direct the 2nd respondent to reinstate the petitioner in service with backwages, continuity of Service and with attendant benefits.

(In W.P.Nos.3277 to 3285 of 2000)

For Petitioner : Ms.Narmadha Sampath
Additional Advocate General,
Assisted by Ms.R.Janaki,
Additional Government Pleader

For R1 : Mr.S.Senthilnathan
R2 : Court
(In W.P.Nos.2196 to 2201 of 2002)

For Petitioner : Mr.S.Senthilnathan

For R2 : Ms.Narmadha Sampath
Additional Advocate General,
Assisted by Ms.R.Janaki,
Additional Government Pleader

R1 : Court

C O M M O N O R D E R

W.P.Nos.3277 to 3285 of 2000 are filed by the Assistant Engineer, Public Works Department, Ground Water Section, Panangattucherry, challenging the award dated 25.03.1999 made in I.D.Nos.539 to 547 of 1993, granting compensation of Rs.30,000/- each to the employees. W.P.Nos.2196 to 2201 of 2002 are filed by the workers challenging the very same award seeking reinstatement into service with backwages, continuity of service and attendant benefits.

2.All the Writ Petitions arise out of the common award dated 25.03.1999 passed in I.D.Nos.539 to 547 of 1993 on the file of the Principal Labour Court, Chennai, and hence disposed of by this common order. The parties are referred to as per their rank in I.D.Nos.539 to 547 of 1993.

3.According to the petitioners, they were working as Pump Operators as daily rated employees under the respondent and wages were paid once in a month, calculated at the rate of Rs.25/- per day. The petitioners worked for more than 240 days in a calender year, ranging from five years, up to nine years. They requested the respondent to regularize their services and the respondent refused to give job when they reported for work on 12.01.1993. In spite of their repeated request, the respondent did not provide job. No charge memo was issued to the petitioners and no Disciplinary Enquiry was conducted against the petitioners. The termination of the petitioners would amount to retrenchment under Section 25 (F) of the Industrial Disputes Act. Hence, they have raised the above I.Ds.

4.The respondent filed separate counter affidavit in all the above I.Ds. raised by the petitioners. The respondent denied that petitioners were daily rated workers and they worked for more than 240 days in a calender year. The respondent has stated that the petitioners have not worked for more than 90 days in a calender year and they are not qualified to be appointed as Pump Operators. They are only daily rated workers and the petitioners did not work in the sanctioned post. They are engaged as and when required by the respondents to do menial job. The petitioners filed O.A.No.2866 of 1992 before the Tamilnadu Administrative Tribunal and obtained stay of order restraining the respondent from stopping their unskilled services. Based on the interim order granted by the Administrative Tribunal, the petitioners were continued to work subsequently. O.A.No.2866 of 1992 was dismissed by the order dated 30.10.1992. Once the O.A

was dismissed, they were stopped from doing work. The service of the petitioners is not necessary beyond the period of requirement. The petitioners were engaged to operate the pump during the seasons to supply water to Madras Atomic Power Plant, Kalpakkam. When the work was completed, the petitioners were stopped from service. They are not selected by Tamil Nadu Public Service Commission for regular appointment. Public Works Department, Ground Water Section of Panangattuchery is not an industry and petitioner cannot claim their right under the Industrial Disputes Act and prayed for dismissal of all I.Ds. raised by the petitioners.

5. Before the Labour Court, all the petitioners were examined as W.W.1 in their respective I.Ds. and various number of documents were marked in respective I.Ds. The respondent examined one M.Krishnasamy as M.W.1 in all I.Ds. raised by the petitioners and marked in all I.Ds., the order dated 13.10.1992 passed by the Tamil Nadu Administrative Tribunal, Chennai, in O.A.No.2866 of 1992. Before the Labour Court, the petitioners filed applications in I.A.Nos.880 to 886, 996 & 997 of 1994 for a direction to the respondent to produce the number of documents relating to the year 1983. The Labour Court partly allowed the said applications, directing the respondent to produce the muster roll relating to the year 1993. The respondent took time for producing the documents, but failed to produce the same. The Labour Court considering all the materials on record, held that the respondent is an 'industry' within the meaning of Section 2 (j) of the Industrial Disputes Act and held that the petitioners were employed only as daily wages to assist the permanent employees of the respondent Ground Water Section, Panangattucherry and in O.A.No.2866 of 1992 filed by the petitioners they have stated that they are daily rated employees of Public Works Department. The Labour Court held that the petitioners worked under the respondent for a period of 240 days and discharge of the petitioners from service is not proper and it amounts to retrenchment. The Labour Court considering the fact that the petitioners were not in service for more than six years, awarded a sum of Rs.30,000/- each to all the petitioners as compensation in lieu of reinstatement. Against the said award, the above Writ Petitions are filed by the petitioners and respondents.

6. The learned counsel appearing for petitioners contended that the Labour Court having held that the petitioners were engaged for more than 240 days, ought to have ordered reinstatement with continuity of service, attendant benefits and backwages. In any event, the compensation awarded by the Labour Court is meagre as petitioners have worked continuously from five years to nine years and prayed for allowing all the Writ Petitions filed by the petitioners and prayed for dismissal of

the Writ Petitions filed by the respondent.

7.The learned Additional Advocate General appearing for the respondent reiterated the averments in the counter statements filed before the Labour Court. The learned Additional Advocate General contended that the Labour Court erroneously held that the respondent is an 'industry', without properly appreciating the fact that the respondent is discharging sovereign duty while supplying water to Madras Atomic Power Plant, Kalpakkam. The contention of the petitioners in O.A.No.2866 of 1992 before the Tamil Nadu Administrative Tribunal that they were permanent employees and entitled to be regularized with all backwages was not accepted by the Tribunal and the said O.A was dismissed on 30.10.1992. The Labour Court on presumption held that the petitioners worked for more than 240 days in a calendar year when there is no material to that effect. The Labour Court erred in awarding Rs.30,000/- as compensation in lieu of reinstatement when the petitioners are not entitled to the said relief of reinstatement.

8.Heard the learned counsel appearing for the petitioners as well as the learned Additional Advocate General appearing for the respondent and perused the materials available on record.

9.The respondent admitted that the petitioners were engaged as daily rated wages as and when required to assist the permanent employees to do menial work. The respondent has stated in the counter statements that the petitioners worked only for 90 days for the period mentioned in the counter statements. It is seen from the award of the Labour Court that all the petitioners have filed applications for a direction to the respondent to produce various documents. The Labour Court considering the averments in the affidavits in the said I.As. and the counter affidavits filed by the respondent, directed the respondent to produce the Nominal Muster Roll from the year 1983. Even though the respondent took time to produce the same, he failed to produce the Nominal Muster Roll. The Labour Court taking note of the fact that the respondent failed to produce the Nominal Muster Roll from the year 1983 and failed to furnish the details of the period during which the petitioners were engaged, held that the petitioners worked for more than 240 days.

9(i) During the hearing, the learned Additional Advocate General produced three sheets of papers alleging to be the extraction of Nominal Muster Roll. There is no authentication by any official in the said papers. The respondent has not given any reason for not filing the Nominal Muster Roll before the Labour Court and therefore, she is not entitled to file the

alleged extract from the Nominal Muster Roll. From the papers filed by the respondent, it is seen that the record of Nominal Muster Roll is not found for most of the periods. The respondent has not filed any petition seeking permission to file the alleged extract of Nominal Muster Roll register and the three sheets of paper filed by the respondent is not even authenticated by any officer. In view of the same, the said sheets cannot be relied on by the respondent. For the above reason, there is no error in the award of the Labour Court to hold that the respondent is an industry and petitioners have worked for more than 240 days in a year.

9(ii) The Labour Court has awarded compensation of Rs.30,000/- to each of the petitioners in lieu of reinstatement, since the petitioners were out of service for more than six years, when the award was passed. The Courts have power to grant compensation in lieu of reinstatement considering the facts and circumstances of the case. In the present case, the Labour Court has given reason for not ordering reinstatement, which is not erroneous. But the Labour Court failed to consider that the petitioners were employed by the respondent for the period ranging from 5 years to 9 years. Considering the length of the period during which the petitioners worked under the respondent, the amount awarded by the Labour Court is meagre. Hence, a sum of Rs.1,00,000/- each to the petitioners will be a just compensation in lieu of reinstatement, considering the length of the service rendered by the petitioners.

10. For the above reasons, all the Writ Petitions are disposed of with a direction to the respondent to pay the amount awarded by this Court to the petitioner. The learned Additional Advocate General submitted that the respondent had deposited the compensation awarded by the Labour Court. Hence, the respondent is directed to pay the balance amount of Rs.70,000/- each to all the petitioners within a period of 16 (sixteen) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst. Registrar (CS VI)

/true copy/

Sub Asst. Registrar

gsa

To

1. The Presiding Officer,
Principal Labour Court,
Chennai.

2.The Assistant Engineer(PWD)
Ground Water Section
Panangattucherry Chengai-MGR District
Pin-603 102

+10 cc to Mr.S.senthilnathan Advocate sr64311,
64319,64310,64312,64314,64315,64316,64313
64318 64317
+2 cc to Government pleader sr64670,64671

W.P.Nos.3277 to 3285 of 2000
and 2196 to 2201 of 2002

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