

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.14448 of 2012
and M.P.No.1 of 2012

1.The Managing Director,
Tamil Nadu Water Supply Board,
Chepauk, Chennai - 600 005.

2.The Executive Engineer,
Tamil Nadu Water Supply Board,
Chepauk, Chennai - 600 005.

... Petitioners

Vs.

1.Muniappan

2.The Presiding Officer,
Labour Court, Salem.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari to call for the records relating to Impugned Award in I.D.No.465 of 1998 passed by the 2nd respondent dated 20.12.2010 and quash the same.

For Petitioners: Mr.S.Eraskine Leo

For R1 : Mr.K.V.Shanmuganathan

सत्यमेव जयते
O R D E R

The petitioner has come out with the present Writ Petition challenging the impugned order of the second respondent dated 20.12.2010 made in I.D.No.465 of 1998.

2.The first respondent raised Industrial Dispute in I.D.No.465 of 1998 before the second respondent to set aside the order of termination of the service of the first respondent and for reinstatement with full backwages with interest and continuity of service and other attendant benefits. According to the first respondent he was employed by the petitioner as Watchman on 01.09.1988. On 01.06.1990, the petitioner without any notice terminated the services of the first respondent

without complying Sections 25-F and 25-G of the Industrial Disputes Act, 1947. The first respondent worked for 240 days in a year in 12 calendar months and 480 days in 24 calendar months. The termination order issued by the petitioner is unfair labour practice. There are vacancies in the petitioner's Board and the first respondent is suffering without any employment and income. The petitioners were executing water supply improvement projects in different places. The first respondent was employed as Watchman to protect the properties of the petitioners and prayed for reinstatement with full back wages with interest and continuity of service and other attendant benefits.

3.The petitioners filed counter and contended that the first respondent worked only for 89 days. The petitioners Board were executing water supply improvement projects in different places. The first respondent was employed as watchman to protect the properties of the petitioners as and when required. As soon as the project is over, there is no work for watchman. The Village Water Supply Project Sub Division Office at Krishnagiri was closed and the properties in different water supply projects were brought under one place with effect from 01.06.1990 and therefore the services of the first respondent was no more required and hence the first respondent was discharged from service on 01.06.1990. The first respondent was not engaged regularly. Section 2 (oo) (bb) is applicable to the facts of the case. Sections 25-F and 25-G is made out of context.

4.The second respondent considering the pleadings and documents filed by the petitioner, passed the award ordering reinstatement of the first respondent into service with continuity of service along with back wages and other attendant benefits. Against the said award, the petitioner has come out with the present Writ Petition.

5.The learned counsel appearing for the petitioner contended that the Industrial Dispute raised by the first respondent was transferred from Labour Court, Vellore to Labour Court, Salem when Labour Court was established in Salem. After transfer to Labour Court, Salem no notice was served on the petitioners. Before the second respondent, the first respondent failed to file the documents and prove that he worked for 240 days continuously. The first respondent failed to prove that he was continuously employed by the petitioners when the project was over and the first respondent was no longer required and his service was discharged. The first respondent was discharged in the year 1990 and he raised Industrial Dispute only in the year 1998 and prayed for setting aside the award of the Labour Court and allowing the Writ Petition.

6.Per contra, the learned counsel appearing for the first respondent contended that the first respondent has produced appointment order, ousting order and the service certificate issued by the petitioners before the second respondent and the same was marked as Exs.P1, P2 and P5. The first respondent has proved that he continuously worked for 2 years. The termination of the services of the first respondent by the petitioners without following Sections 25-F and 25-G of Industrial Disputes Act, 1947 is not correct and prayed for dismissal of the Writ Petition.

7.Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the first respondent and perused the entire materials on record.

8.The contention of the petitioners is that after the transfer of Industrial Dispute from Labour Court, Vellore to Labour Court, Salem no notice was issued to the petitioners. The second respondent passed *exparte* award. From the impugned award, it is seen that Government Pleader Thiru.B.M.Thanikachalam, appeared for the petitioners before the second respondent. The Government Pleader ought to have filed application to set aside the award by proving that no notice was served after transfer, if really no notice was served on the petitioners and *exparte* award was passed by the second respondent.

9.The learned counsel appearing for the petitioners has not stated that Thiru.B.M.Thanikachalam, Government Pleader has not appeared for the petitioners. From the impugned award of the second respondent, it is seen that the first respondent has marked the appointment order, ousting order and the service certificate issued by the petitioner before the second respondent as Exs.P1, P2 and P5. The petitioners in the counter statement filed before the second respondent has not furnished the details of the date on which the first respondent was engaged as Watchman. The petitioners have admitted that the first respondent was initially engaged as Watchman on 1988 and subsequently engaged as and when required. When the petitioners have taken such a stand, they ought to have furnished the details of days of the first respondent worked and proved that the first respondent was not engaged for 240 days in 12 calendar months or 480 days in 24 calendar months. The second respondent considering the evidence and documents filed by the first respondent in proper manner has given reason for setting aside the order of termination and ordered reinstatement of the first respondent into service with continuity of service along with back wages and other attendant benefits, which is valid. The learned counsel appearing for the petitioner contended that

service of the first respondent was discharged on 01.06.1990 and first respondent raised Industrial Dispute only in the year 1998.

10.From the materials on record, it is seen that the first respondent has raised Industrial Dispute in I.D.No.237 of 1997 before the Labour Court, Vellore and subsequently it was transferred to Labour Court, Salem and renumbered as I.D.No.465 of 1998. The learned counsel appearing for the first respondent has not explained the delay in raising the dispute. In view of the same, the first respondent is not entitled to back wages from the date of termination till the date of raising the Industrial Dispute before the Labour Court, Vellore.

11.With the above modification, this Writ Petition is allowed in part. No costs. Consequently connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To

1.The Presiding Officer,
Labour Court, Salem.

2.The Managing Director,
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3.The Executive Engineer,
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Chepauk, Chennai - 600 005.

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JP(CO)
SP(25/10/2019)