

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 24.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.14745 of 2003

- 1.The Managing Director,
Tamil Nadu Water Supply and
Drainage Board,
31, Kamarajar Salai,
Chennai - 600 005.
- 2.The Executive Engineer,
Tamil Nadu Water Supply and
Drainage Board,
RWS Division,
65, Bharathi Park, 7th Cross Street,
Coimbatore - 611 011.Petitioners

Vs

- 1.Mr.R.Dharman,
- 2.The Presiding Officer,
Labour Court,
Coimbatore. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, may be pleased to call for the records made in impugned award I.D.No.236/2000 dated 20.08.2002, on the file of the Labour Court, Coimbatore, the 2nd respondent herein, quash the said award.

For Petitioners : Mr.M.Arokiyaraj

For Respondents : Mr.N.Stalin
for R1

R2 - Court

O R D E R

The award under challenge is for reinstating the 1st respondent along with continuity of service and without backwages.

2. The stand taken by the petitioner Board is that the 1st respondent had not put in 240 working days in one calendar year. The Labour Court had disbelieved the statement of the Management and by relying upon the evidence available on record, came to the conclusion that the petitioner had put in 240 days and therefore, ordered for reinstatement with continuity of service. However, the backwages were denied.

3. I have gone through the award and I do not find any infirmity in such a finding, which is based on the evidences before the Court. It is also seen that the Management had extended the benefit of confirmation of services to identically placed NMR employees, who had put in lesser number of working days than the 1st respondent. The reason assigned for such a discrimination is that those employees had raised industrial disputes and were also parties in a writ petition, in which orders came to be passed in their favour. Since the 1st respondent herein had not raised a dispute and was also not a party to any writ petition, the benefits to the 1st respondent were not extended. The Labour Court had also held that though the 1st respondent herein had raised a dispute belatedly after 10 years, the petitioner Board had not raised any objection before the Labour Court with regard to laches and therefore held that, the dispute was properly raised by the 1st respondent and hence, he is entitled for the benefits in par with the other employees, who have been confirmed and the working days of them were lesser than the petitioner herein. In my view, such a finding cannot be found fault with.

4. It is now brought to the notice of this Court that the 1st respondent has reached the age of superannuation on 31.01.2016. Pending the writ petition, this Court by an order dated 11.09.2003, had directed the petitioner Board to pay the last drawn wage under Section 17(B) of the I.D. Act to the 1st respondent, on condition that the 1st respondent files an affidavit on non-employment before this Court.

5. The learned counsel for the 1st respondent submitted that the earlier counsel who had represented the 1st respondent had not intimated him about that interim order and therefore they could not file the affidavit in time. Nevertheless, an affidavit dated 24.04.2019 has been filed before this Court stating that the 1st respondent was not gainfully employed from his date of termination i.e., from 12.10.1989 till his date of

superannuation i.e., 31.01.2016. There is no material produced before this Court by the petitioner that the 1st respondent was gainfully employed during this period. Even otherwise, the petitioner Board was bound to pay the 17(B) wages immediately from the date of award. Since the 1st respondent has now filed an affidavit before this Court, this Court is constrained to accept such an affidavit and order payment of the 17(B) wages.

6. In the light of the above observations, I do not find any reasons to interfere, while considering the Award of the Labour Court dated 20.08.2002 in I.D.No.236/2000. As such, the Award for reinstatement with continuity of service is confirmed. The 1st respondent will also be entitled for payment of his wages under Section 17(B) from the date of termination till the date of superannuation.

7. At this juncture, the learned counsel for the petitioner produced a working sheet stating that the total amount due towards the 17(B) wages is Rs.87,149/- out of which, a sum of Rs.9,396/- has already been paid to the 1st respondent herein for the period 20.08.2002 to 31.01.2004. As such, the petitioner shall pay the balance amount of Rs.77,753/- to the 1st respondent herein, within a period of 8 weeks from the date of receipt of copy of this order.

8. Accordingly, the writ petition stands allowed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

jas/hvk

To

1.The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
31, Kamarajar Salai,
Chennai - 600 005.

2.The Executive Engineer,
Tamil Nadu Water Supply and
Drainage Board,
RWS Division,
65, Bharathi Park, 7th Cross Street,
Coimbatore - 611 011.

3. The Presiding Officer,
Labour Court,
Coimbatore.

+1 cc to Mr.N.Stalin, Advocate, Sr.No. 39180

+1 cc to Mr.M.Arockiaraj, Advocate, Sr.No. 39163

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CSL/01.07.2019



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