

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 26.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.34976 of 2003
and
W.M.P.No.42519 of 2003

The Pondicherry Agro Service
and Industries Corporation Ltd.,
rep.by its Managing Director,
Agro House, Thattanchavady,
Pondicherry - 605 009. ...Petitioner

-Vs-

1. The Presiding Officer,
The Labour Court,
Pondicherry.
2. PASIC Employees Federation,
rep.by its President Jaffar Ali,
Agro House, Thattanchavady,
Pondicherry - 605 009. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India, praying to issue a writ of Certiorari,
calling for the records relating to the Award dated 05.03.2003
made in I.D.No.46/2001 on the file of the 1st respondent and to
quash the same in so far as the same is against the petitioner.

For Petitioner : Mr.T.M.Naveen
for D.Kamatchi

For Respondents: R1 - Court
R2- No appearance

ORDER

When the 2nd respondent federation had claimed that the
services of Jaffar Ali, being their member, as well as the
President, who was employed as a casual labourer on daily wage
basis, should be regularized with effect from 26.04.1999, which
is the original date of his appointment, the petitioner had
rejected such a claim and a reference was made to the Labour
Court in this regard. The labour Court, had placed reliance on
the Recruitment Rules and held that the employee namely, Jaffar

Ali was entitled for regularization, with effect from 26.04.1999. However, on the principle of "no work, no pay", the employee was held to be disentitled for arrears of salary and other emoluments. Challenging the Award holding that the employee is entitled for regularization with effect from 26.04.1999, the present writ petition has been filed.

2. The learned counsel for the petitioner submitted that the petitioner herein was not originally appointed as per the Rules of the Corporation and that the procedures for regularization as per the policy is that the person engaged on daily wage basis, would be based on consolidated pay for one or two years of satisfactory service and after a period of four years of service on consolidated pay, they would be regularized for the post. The employee was not originally appointed by a due process of selection as envisaged under the Corporation Regulations.

3. The Hon'ble Apex Court in its decision reported in 2006 (4) SCC 1 in the case of Secretary, State of Karnataka vs Umadevi had held that a mere service for a considerable length of time of a casual wage worker would not automatically entitle him for absorption in regular service, unless such an appointment has been made by following due process of selection or recruitment.

4. In the instant case, it is not in dispute that the petitioner was not selected through due process of selection or recruitment. As such, the original appointment on 26.04.1999 itself was irregular. Applying the ratio held in the aforesaid decision of the Hon'ble Apex Court, I am of the view that the Labour Court was not correct in awarding regularization in favour of Jaffar Ali from 26.04.1999.

5. Though notice was served on the 2nd respondent and their name is printed in the cause list, none appeared on their behalf. Hence, it can only be concluded that the second respondent has no remarks to offer.

6. In the light of the above observations, the Award dated 05.03.2003 made in I.D.No.46/2001 on the file of the 1st respondent, is set aside.

7. Accordingly, writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.
jas/hvk

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Presiding Officer,
The Labour Court,
Pondicherry.

+1cc to Mr.K.P.Jotheeswaran, Advocate, SR.No.40463

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Kak(11/07/2019)



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