IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.32037 to 32041 of 2004
and
W.P.M.P.Nos.38811 to 38815 of 2004
and
W.V.M.P.Nos.1796, 1797, 1779 to 1781 of 2004

W.P.No.32037 of 2004

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

2.The Executive Engineer,
Tamil Nadu Water Supply and
Drainage Board,
Urban Division
14A, South Krishnan Street,
Kancheepuram - 631 501

..Petitioners

Vs.

1.Mr.K.Sekar

2.The Presiding Officer,
I Additional Labour Court, Chennai. ..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 I.D.No.367/99 dated 9.3.2004 on the file of the second respondent and quash the same.

W.P.No.32038 of 2004

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

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2.The Executive Engineer,
Tamil Nadu Water Supply and
Drainage Board,
Urban Division
14A, South Krishnan Street,
Kancheepuram - 631 501

..Petitioners

Vs.

1.Mr.R.Kesavan

2.The Presiding Officer,
I Additional Labour Court, Chennai. ..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 I.D.No.368/99 dated 9.3.2004 on the file of the second respondent and quash the same.

W.P.No.32039 of 2004

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

2.The Executive Engineer,
Tamil Nadu Water Supply and
Drainage Board,
Urban Division
14A, South Krishnan Street,
Kancheepuram - 631 501

..Petitioners

Vs.

1.Mr.G.Srinivasan

2.The Presiding Officer,
I Additional Labour Court, Chennai. ..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 I.D.No.366/99 dated 9.3.2004 on the file of the second respondent and quash the same.

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W.P.No.32040 of 2004

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

2.The Executive Engineer,
Tamil Nadu Water Supply and
Drainage Board,
Urban Division
14A, South Krishnan Street,
Kancheepuram - 631 501

..Petitioners

Vs.

1.Mr.N.Kanniappan

2.The Presiding Officer,
I Additional Labour Court, Chennai. ..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 I.D.No.369/99 dated 9.3.2004 on the file of the second respondent and quash the same.

W.P.No.32041 of 2004

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

2.The Executive Engineer,
Tamil Nadu Water Supply and
Drainage Board,
Urban Division
14A, South Krishnan Street,
Kancheepuram - 631 501

..Petitioners

Vs.

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1.Mr.K.Senthilvel

2.The Presiding Officer,
I Additional Labour Court, Chennai. ..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 I.D.No.365/99 dated 9.3.2004 on the file of the second respondent and quash the same.

For Petitioners : Mr.S.Eraskine Leo
(in all W.Ps)

For Respondents : R1 - Mr.S.Ravi
(in all W.Ps)

R2 - Labour Court
(in all W.Ps)

C O M M O N O R D E R

The Awards dated 09.03.2004 passed in I.D.No.367/99, I.D.No.368/99, I.D.No.366/99, I.D.No.369/99, I.D.No.365/99 are under challenge in the present writ petitions.

2. The writ petitioners are the Tamil Nadu Water Supply and Drainage Board, which is a Government of Tamil Nadu Organization.

3. The learned counsel for the writ petitioners state that the Tamil Nadu Water Supply and Drainage Board has been constituted under Act 4 of 1974 to execute the Water Supply and Drainage Schemes throughout the State of Tamil Nadu on behalf of local bodies or at the instance of the Government of Tamil Nadu. The Tamil Nadu Water Supply and Drainage Board acts only as an Executing Agency for the purpose of carrying out the execution of the schemes, which all are time bound in rural areas. The Tamil Nadu Water Supply and Drainage Board used to engage persons on daily wage basis in order to meet out the exigency like absent of employees or otherwise. Persons used to engaged by the Board are neither recruited through Employment Exchange or by an appointment order on regular basis.

4. It is contended that these daily wage employees are engaged to meet out certain exigencies and therefore, their appointments were not made in accordance with the Recruitment Rules of the writ petitioner Board. As far as the 1st respondent / workman in the present writ petitions are concerned, admittedly, they were engaged by the Board as Casual

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labourers on daily wage basis. The petitioner states that the 1st respondent / workman in the present writ petitions as Casual labourers, were worked for a total period of 180 days. Thus, they had not even completed 240 days as per their statement. Soon after the completion of the schemes, the writ petitioner Board will discontinue, engaging casual labourers. Under these circumstances, the engagement of casual labourers on daily wage basis are made only to meet out certain emergency circumstances and exigencies and at no point of time, they were issued with an order of appointment or these persons re-appointed through Employment Exchange or by way of a selection.

5. The writ petitioners state that based on the services rendered as Casual labourers on daily wage basis, for a period of 180 days, the 1st respondent in the present writ petitions raised a dispute before the Labour Court under Section 2A of the Industrial Disputes Act, 1947 [hereinafter referred to as 'ID Act'], claiming reinstatement with backwages on the allegation that they worked 240 days in one year and 480 days in two years and further, stated that they were terminated from service. The writ petitioner Board filed a counter affidavit before the 2nd respondent, denying the allegations and stated that the 1st respondent in the present writ petitions, worked as Casual labourer on daily wage basis and at no point of time, they were appointed by following the procedures as contemplated in the Recruitment Rules and therefore, the 1st respondent in the present writ petitions are not entitled to invoke the provisions of Section 25F of the ID Act. It is further contended that the 1st respondent in the present writ petitions have not worked 240 days in one year or 480 days in two years. Once a scheme is completed, then the engagement of the casual labourers came to an end and therefore, the 1st respondent in the present writ petitions are not entitled to get their benefits under the ID Act. The 1st respondent in the present writ petitions are not recruited through the Employment Exchange and they does not possess the requisite qualification to hold the respective posts as per the Recruitment Rules of the writ petitioner Board.

6. The learned counsel for the writ petitioners state that the Award of the Labour Court is perverse as there was no appointment and the 1st respondent in the present writ petitions were engaged as Casual labourers for a period of 180 days and therefore, the 1st respondent in the present writ petitions are not entitled for any relief.

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7. The learned counsel appearing on behalf of the 1st respondent disputed the contentions raised on behalf of the writ petitioner by stating that the compliance of Section 25F of the ID Act is mandatory under the Retrenchment Act. The procedures as contemplated under Section 25F of the ID Act is to be followed. Therefore, one month notice in writing, indicating the reasons for retrenchment was to be issued and one month salary was also not paid to the 1st respondent / workman. Therefore, the very termination of the 1st respondent in the present writ petitions was illegal and therefore, there is no infirmity as such in respect of the Award passed by the Labour Court.

8. The learned counsel for the 1st respondent reiterated by stating that the Management admitted the fact that the 1st respondent in the present writ petitions were engaged as Casual labourers on daily wage basis. Once the fact regarding the engagement was admitted before the Labour Court by the writ petitioner Board, then they are bound to reinstate the 1st respondent, pursuant to the Award passed as the writ petitioners had not established that they had complied with the provisions of the 25F of the ID Act and under these circumstances, the writ petitions are liable to be dismissed.

9. In support of the said contentions, the learned counsel for the respondent cited the judgment of the Hon'ble Supreme Court of Inda in the case of Anoop Sharma Vs. Executive Engineer, Public Health Division No.1, Panipat(Haryana) in C.A.No.3478/2010 dated 09.04.2010, wherein the non-compliance of the requirements as contemplated under Section 25F of the ID Act is fatal and therefore, on that ground, the writ petitions are liable to be dismissed.

10. The learned counsel for the respondents further cited the judgment of the Hon'ble Supreme Court of India in the case of Deep Chandra Vs. State of Uttar Pradesh and another reported in 2001(3) L.L.N 820, wherein the Hon'ble Supreme Court of India held that the conditions precedent to retrenchment of workmen as contemplated under Section 25F is to be followed. No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

> (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
>
> (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of

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continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

Citing the judgment, the learned counsel for the 1st respondent workman reiterated that the non-compliance of the provisions of Section 25F of the ID Act was considered by the Labour Court in right spirit and there is no infirmity as such. Thus, the writ petitions are devoid of merits and are to be dismissed.

11. The legal principles at the first instance, to be considered by this Court with reference to the facts and circumstances of the case on hand are that, the writ petitioners are Tamil Nadu Water Supply and Drainage Board, which is a State Government Organization. The terms and conditions of appointments are very much stipulated in the Recruitment rules constituted by the Board and the Recruitment Rules are to be followed for the purpose of granting permanent status or otherwise. The Recruitment rules for selection and appointments are to be scrupulously followed by the authorities competent. Irregular or illegal appointments cannot be validated in violation of the Recruitment Rules in force.

12. A new channel cannot be created by these Casual labourers, appointed on daily wage basis for the purpose of seeking confirmation of appointments, which all are otherwise made illegally or irregularly. There cannot be any loophole for the purpose of granting permanent absorption or regularization in violation of the Recruitment rules in force. All appointments are to be made under the Constitutional schemes and by following the rules in force.

13. The Constitution Bench of the Hon'ble Supreme Court of India ruled that the Regularization and Permanent absorption cannot be granted in violation of the recruitment rules in the case of The Secretary, State of Karnataka Vs Umadevi, reported in (2006) 4 SCC Page No.1.

14. This Court is dealing with so many such cases, where the Casual labourers engaged on daily wage basis, in order to complete the scheme or on certain exigencies are claiming regularization, permanent absorption or reinstatement on their disengagement or otherwise. The practice in this regard is that they are claiming permanency or reinstatement mainly on the ground that they have served for about 240 days and therefore, they should be reinstated and disengagement was illegal. In the event of granting such benefits in public services, undoubtedly,

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the same would be in violation of the Recruitment rules, which all are constituted under the Constitutional schemes in order to fulfill the Constitutional mandates and requirements. Any scheme of permanent absorption, which is otherwise unconstitutional, cannot be approved by the Courts. All scheme of appointments to public services, more specifically, in Government Departments i.e., State or Central Government organizations or undertakings must be made in consonance with the Constitutional principles and any deviation will affect the Equality clause enunciated in the Constitution.

15. Equal opportunity in public employment is the Constitutional mandate. In the event of granting permanent absorption in violation of the Recruitment rules, undoubtedly, the Rule of Reservations are violated, the other Reservations provided under the priority are not followed and the procedures and the requisite qualifications are not verified. Such public appointments cannot be construed as the valid appointments made under the Constitutional schemes. Equal opportunity in public employment being Constitutional mandate, the authorities competent must ensure that all appointments to public services in the Government organizations are to be done strictly in accordance with the recruitment rules.

16. Lakh and lakh of young people of this great Nation are burning their midnight lamp and working hard to secure public employment by participating in the open competitive process. If such back door appointments are encouraged without any selection process, without implementing the Rule of Reservation, without merit assessment and without verifying the other requisite qualifications, then we are not only depriving and denying the Constitutional rights of all those eligible persons, we are not implementing the Constitutional mandates. Thus, the Constitutional Courts are duty bound to ensure that all such public appointments in Government organizations are made strictly in accordance with the Recruitment rules and by following the procedures as contemplated.

17. The Casual labourers engaged on daily wage basis cannot be allowed to take a loop line for the purpose of securing permanency or to secure reinstatement one way or other, knowing that their initial appointments were not made on regular basis. Such a channel can never be allowed and in the event of allowing such a separate channel for grant of permanent absorption or reinstatement, the said method will be not only unconstitutional, it amounts to infringement of the Constitutional rights of all other eligible candidates, who all are aspiring to secure public employment through selection process. These all are the basic principles to be followed, in such cases, where the causal labourers engaged by the Government

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departments in order to implement certain temporary schemes or on exigencies and those employees cannot be allowed to go against the terms and conditions of their engagement.

18. It is needless to state that these Casual daily wage rated employees were engaged in a scheme or on certain exigencies, knowing the fact that they were not appointed properly, they were aware of the terms and conditions of such daily wage engagement. Knowing the terms and conditions of the daily wage employment, and accepting the offer and worked for the implementation of the scheme or to restore the exigencies, then these casual labourers engaged on daily wage basis, cannot claim any permanency or regularization or reinstatement, after completion of the emergency work or such exigencies.

19. Thus, this Court is of the considered opinion that wherever there is a recruitment rules in the Government organisation, which is a Special rule, the same alone will prevail and the casual labourers engaged on daily wage basis, cannot be allowed to take a different route under the ID Act for the purpose of securing reinstatement or permanent absorption, which is otherwise in violation of the Recruitment rules framed under Article 309 of the Constitution of India or a Statute, which will prevail over the other General laws.

20. The Special Enactments or Rules regarding service alone will prevail over the General law. In the present context, the ID Act is a General law. Thus, only in the absence of any statutory rule or an Act, the ID Act can be invoked and wherever there is a Special law, governing the service conditions are in force, the Special law alone will prevail and the Courts are bound to ensure that the cases are decided under the Special law, which all are in force and applicable with reference to the Government Departments or Government organisations.

21. It is not as if the Casual labourers engaged on daily wage basis in Government Departments and in Government organizations, can approach the Labour Court under the General law, keeping aside the Special law or Rules, which all are in force governing the terms and conditions of appointments or the Recruitments rules. The Courts have repeatedly held that the Special Act will prevail over the General law.

22. In the present context, the Recruitment rules constituted by the writ petitioner Board will undoubtedly prevail over the General law. Thus, the grievances if any to be redressed, the employees including the Casual labourers engaged on daily wage basis, are bound to approach the competent authority or Forum under the Rules framed, which is applicable to the writ petitioner Board and they cannot be permitted to go

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under the General law for the purpose of seeking permanent absorption or reinstatement or otherwise.

23. The Constitution Bench of the Hon'ble Supreme Court of India in the case of The Secretary State of Karnataka Vs Umadevi (cited supra), dealt with such circumstances in an elaborate manner, more specifically, in paragraph 6, which is extracted hereunder:

> "6. The power of a State as an employer is more limited than that of a private employer inasmuch as it is subjected to constitutional limitations and cannot be exercised arbitrarily (see Basu's Shorter Constitution of India). Article 309 of the Constitution gives the Government the power to frame rules for the purpose of laying down the conditions of service and recruitment of persons to be appointed to public services and posts in connection with the affairs of the Union or any of the States. That article contemplates the drawing up of a procedure and rules to regulate the recruitment and regulate the service conditions of appointees appointed to public posts. It is well acknowledged that because of this, the entire process of recruitment for services is controlled by detailed procedures which specify the necessary qualifications, the mode of appointment, etc. If rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance with the rules. The State is meant to be a model employer. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 was enacted to ensure equal opportunity for employment seekers. Though this Act may not oblige an employer to employ only those persons who have been sponsored by employment exchanges, it places an obligation on the employer to notify the vacancies that may arise in the various departments and for filling up of those vacancies, based on a procedure. Normally, statutory rules are framed under the authority of law governing employment. It is recognised that no government order, notification or circular can be substituted for the statutory rules framed under the authority of law. This is because, following any other course could be disastrous inasmuch as it will deprive the security of tenure and the right of equality conferred on civil servants under the constitutional scheme. It may even amount to negating the accepted service jurisprudence. Therefore, when statutory rules are framed under Article 309 of the Constitution which are exhaustive, the only fair means to adopt is to make appointments based on the rules so framed."

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24. In the said paragraph, the Hon'ble Supreme Court of India reiterated that when statutory rules are framed under Article 309 of the Constitution which are exhaustive, the only fair means to adopt is to make appointments based on the rules so framed. Thus, when the service rules including recruitment procedures are already available in the writ petitioner Board, which is a Government organization, all reinstatement, permanent absorption or otherwise are to be considered only with reference to the Recruitment Rules in force and not under the General law namely the Industrial Disputes Act.

25. In the event of allowing such petitions under the ID Act, it will create not only chaos and the same will create confusion, resulting illegalities and irregularities in granting regularization, reinstatement or permanent absorption. Thus, whenever there is a Special Rule regarding appointment, reinstatement, Recruitment, then the Special Rules alone will prevail over the General law and entertaining a petition under the ID Act itself is impermissible and in the event of any grievances, temporary employees, casual labourers engaged on daily wage basis, they are bound to redress the remedy with the authorities competent stipulated under the Statute or the rules in force and thereafter, before the Appellate authority namely, the Government.

26. This being the facts and circumstances, the Award of the Labour Court cannot be sustained. The Labour Court proceeded on a routine manner as if the employment was made in a Private company or Establishments.

27. In the present cases, the employer is the Government organization, which is otherwise governed by the Recruitment rules, services itself etc., Those recruitment rules, service conditions, method of appointments etc., are not adjudicated by the Labour Court in the Industrial Dispute. Contrarily, the Labour Court proceeded only on the pretext that the conditions stipulated in Section 25F of the ID Act was not complied with and therefore, the 1st respondent in the present writ petitions as Casual labourers, are entitled for reinstatement with back wages. In other words, the Labour Court dealt with the issues in a routine manner on the basis that the employer is a Private Establishment, which is otherwise governed under the provisions of the ID Act. Contrarily, the Government Organization, where the recruitment rules, terms and conditions of service are already in force, the General law cannot be applied and therefore, the benefit of reinstatement in violation of the recruitment rules cannot be granted by the Court. In view of the discussion, this Court has no hesitation in coming to the conclusion that the Award of the Labour Court is not only perverse, but in violation of the basic Constitutional

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principles to be followed in the matter of application of the Statute or Rules as well as in respect of grant of permanent absorption in violation of the recruitment rules, which all are constituted by the writ petitioner Board and in force. Consequently, the Awards dated 09.03.2004 passed in I.D.No.367/99, I.D.No.368/99, I.D.No.366/99, I.D.No.369/99, I.D.No.365/99 are quashed and all the writ petitions stand allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

// True Copy//

Sub Assistant Registrar

+1cc to Mr. , Advocate, SR.No.
+1cc to Mr. , Advocate, SR.No.
+1cc to Government Pleader, SR.No.

(CO)
CSR(26/11/2019)

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To

1.The Presiding Officer,
Labour Court,
Coimbatore.

2.The Management of Sirikundra Estate
Hindustan Lever Limited,
Tea Estates India Division,
Valparai - 642 127.

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

4.The Executive Engineer,
Tamil Nadu Water Supply and
Drainage Board,
Urban Division
14A, South Krishnan Street,
Kancheepuram - 631 501.

+5CCs to Mr.S.Ravi, Advocate, SR.Nos.88502 to 88506.

W.P.Nos.32037 to 32041 of 2004

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