

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.11.2019
CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.Nos.829 & 830 of 2012

W.P.No.829 of 2012 :-

1.The Divisional Forest Officer,
Rural Fuelwood Division,
Tirupattur.

2.The Conservator of Forests,
Fort, Vellore-632 004.

.. Petitioners

-vs-

1.A.Roja

2.The Presiding Officer,
Principal Labour Court,
Vellore, Vellore District.

.. Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records in I.D.No.265 of 2010, dated 19.09.2011 on the file of the 2nd respondent herein and quash the same.

W.P.No.830 of 2012 :-

1.The Divisional Forest Officer,
Rural Fuelwood Division,
Tirupattur.

2.The Conservator of Forests,
Fort, Vellore-632 004.

.. Petitioners

-vs-

1.A.Kasthuribai

2.The Presiding Officer,
Principal Labour Court,
Vellore, Vellore District.

.. Respondents

Pryer: Writ Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records in I.D.No.266 of 2010, dated 19.09.2011 on the file of the 2nd respondent herein and quash the same.

For Petitioners : Ms.Thangavadhana Balakrishnan
(In both W.Ps.) AGP(Forest)

For Respondents : R1 - No appearance
(In both W.Ps.) : R2 - Labour Court

COMMON ORDER

The common award dated 19.09.2011, passed in I.D.Nos.265 and 266 of 2010 is under challenge in the present writ petitions.

2.The writ petitioners are the Divisional Forest Officer, Rural Fuelwood Division, Tirupattur and the Conservator of Forests, Fort, Vellore.

3.The learned Additional Government Pleader appearing on behalf of the writ petitioners made a submission that the 1st respondent workmen were engaged as daily wage employees more specifically, under the Sweedish International Development Authority (Sida) Scheme. The Scheme was implemented through the funding made by the Sweedish Government more specifically, under the Social Forestry Scheme. Therefore, these engagements of daily wage employees were made in order to protect the forests and on need basis. There is no regular work for these employees and they have to ensure that the plantation in the forests is protected. Mostly nearby village people are engaged on daily wage basis and there is no prescribed hours of work or otherwise. This being the nature of the engagement, the 1st respondent workmen approached the Labour Court by raising industrial disputes stating that they were discharged from services without following the procedures and accordingly, prayed for reinstatement with backwages.

4.The learned Additional Government Pleader further made a submission that the industrial disputes were raised after a lapse of 21 years from the date of discharge. The Sida Scheme itself was closed during the year 1989, as the funding from the Sweedish Government was stopped. Thereafter, these daily wage employees were not engaged by the Forest Department and they were engaged by the Rural Development Department. At the outset, after the year 1989, there was no engagement of daily rated employees under the Sida Scheme. The Government had also issued orders in this regard in G.O.Ms.No.592, Environment and Forests (FR.VI) Department, dated 16.02.1989. Thus, the very claims raised in the industrial disputes after a lapse of 21 years are not maintainable. The industrial disputes were

raised in I.D.Nos.265 and 266 of 2010. The Labour Court without considering any of these grounds, granted the relief of reinstatement with backwages.

5.The learned Additional Government Pleader further made a submission that these daily rated employees were transferred to District Rural Development Agency (DRDA), the Panchayat Union as per G.O.Ms.No.600, Rural Development Department, dated 27.03.1990, and the said Government Order was also marked as a document. The Department of Rural Development was not impleaded as a party in the industrial disputes. Under these circumstances, the award of the Labour Court is perverse.

6.The Labour Court granted the relief mainly on the ground that Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), was not followed and therefore, the workmen are entitled for the relief as such sought for in the claim petitions. First of all, the writ petitioners are the Departments of Government of Tamil Nadu. The NMRS or the daily rated employees are covered by the Government Orders and the rules framed for this purpose. When the Special Rules or Government Orders are issued under Article 309 of the Constitution of India regulating the engagement of daily rated employees in Government Departments, then such grounds cannot be considered by the Labour Court. This apart, the 1st respondent workmen were engaged under the Scheme as daily rated employees on need basis. Those employees cannot seek any permanent absorption or regularisation, as such permanent absorption are to be granted strictly in accordance with the recruitment rules in force, as far as Government Departments are concerned.

7.The Hon'ble Supreme Court of India in the case of Secretary, State of Karnataka and others Vs. Umadevi and others reported in (2006) 4 SCC 1, settled the legal principles that the benefit of regularisation or permanent absorption cannot be granted in violation of the recruitment rules in force. Daily wage employees are governed under the Government Orders and therefore, the persons, who were appointed irregularly or illegally cannot claim the benefit of regularisation or permanent absorption. Thus, the general law viz., industrial dispute cannot be strictly applied for the purpose of grant of permanent absorption or reinstatement or otherwise, since the employees engaged by the Government Departments are governed by the service rule constituted by the Government, which is to be construed as a special rule. The Special Rules will prevail over the general law. When the engagement of the daily rated employees is governed by Sida Scheme, which was funded by Swedish Government and after closure of the scheme, the employees, who were engaged on daily wage basis are not

entitled for any relief. However, these daily rated employees were transferred to the District Rural Development Agency under another Scheme and the industrial disputes were raised after a lapse of 21 years from the alleged non-employment of these 1st respondents.

8.The above being the facts and circumstances, the findings of the Labour Court with reference to the claim petitions are perverse and infirm. Thus, the common award dated 19.09.2011, passed in I.D.Nos.265 and 266 of 2010 is quashed and the writ petitions stand allowed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CJ Conf)

// True Copy//

Sub Assistant Registrar

abr

To

The Presiding Officer,
Principal Labour Court,
Vellore, Vellore District.

+1cc to Government Pleader, SR.No.96743.

W.P.Nos.829 & 830 of 2012

MR (CO)
CSR(31/12/2019)

सत्यमेव जयते

WEB COPY