

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.09.2019

CORAM

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

W.P.No.35709 of 2016

- 1.M.Muthampalam
- 2.V.Sankaran
- 3.Govindaraj
- 4.Chandramohan
- 5.M.Subramani
- 6.Periyakuppan
- 7.R.Lakshmanan
- 8.Pappa
- 9.Chandra
- 10.Seethalakshmi
- 11.Bakkiyavathi

Vellakadai Peak 'B' Estate,
Kaveri Peak Post,
Yercaud - 636 602,

Represented by P.Paramasivam,
General Secretary,
Salem District Plantation Workers Union(Yercaud),
114, Dr.Subbrayan Road,
Salem - 636 001.

..Petitioners

- 1.The Manager,
Vellakadai Peak 'B' Estate,
Kaveri Peak Post,
Yercaud - 636 602,
Salem District.

- 2.The Presiding Officer,
Labour Court,
Salem.

..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the award passed in I.D.No.596 of 1992 on 13.08.2012 on the file of the Second Respondent and to quash the same and further direct the First Respondent Management to reinstate the 11 workers involved in the dispute in I.D.No.596 of 1992 with continuity of service and back wages and other attendant benefits and further direct to

issue any other order or direction in the circumstances of the case and thus render justice.

For Petitioners : Mr.S.Arunachalam
For M/s.S.Arunachalam Associates

For Respondents : Mr.S.Ravindran, Senior counsel
For Mr.S.Baeer Ahamed for R1

R2 - Labour Court

O R D E R

The Award dated 13.08.2012 passed in I.D.No.596 of 1992 by the 2nd respondent is sought to be quashed in the present writ petition.

2. The writ petitioners claim to be the workmen, served more than 240 days in the 1st respondent Estate. Based on the claim that they have served more than 240 days in one year, the petitioners raised Industrial Dispute under Section 2(k) of the Industrial Disputes Act against the denial of employment to 11 workers on 29.06.1990.

3. The Industrial Dispute raised in I.D.No.596 of 1992, ended with an order of dismissal on 13th August 2012. Challenging the said Award, the present writ petition is filed.

4. The learned counsel for the writ petitioners state that the Award was passed on 13th August 2012 and immediately the writ petitioners filed W.P.No.19548 of 1996 and the Award of the Labour Court, which was originally passed was set aside and the matter was remanded back to the Labour Court to examine the Document Ex.B1, so as to decide the details regarding the employment of the writ petitioners and passed a final Award. Against the said order passed in the writ petition, a Writ Appeal was filed and the same was dismissed. Accordingly, the Labour Court reheard the matter and rejected the Industrial Dispute. Challenging the said award, the present writ petition is filed by the writ petitioners / workmen.

5. The preliminary issue to be considered in this writ petition is that whether the writ petitioners had established that they have served 240 days of service in one year or not? The other factors are secondary. In view of the fact that if the employment of 240 days is not established, then it may not be required to consider the other benefits raised.

6. In this regard, the learned Senior Counsel appearing on behalf of the respondent Management solicited the attention of this Court that the Award was passed on 13.08.2012 by the 2nd

respondent providing the following factual findings based on the appreciation of evidence.

7. It is contended that the documents produced by the Management as well as the evidences and also the evidences of the workmen were considered by the Labour Court and the findings are given as follows:

a. There is material contradiction in the evidence of WW1 and WW2 in respect of the reasons for their alleged non-employment.

b. While WW1 stated that the 1st respondent did not provide employment on 29.06.1990 as agreed by them, WW2 stated that they were given employment as per the agreement but subsequently terminated from service. Thus, even in respect of the factum of alleged termination from service, there is contradiction in the evidence of WW1 and WW2.

c. Evidence of WW1 proved that quarters were provided even for temporarily workmen. Therefore, merely because the petitioners were provided with quarters they cannot be presumed to be regular workmen or that they work for 240 days of continues service.

d. Exhibit M6 and admission of WW2 in cross examination would prove that the different estates spoken to by the petitioners cannot be termed as group companies.

e. Exhibit M4 and M5 prove that Ramesh Rajah is the proprietor of 1st respondent estate. Therefore, the evidence of WW1 and WW2 stating that M.S.P.Rajah is the proprietor of 1st respondent estate cannot be accepted.

f. Exhibit M1 has been jointly signed by representative of the petitioners and the respondent. The petitioners have not let in any additional evidence discrediting Exhibit M1. Therefore, it cannot be stated that each of the workmen have proved that they worked for 240 days of continues service.

g. The evidence let in by the petitioners show that they have worked in different organizations. Therefore, the mere fact that the petitioners resided in quarters would not improve their case.

h. Since the petitioners have not proved their case in respect of the fact whether they worked for 240 days of continues service in a calendar year, they are not entitled to any relief."

8. Citing the above findings of the Labour Court, learned Senior counsel made a submission that the writ petitioners have not even established their employment for 240 days in a calendar

year, the other grounds lost its significance and relevance. When the Labour Court categorically found that the writ petitioners had not served for 240 days, they are not entitled for any relief as such sought for in the Industrial Dispute.

9. This Court is of the considered opinion that the Labour Court appreciated the documents and evidences. The writ petitioners also had participated in the proceedings. The Labour Court ultimately found that the writ petitioners had not completed 240 days of service.

10. On a perusal of the findings of Labour Court, this Court is of the opinion that there is no perversity or illegality in the matter of appreciation of the evidences and the documents filed by the respective parties.

11. The learned Senior counsel further raised a ground that the Award was passed by the Labour Court on 13.08.2012 and the writ petition itself was filed on 4th September 2015 after a lapse of about 3 years. Thus, the writ petition is liable to be rejected on the ground of laches also. This Court is of the opinion that the said fact is not disputed and the writ petition is filed after a lapse of 3 years from the date of passing of the Award and as rightly contended, the writ petition is to be rejected on the ground of laches also.

12. This being the factum, this Court has no hesitation in coming to the conclusion that the Award of the Labour Court is in consonance with the legal principles and based on the evidences and documents produced by the respective parties, which were marked and adduced. Consequently, the Award passed by the Labour Court dated 13.08.2012 in I.D.No.596 of 1992 is confirmed and the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Presiding Officer,
Labour Court,
Salem.

+1cc to M/s.S.Bazeer Ahamed, Advocate SR.79612

PPA(CO)
CB(07/11/2019)

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