

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.43706 of 2006

and

M.P.No.1 of 2006

The Senior Manager
Hotel Tamil Nadu
Tamil Nadu Tourism
Development Corporation Limited
Ramakrishna Road
Salem.

... Petitioner

Vs.

1.B.Ramasamy

2.The Labour Court
Salem.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari calling for records relating to the order dated 02.03.2005 in I.D.No.342 of 1999 on the file of the Labour Court, Salem, the 2nd respondent herein.

For Petitioner : Mr.A.Vijayakumar

For R1 : Mr.R.MD.Nasrullah for
Mr.K.V.Shanmuganathan

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O R D E R

Writ Petition is filed challenging the order passed by the Labour Court, Salem/2nd respondent herein dated 02.03.2005 made in I.D.No.342 of 1999.

2.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the 1st respondent and perused the materials available on record.

3.The 1st respondent was working as an Assistant Cook in the petitioner Hotel on daily wages. A charge memo was issued to the 1st respondent and he was terminated from service. A settlement was arrived at between the petitioner and 1st respondent before the 2nd respondent. The 1st respondent was reinstated into service with continuity of service, but without backwages. After 1st respondent was reinstated, the petitioner management issued number of charge memos and subsequently, dismissed the 1st respondent from service. Hence, the 1st respondent raised industrial dispute in I.D.No.342 of 1999 before the 2nd respondent. The 2nd respondent considering the oral and documentary evidence let in by the parties, held that non employment of the 1st respondent is not justified and directed the petitioner to reinstate the 1st respondent into service as a daily wager within a period of three months from the date of receipt of award with continuity of service and other benefits, but without backwages. The petitioner management has come out with present writ petition challenging the said award.

4.The contentions of the learned counsel appearing for the petitioner that the 1st respondent being a daily wager has no vested right to put in service, when the work was offered to him on temporary basis, the 1st respondent refused to join the duty and the petitioner was insisted on being given permanent work, are without merits. From the award of the 2nd respondent, it is seen that the petitioner has not stated that the 1st respondent did not work for 240 days and therefore, the provisions of Section 25F of the Industrial Disputes Act, is not applicable to the 1st respondent. From the materials available on record, it is seen that the petitioner has issued number of charge memos alleging various misconduct committed by the 1st respondent, but the 1st respondent was terminated as there was no work in the petitioner management. Even if no work is available in the petitioner management, the worker can be retrenched only after complying the provisions of Section 25F of the Industrial Disputes Act, if he had worked continuously 240 days in 12 calendar month. The 2nd respondent considering the above materials and failure on the part of the petitioner to conduct enquiry or comply with the provisions of Section 25F of the Industrial Disputes Act, ordered reinstatement into service as a daily wager with continuity of service and other benefits, but without backwages. There is no error or perversity in the order passed by the 2nd respondent. The learned counsel appearing for the petitioner submitted that the 1st respondent has attained the age of superannuation. The petitioner management is directed to notionally reinstate the petitioner and that the 1st respondent is entitled to terminal benefits and backwages.

5.For the above reason, the writ petition stands dismissed.
No costs. Consequently, connected Miscellaneous Petition is
closed.

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Sd/-
Assistant Registrar

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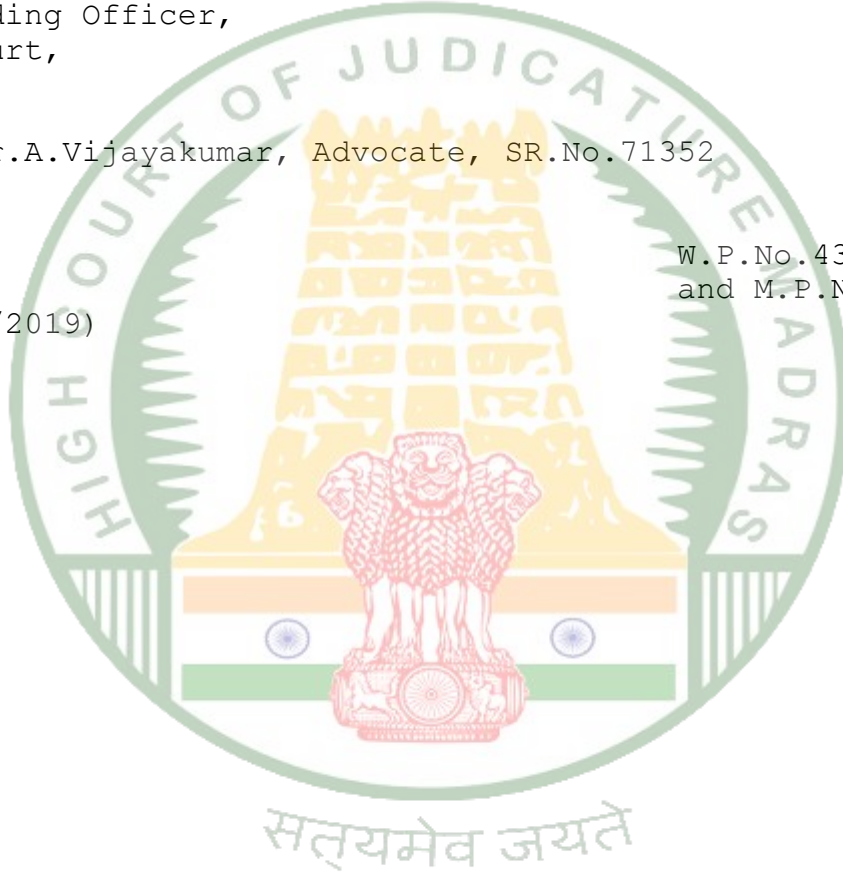
Sub Assistant Registrar

To
The Presiding Officer,
Labour Court,
Salem.

+1cc to Mr.A.Vijayakumar, Advocate, SR.No.71352

W.P.No.43706 of 2006
and M.P.No.1 of 2006

Kak (28/09/2019)



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