

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.A.No.618 of 2017

The Executive Engineer Tamil Nadu Water Supply and
Drainage Board, Mechanical Sub Division, Williams Road
Trichirapalli. Appellant

-Vs-

1. Nedumaran
2. The Presiding Officer
Labour Court, Trichy. Respondents

Prayer : Writ Appeal under Clause 15 of the Letters Patent,
against the order passed by this Honourable Court in
W.P.No.13834 of 2000 dated 08.02.2010.

Prayer in W.P.No. 13834 of 2000: Writ Petition filed under
Article 226 of Constitution of India praying for a Writ of
Certiorarified Mandamus to call for the records of the Second
respondent dated 31.03.1998 in I.D.No. 16/97 and quash the
same and direct the first respondent to reinstate the
petitioner in employment with the continuity of service with
full back wages.

For Appellant : Ms.S.Thamizharasi

For Respondents : Mr.P.Prithvi Chopda
Amicus Curiae - for R1

J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI, J.)

The appellant Tamil Nadu Water Supply and Drainage Board,
Trichirapalli has filed this writ appeal, aggrieved by the
order dated 08.02.2010 passed by the learned Single Judge,
whereby the learned Single Judge allowed the writ petition
filed by the labour Nedumaran and directed reinstatement with
50% backwages, setting aside the order passed by the labour
Court in I.D.No.16 of 1997 dated 31.03.1998. The operative

portion of the order of the learned Single Judge is quoted below for ready reference.

"9. In the light of the above, this writ petition stands allowed. Insofar as the award in ID No.16/97 dated 31.3.1998, declining the relief to the petitioner, the same is set aside, and the first respondent is directed to reinstate the petitioner in the post which he was holding before his services were terminated. The petitioner is also eligible for 50% of the back wages from the date of his non-employment till he is restored to services. The first respondent is also directed to comply with this order within eight weeks from the date of receipt of a copy of this order. No costs "

2. The relevant findings of the learned Labour Court with regard to the said respondent workman Nedumaran in paragraph No.15, are quoted below for ready reference.

"15.P.W.4 in his deposition said that he joined in the year 1975 in the management, worked till 30.11.96, as a watchman he worked from 1990 to 1996 he was removed from service on 30.11.96 orally. In his cross examination, he said that he was not employed through employment exchange, he was removed, after 30.12.90 he requested the management to give any job. MW-2 in his deposition said that PW-4 worked till 30.11.96 as a sweeper for a salary of Rs.70/-, he asked for conferment, but he cannot be conferred because he was not employed through the employment exchange, so he himself stopped coming to the job and the management did not remove him from service. In the document MW-3 it is found that PW-4 worked as sweeper and a payment of Rs.70/- was made to him. In Ex-P9 it is found that since PW4 did not come through the employment exchange his service was terminated in May 1990, but he was appointed as a sweeper, his educational qualification was 10th std. So PW4 cannot asked for reinstatement since he did not come through the employment exchange. Further, he does not have the required qualification for getting the job. So the PW4 has no right to claim any relief against the management."

3. Learned counsel appearing for the appellant Ms.Thamizharasi submitted that since the labour Court returned a finding that only PW1 to 3 had worked for more than 480 days in

the preceeding two years, they can be directed to be reinstated into the services of the appellant Board and the first respondent workman Nedumaran, who was P.W.4 before the learned Labour Court was not entitled.

4. Since nobody has entered appearance on behalf of the respondent workman Nedumaran, this Court appoints Mr.P.Prithivi Chopda as Amicus Curiae to appear on behalf of the respondent workman. The fees of the Amicus Curiae shall be fixed by the Tamil Nadu State Legal Aid Services Authority.

5. Mr.Prithvi Chopda, learned Amicus Curiae supported the impugned order passed by the learned Single Judge and submitted that there is no specific mention in paragraph 15 of the award of the labour Court that the respondent workman Nedumaran did not work for the minimum requisite period of 480 days prior to the oral termination on 30.11.1996, and therefore, the reinstatement with 50% backwages is justified.

6. Having heard the learned counsel on both sides, we do not find any merit in the present appeal filed by the TWAD Board. From the afore quoted portion of the award of the labour Court, we do not find any categorical finding against the respondent workman Nedumaran that he did not work for the minimum requisite period of 480 days prior to his oral termination on 30.11.1996. On the contrary, we find that he was working from 01.05.1975 as daily wages labourer and thereafter as watchman till 30.11.1996, when he was orally terminated, after a long period of service to his credit. In the absence of any categorical finding based on any relevant material that he did not work for the requisite period of 480 days in the preceeding two years or 240 days in the preceding one year, we cannot sustain the labour Court award against the first respondent, especially when the labour Court returned with a finding, in case of similarly situated workmen, that they would have worked for more than 480 days in the preceeding two years and therefore are entitled for reinstatement, the presumption sought to be drawn on the basis of the afore quoted finding of the labour Court, as urged by the learned counsel for the appellant, does not stand the scrutiny.

7. The findings of the labour Court, in the manner in which they have been written, leaves much to be desired. The fact finding Court has to base its finding on the relevant evidence and has to record such findings categorically. No inferences, assumptions or presumptions are allowed. We do not draw any support to uphold the contentions raised on behalf of the appellant Board on the basis of the aforesaid findings of the labour Court.

8. Therefore, in our considered opinion, the learned Single

Judge was perfectly justified in directing reinstatement of the first respondent workman back into service along with the other three workman, who were so directed by the labour Court itself. We dismiss the present appeal filed by the TWAD Board and direct the appellant Board to comply with the directions of the learned Single Judge, within three months from today. No costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

KST

To

1. The Presiding Officer
Labour Court, Trichy.
2. The Member Secretary.
State Legal Aid Services Authority
Chennai 600 104.

Copy To

The Executive Engineer,
TN Water supply and Drainage Board,
Mechanical Sub Division,
Williams Road, Trichirappalli.

+1cc to Mr.S.Thamizharasi, Advocate, S.R.No. 57094
+1cc to Mr.Prithvi Chopda, Amicus Curae, S.R.No.58210

W.A.No.618 of 2017

PPA (CO)
GN(14/08/2019)
CB(05/09/2019)

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