



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.11.2019

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THE HONOURABLE MR.JUSTICE **S . S . SUNDAR**

W.P.(MD)No.8327 of 2011

and

M.P.(MD)No.1 of 2011

The Tamil Nadu Poultry Development
Corporation (TAPCO), Kappalur,
Madurai,
now Taken over by the Commissioner of
Animal Husbandry and Veterinary Services,
Chennai.

... Petitioner

vs.

1.S.Murugan

2.The Presiding Officer,
Labour Court, Madurai.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records on the file of the second respondent pertaining to its order passed in I.D.No.14 of 1998, dated 27.05.2010 and quash the same.

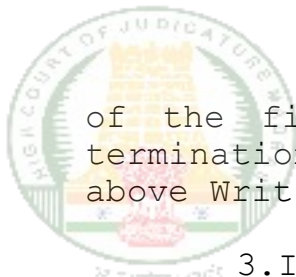
For Petitioner :Mr.D.Muruganandam
Additional Government Pleader

For R1 :Mr.T.Ravichandran

O R D E R

This Writ Petition is filed for issuing a Writ of Certiorari, to quash the order passed by the second respondent in I.D.No.14 of 1998, dated 27.05.2010.

2.The first respondent was engaged as a Labour by M/s.TAPCO and he was paid daily wages for the days, in which the first respondent was engaged by M/s.TAPCO. The first respondent raised an industrial dispute in I.D.No.14 of 1998, before the Labour Court, Madurai, stating that he was terminated from service in 1996 without any notice. The Labour Court passed an award, holding that the termination of first respondent is illegal. Since M/s.TAPCO, closed its business, the Labour Court directed the petitioner to pay salary



of the first respondent on daily wage basis from the date of termination till the date of award. Aggrieved by the same, the above Writ Petition is filed.

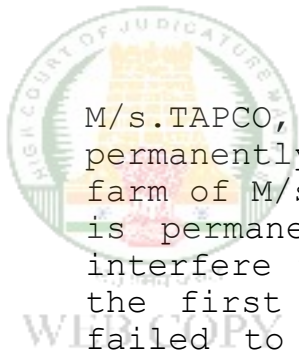
3.It is admitted that the petitioner Corporation was a public sector undertaking registered under the Companies Act. On account of heavy loss, it is stated that the Company was wounded up and its activities have come to an end even in 2000. However, the Department of Animal Husbandry took over TAPCO along with its employees, numbering around 139 after sending several other persons under VRS.

4.The learned Additional Government Pleader appearing for the petitioner submitted that no record was produced to show that the first respondent had worked from 1986 to 1996 or that he had completed 240 days, to show that he was a workman. It is further submitted that the first respondent was engaged only on daily rate basis and that he did not receive monthly salary. It is in the said circumstances, the learned Additional Government Pleader submitted that the first respondent is not entitled to get back wages, particularly, when the Corporation, which engaged the first respondent, was closed. It is also submitted by the learned Additional Government Pleader that the petitioner being a Government undertaking, the first respondent, who was appointed without following any procedure (not sponsored by employment exchange), is not entitled to any relief.

5.The learned Additional Government Pleader relied upon the judgment of Honourable Supreme Court in the case of **Surendra Kumar Verma vs Central Government Industrial Tribunal and another**, reported in **(1981) 1 SCR 789**, wherein, it has been held that the Court may deny the relief of full back wages where that would place an impossible burden on the employer. The said judgment cannot be cited for the proposition advanced by the learned Additional Government Pleader in this case, as the Honourable Supreme Court has also considered the relative of hardship, that would be caused to the employee, which would far greater than the hardship, that would be caused to the Corporation, if the relief is denied to the employee.

6.The Labour Court, after considering all the documents and oral evidence, came to the conclusion that the first respondent is entitled to the relief. Though the petitioner pleaded that the first respondent was engaged on daily wage basis for a long time, no records were produced by the petitioner to prove that the first respondent was not employed for more than 240 days in a year.

7.It is admitted that the first respondent was engaged for the purpose of watering, feeding, collection of eggs, cleaning of eggs and to put the same in incubators in the poultry farm run by



M/s.TAPCO, which would show that the first respondent was permanently engaged. More than 90% employees engaged in the poultry farm of M/s.TAPCO must be by engaging daily wagers. Such employment is permanent in nature and hence, this Court has no reason to interfere with the order of the Labour Court, as to the status of the first respondent as workman, especially when the Corporation failed to produce reduce which are maintained in the course of business.

8.The Labour Court after considering the fact that M/s.TAPCO was closed, refused to grant reinstatement, but, directed the petitioner to pay back wages on daily wage basis from the date of non-employment till the date of award. This appears to be fair, having regard to the facts and attending circumstances. Hence, the Writ Petition is dismissed and the Award of Labour Court, Madurai, in I.D.No.14 of 1998, dated 27.05.2010 is upheld. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar(CS)

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To

The Presiding Officer,
Labour Court, Madurai.

+1 CC to M/s.SPL GP (SR-96339[F] dated 06/11/2019)

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