



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 22.07.2019
CORAM:

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**THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
AND
THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

**W.A(MD)NO.326 OF 2019
and
C.M.P(MD)No.2564 of 2019**

- 1.The Commissioner,
Municipality,
Puliyankudi,
Sivagiri Taluk,
Tirunelveli District. : Ist Appellant/Petitioner
 - 2.The Secretary,
Municipal Administration and
Water Supply Department,
Chepauk,
Chennai.
 - 3.The Commissioner of
Municipal Administration,
Chepauk,
Chennai. : 2nd and 3rd appellants/
Respondents 3 and 4
- .vs.
1. R.Paramasivan
 2. The Labour Court,
Tirunelveli,
Tirunelveli District. : Respondents/Respondents
1 and 2

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent praying this Court to set aside the order passed by this Court in W.P(MD)No.454 of 2015 dated 01.03.2018.

Prayer in WP(MD). 454/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, calling for the records relating to the impugned order in claim Petition in C.P NO. 6 of 2014 on the file of the 2nd Respondent on 04.12.2014 and to quash the same as illegal and pass such further or other orders.



For Appellants

: Mr.V.R.Shanmuganathan

Special Govt.Pleader

For Respondent-1

: Mr.M.P.Senthil

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JUDGMENT

[Judgment of the Court was made by **K.RAVICHANDRABAABU, J.**]

This Writ Appeal is directed against the order of the Writ Court passed in W.P(MD)No.454 of 2015, dated 1.3.2018.

2.The appellants are the Petitioner, respondents 3 and 4 respectively, before the Writ Court. The first respondent herein was employed as a Sweeper and he was getting consolidated pay of Rs.2,000/-p.m. It is seen that he was un-authorizedly absent from 1.6.1999 to 11.11.1999. Consequently, the first respondent was not permitted to report duty after such unauthorized absented period. The first respondent, therefore, filed I.D.No.28 of 2004, on the file of the Labour Court, Tirunelveli, which in-turn, by its order, dated 25.1.2008, directed for re-instatement in the same status as temporary employee, with same pay. Though a Writ Petition was filed by the management challenging the said order of the Labour Court, the management was not successful both before the Writ Court as well as in the Writ Appeal. Consequently, the first respondent filed C.P.No.11 /2018, wherein and whereby, he sought for payment of arrears of salary to a sum of Rs.1,16,325/-.The said Claim Petition was allowed on 16.5.2011 and it is stated that the said order has been complied with by the management. Thereafter, another Claim Petition in C.P.No.6 of 2014 was filed by him claiming wages to the tune of Rs.2,32,000/- for the period during which he was denied employment. The said Claim Petition was allowed on 4.12.2014, with a direction to the management to settle the claim amount of Rs.2,32,000/- with 12% interest from 7.1.2014 till it was realized by the first respondent herein. Challenging the said order, the management filed the subject-matter Writ Petition in W.P(MD)No.454 of 2015. The said Writ Petition was disposed by the Writ Court on 1.3.2018 by issuing certain directions, wherein and whereby, the Writ Court directed the management to send proposals for regularizing the service of the first respondent and with a further direction to the Government to pass orders regularizing the service of the first respondent and place him in the time scale of pay from the date on which the co-workers were regularized. The Writ Court has also directed the management to withdraw the amount deposited to the tune of Rs.1,82,000/- to the credit of C.P.No.6 of 2014. In effect, the Writ Court while permitting the management to withdraw the amount deposited by them towards the arrears of salary, has gone into the issue regarding regularization of the Writ Petitioner/first respondent herein and issued several directions as stated supra. Therefore, the present Writ Appeal is filed mainly by contending that the order of the Writ Court is beyond the scope of the Writ Petition and the issue involved therein.



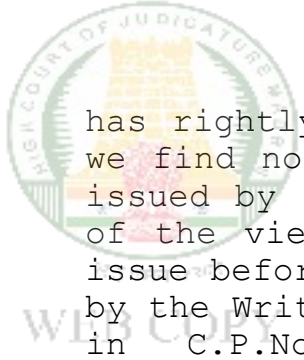
3.The learned Special Government Pleader for the appellants contended that the issue before the Labour Court in C.P.No.6 of 2014 is as to whether the employee/first respondent is entitled for wages for the period during which he was denied employment. The Labour Court allowed the Claim petition on the reason that the management failed to reinstate the Petitioner unconditionally, as per the direction of the Labour Court passed in the earlier Industrial Dispute. Therefore, the learned Special Government Pleader contended that the Writ Court should have seen as to whether the order of the Labour Court in directing the management to pay the said sum can be sustained or not, instead of going into the issue regarding the regularization of the employee, which was not the issue either before the Labour Court or before the Writ Court.

4.On the other hand, the learned counsel for the first respondent contended that even though the issue before the Labour Court was in respect of payment of salary for the period during which the first respondent was denied employment, still the Writ Court is justified in considering the issue of regularization as well, by issuing directions as stated supra.

5.Heard both sides.

6.There is no dispute to the fact that the issue raised in C.P.No.6 of 2014 is in respect of the employee's claim for wages for the period during which time, he was out of employment. In other words, the claim of the employee towards such amount is in respect of the period in which he was denied employment by the management. There is no dispute to the fact that the employee has already succeeded before the Labour Court against denial of employment, which was also confirmed by this Court in Writ Petition and Writ appeal, with a specific direction for re-instatement. However, it is to be noted that the Labour Court has directed the management to reinstate the Petitioner only as a temporary employee with the same wages. Therefore, the Management ought to have reinstated the Petitioner/first respondent. Since he was not reinstated, he approached the Labour Court and filed C.P.No.6 of 2014 which was rightly allowed by the Labour Court. Further, when the management filed Writ Petition against the said order, the Writ Court, instead of deciding the matter as to whether the order of the Labour Court is sustainable or not, has gone beyond the scope of the Writ Petition and decided the question of regularizing the first respondent and issued several positive directions.

7.The learned Special Government Pleader appearing for the appellants submitted that the first respondent, in fact, was called upon to appear after the order passed by the Labour Court for reinstatement. However, it is seen that the said communication was sent only for an interview and not for asking the first respondent to come and report for duty. Therefore, the Labour Court



has rightly ordered for payment in C.P.No.6 of 2014, with which, we find no reason to interfere. However, insofar as the directions issued by the Writ Court in respect of the regularization, we are of the view that the issue of regularization was not at all the issue before the Labour Court and therefore, those directions issued by the Writ Court are certainly beyond the scope of the order passed in C.P.No.6 of 2014 and the issue raised in the Writ Petition. Hence, We are inclined to set aside the order of the Writ Court by passing the following order:

8. Accordingly, the Writ Appeal is allowed and the order of the Writ Court in the above Writ Petition is set aside with the following directions:

(1) the appellants shall pay the amount as awarded by the Labour Court, Tirunelveli in C.P.No.6 of 2014, dated 4.12.2014, after adjusting the the amount, if any, already paid, within a period of two weeks from the date of receipt of a copy of this order.

(2) It is open to the first respondent to make necessary representation/application seeking for regularization of his service within a period of two weeks thereafter.

(3) On receipt of such application/representation, the concerned authorities shall consider the same and pass orders on merits and in accordance with law.

(4) Such order shall be passed by the concerned authorities within a period of twelve weeks thereafter.

No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar (CS)

To

The Labour Court,
Tirunelveli.

+1 CC to Mr.M.RAJARAJAN, Advocate (SR-76707[F] dated 22/07/2019)
+1 CC to SPL GP (SR-76919[F] dated 23/07/2019)

JUDGMENT MADE IN
W.A(MD) NO.326 OF 2019

and
C.M.P(MD) No.2564 of 2019
22.07.2019