



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.11.2019

CORAM

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

W.P. (MD) No. 20193 of 2014

and

M.P. (MD) No. 2 of 2014 and W.M.P. (MD) No. 5687 of 2016

The Director,
STAMIN,
Kudumiyamalai, Pudhukottai District. ... Petitioner

vs.

1. R. Devaraj
2. The Presiding Officer / District Judge,
Presiding Officer Labour Court,
Trichy. ... Respondents

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 relating to the impugned order in Industrial Dispute No. 141 of 2004, on the file of the Labour Court, Tiruchirapalli (Camp at Pudukottai), the second respondent herein, dated 09.11.2012 and quash the same.

For Petitioner : Mr. D. Muruganandam
Additional Government Pleader
For R1 : Mr. K. Balasundaram

ORDER

This Writ Petition is filed by the Director, STAMIN, challenging the award of Labour Court, Trichy, in I.D. No. 141 of 2004.

2. When the first respondent was working as Watchman on daily wage basis with the petitioner, a Colour Television, which was installed in the Training Centre At State Agricultural Management Extension Institute, Kudumiyamalai, Pudukottai District, was stolen. When the first respondent reported the theft to the management, a criminal complaint was also lodged on the basis of the statement given by the first respondent. Later, the first respondent was terminated from service with effect from 07.10.2003. It is admitted that no written order was issued and he was orally informed that he was removed from service.



3.It is the case of the petitioner that the Assistant Director of Agricultural, enquired about the incident and advised the first respondent not to come to duty from 07.10.2003 onwards. It is admitted that no charge memo was issued or enquiry was conducted before terminating the first respondent orally. As against the same, the first respondent raised an industrial dispute in I.D.No.141 of 2004. The Labour Court allowed the petition filed by the first respondent, by holding that the oral termination of first respondent is illegal. The petitioner was directed to reinstate the first respondent into service immediately with continuity of service with 25% back wages and other benefits. Aggrieved by the same, the above Writ Petition is filed.

4.The learned Additional Government Pleader submitted that the first respondent was not a permanent employee and he was given daily wages for the day of work. It is submitted that the first respondent, who was only a Watchman on daily wage basis, cannot be given continuity of service or back wages, especially, when the first respondent was given work depends upon necessity. The learned Additional Government Pleader further submitted that the first respondent has lost the confidence of petitioner by his conduct/dereliction of duty. It is, therefore, submitted that the award of Labour Court without considering the legal and factual issue is unsustainable.

5.In this case, the petitioner has orally terminated the first respondent from service. Admittedly, no enquiry was conducted. Not even a charge memo was issued to the first respondent. It is stated by the first respondent before the Labour Court that he was engaged, of course, on daily wage basis from 20.08.1982 paying Rs.75/- per day as salary. The submission of first respondent that he was employed from 1982 was not disputed by the petitioner in the counter affidavit filed before the Labour Court. Oral termination is illegal and contrary to well settled principles. Even assuming that the petitioner is found guilty of serious charges, there is no reason to dispense with enquiry. Even before the Labour Court, no evidence was let in to show that the first respondent was guilty of any serious irregularity or about the involvement of first respondent in the theft.

6.Without an enquiry, the first respondent cannot be held responsible for the theft of Colour Television from the official premises of petitioner. It was open to the petitioner to proceed against the first respondent as per law, after framing charges in the manner known to law. Without following any such procedure, the petitioner cannot presume that the first respondent is guilty of serious charges and it is impermissible in law by terminating a person from service orally. Hence, the order of Labour Court directing reinstatement with continuity of service and 25% back wage



is well justified. Hence, this Writ Petition is dismissed and the Award passed by the first respondent, in I.D.No.141 of 2004, dated 09.11.2012 is confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Crl side)

// True Copy //

Sub Assistant Registrar (CS)

To

The Presiding Officer / District Judge,
Presiding Officer Labour Court,
Trichy.

+1CC TO MR.K.BAALASUNDHARAM, Advocate Sr. No. 98944
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 99547

W.P. (MD) No. 20193 of 2014
18.11.2019

PM(CO)
TR(04.12.2019) 3P 4C