



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.12.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.(MD)Nos.967 and 968 of 2014

and

M.P.(MD).Nos.1 and 1 of 2014

WEB COPY

W.P. (MD) .No.967 of 2014:

The Managing Director,
Tamil Nadu Fisheries Development
Corporation Limited,
Rep. by its Manager S.Jude Armstrong,
No.485, M.T.B. Building 6th Floor,
Annasalai, Nandanam,
Chennai -35.

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Madurai.

2.S.Anandarajan

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records of the impugned award passed by the 1st respondent dated 09.10.2007 in I.D.No.185 of 1995 and quash the same.

For Petitioner : Mr.G.Murugan

For 2nd respondent : Mr.S.M.Mohangandhi

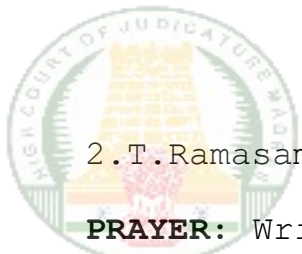
W.P. (MD) .No.968 of 2014:

The Managing Director,
Tamil Nadu Fisheries Development
Corporation Limited,
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Vs.

1.The Presiding Officer,
Labour Court,
Madurai.



2.T.Ramasamy

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records of the impugned award passed by the 1st respondent dated 09.10.2007 in I.D.No.314 of 1996 and quash the same.

For petitioner : Mr.G.Muruggan

For 2nd respondent : Mr.S.M.Mohangandhi

COMMON ORDER

These writ petitions have been filed by the petitioners challenging the award passed by the Labour Court in I.D.Nos.185 of 1995 and 314 of 1996, whereby and whereunder the first respondent / Labour Court directed reinstatement of the 2nd respondents / workmen with continuity of service but without backwages on the ground that the retrenchment of the 2nd respondents / workmen, who served about five years, is illegal.

2. According to the petitioners, they started a new scheme by name "Pearl Cultural Project" at Mandapam for development purpose during the year 1991 as a test case. To suit the above specific purpose 24 persons were engaged on temporary basis, including the 2nd respondents herein. The scheme came to an end during the year 1995, since the project ended in failure and subsequently, it was decided to let lease and the lessee was also willing to absorb the said employees, but some of them, including the 2nd respondents herein, were not willing to work under lessee. Hence, the 2nd respondents and others were retrenched by giving retrenchment compensation. Refusing to receive the compensation and go for work, the 2nd respondents herein and other similarly placed persons preferred Industrial Dispute. Without considering the case of the petitioners, the first respondent herein has directed reinstatement of the 2nd respondents / workmen with continuity of service but without backwages on the ground that the retrenchment of the 2nd respondents / workmen, who served about five years, is illegal.

3. Heard the learned counsel for the petitioner and the learned counsel appearing for the second respondent in both the petitions.

4. When the writ petitioners challenged the similar award passed in favour of a similarly placed workman, a learned Single Judge of this Court in an unreported decision in **the Managing Director, Tamil Nadu Fisheries Development Corporation Ltd., rep. by its General Manager Vs. The Presiding Officer, Labour Court, Madurai and others, (W.P.(MD).No.11909 of 2008) dated 16.03.2012**, has confirmed the award passed by the Labour Court and dismissed the



writ petition. The relevant portion is extracted hereunder:

"9. The contention raised by the Fisheries Corporation was that the appointment of the workman was irregular and illegal and once specific project appointment has been given, he is not entitled for any further relief. On the contrary, the workman contended even before the project employment, he was working in the department and as per the certificate given by the Deputy Manager Operation, he was earlier working on daily wages from 02.04.1984 to 31.12.1986 and then as farm worker from 01.01.1987 to 31.03.1987. Though it was stated in the project, he was employed temporarily, but even the previous employment was also under the Fisheries Corporation. At the time of relieving him from service, no retirement compensation was ordered to him in terms of section 25-F of the I.D. Act.

10. The Labour Court was not wrong in stating that the termination was not valid. The Fisheries Corporation had failed to convince the Labour Court the need for retrenching the workman and the statutory compliance before passing the order of retrenchment.

11. The Learned counsel for the Fisheries Corporation attempted to rely on the judgment of the Supreme Court reported in **1992-II LLJ 452 (Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi and others)** for contending a scheme employee cannot seek for regularisation, but that is not a ground taken before the Labour Court. In any event, inasmuch as the workman had completed 240 days of service in the employment, the order of termination is illegal. In this context, it is necessary to refer to the judgment of the Supreme Court reported in **(1976) 1 SCC 822 (State Bank of India v. N. Sunara Money)**.

12. The other portion of the Labour Court denying back wages is concerned, no fault can be found in the said order. Admittedly, the petitioner is a casual labour and the Supreme Court in the judgment reported in **(2008) 13 SCC 248 (Rajasthan Lalit Kala Academy v. Radhey Shyam)** held that even in case of invalid termination under Section 25-F, the normal rule may be reinstatement with backwages, but the Labour Court should consider several other factors such as the nature of employment being adhoc, daily wages, temporary, permanent, etc. and the delay in



raising dispute.

13. In view of the above, this Court do not find any case is made out of interfere with the Award challenged by both sides. Hence, both writ petitions will stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed."

The above decision was subsequently confirmed by a Division Bench of this Court in W.A.(MD).No.468 of 2012, by order dated 26.04.2017.

5. The above decision of this Court is squarely applicable to the facts and circumstances of this case. In this case, as stated earlier, the 2nd respondents have served about five years on temporary basis, but they were suddenly terminated from service and therefore, the Labour Court directed the petitioner to reinstate the 2nd respondents / workmen with continuity of service, but without backwages.

6. In view of the above, both the Writ Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS)

gcg

To

The Presiding Officer,
Labour Court, Madurai.

+2 CC to M/s.R.SARAVANAN, Advocate (SR-103171[F] dated 03/12/2019)

+2 CC to M/s.S.M.MOHANGANDHI, Advocate (SR-103175 & 103176[F] dated 03/12/2019)

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