



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2019

CORAM:

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.[MD]No.14057 of 2011

and

M.P.[MD]No.1 of 2011 & 1 of 2012

1. The Assistant Executive Engineer,
The Tamil Nadu Water and Drainage Board,
Maintenance Sub Division,
Paramakudi,
Ramnad District.

2. The Tamil Nadu Water and Drainage Board,
Rep by its Managing Director,
No.31, Kamarajar Salai,
Chennai.

: Petitioners

Vs.

1. The Presiding Officer,
Labour Court,
Madurai.

2. Lakshmanan

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records pertaining to the impugned order bearing I.D.No.43 dated 07.06.2011 passed by the first respondent and quash the same.

For Petitioner : Mr.Porkodi Karnan

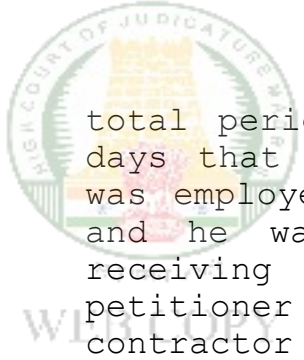
For Respondent No.1 : Court

For Respondent No.2 : Mr.S.M.Mohan Gandhi

O R D E R

The instant writ petition has been filed challenging the order dated 07.06.2011 passed by the first respondent Labour Court in I.D.No.43 of 2008.

2. According to the petitioner Board, the second respondent was originally employed in daily wage basis from 11.08.1995 to 10.09.1995. According to them, even during this period, out of the



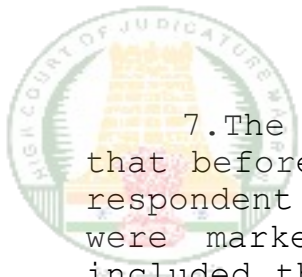
total period of 28 days, the second respondent worked only for 7 days that too not continuously. Thereafter, the second respondent was employed by the Contractor of the petitioner on contract basis and he was working from 19.09.1995 to 31.07.1997 and he was receiving his wages only from the contractor. According to the petitioner Board, they will pay the entire contractual salary to the contractor and during that time, the contractor was paid a sum of Rs.1,000/- per month which had been interpreted by the second respondent as his own salary.

3. According to the petitioner, the second respondent was not given work from 21.08.2007, by the contractor. According to the petitioner, even though the second respondent is not their employee, he has approached the Labour Court under Section 2(a)(2) of the Industrial Disputes Act in I.D.No.43 of 2008, claiming reinstatement with backwages, continuity of service and other benefits. By the impugned order dated 07.06.2011, passed by the first respondent Labour Court in I.D.No.43 of 2008, the first respondent Labour Court directed the petitioner board to reinstate the second respondent into service with continuity of service but without backwages and other benefits. Aggrieved by the said order, the instant writ petition has been filed.

4. Heard Mr. Porkodi Karnan, learned Counsel for the petitioner and Mr. S.M. Mohan Gandhi, learned Counsel for the second respondent.

5. According to the learned Counsel for the petitioner, the first respondent had failed to consider the fact that the second respondent was not working directly under the petitioner Board. According to him, the first petitioner had no power to appoint or terminate the daily wagers on his own. The selection committee of the petitioner Board alone will look after the matters relating to appointment. According to the learned Counsel for the petitioner, this fact was not considered by the first respondent, before passing the impugned order. Further, the learned Counsel would contend that the second respondent did not complete the mandatory period of 480 working days within a period of two years. According to the learned Counsel, the second respondent is merely a contract labourer and not even a daily wager directly employed by the petitioner board.

6. Per contra, the learned Counsel for the second respondent drew the attention of this Court to the impugned order dated 07.06.2011 passed by the first respondent Labour Court in I.D.No.43 of 2008. In particular, he referred to the observations made by the first respondent Labour Court made in paragraph No.8 of the impugned order, wherein a categorical finding has been given that the second respondent has completed 250 days of service in a year. It was also observed by the first respondent Labour Court that even a daily wager cannot be dismissed without enquiry and that the petitioner has not adopted the procedure prescribed by law for dismissal of the second respondent from service.



7.The learned Counsel for the second respondent also submitted that before the Labour Court, 10 documents were filed by the second respondent which were marked as Exs.W1 to W9. The documents which were marked as exhibits on the side of the second respondent included the proceedings of the Managing Director of the petitioner dated 11.10.2001, regularising the service of contract employees like that of the second respondent. Before the Labour Court, no documents were filed by the petitioner. Therefore, according to the learned Counsel for the second respondent, the Labour Court under the impugned order, has rightly awarded reinstatement of the second petitioner into the service of the petitioner Board.

Discussion:

8.The impugned award of the Labour Court is a well considered award. The second respondent has filed the proceedings of the Managing Director of the petitioner Board which is marked as Ex.W.7, before the Labour Court to prove that the service of the contract employees were regularised by the petitioner Board. The petitioner has also written the letter dated 02.09.2006, requesting the Managing Director of the petitioner Board to regularise the service of the petitioner which is marked as Ex.W.5 before the Labour Court. Another letter written by the petitioner to the Chief Engineer of the petitioner Board requesting the Chief Engineer to regularise his service was also marked as Ex.W.9 before the Labour Court.

9.Based on the oral and documentary evidence available on record, the first respondent Labour Court has observed that the petitioner has not adopted the procedure prescribed under law. It is also observed by the Labour Court that even a daily wager cannot be dismissed without any enquiry. In the instant case, admittedly, the second respondent was working for the petitioner board and it is the case of the petitioner board that he was employed only by their contractor and not by them. No contra evidence has been produced by the petitioner board before the Labour Court to disprove the claim of the second respondent as seen from the impugned Labour Court award. This Court, under Article 226 of the Constitution of India cannot re-appreciate the evidence unless and until the findings of the Court below are perverse or based on no evidence. In the instant case, only based on the oral and documentary evidence available on record, the first respondent Labour Court has passed the impugned award and this Court does not find any infirmity in the same.

10.In the result, there is no merit in this Writ Petition. Accordingly, the writ petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-I)



To

The Presiding Officer,
Labour Court,
Madurai.

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+1 CC to M/s.S.M.MOHAN GANDHI, Advocate (SR-55608[F] dated
21/03/2019)

MR

DS : 03/04/2019 : 4P/3C

ORDER MADE IN
W.P. [MD] No.14057 of 2011
20.03.2019