

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2020

ORDERS RESERVED ON 21.01.2020

ORDERS DELIVERED ON 04.02.2020

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.3635 OF 2015

General Manager,
Sri Bharathi Mills,
Pondicherry.

...Petitioner

Vs.

1.The Presiding Officer,
Industrial Tribunal (FAC),
Pondicherry.

2.P.Mannagati,
Rep. by the President/Secretary,
Sri Bharathi Mills Pondicherry,
Thozhilalar Urimai Padukappu Sangam,
Pondicherry.

...Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the award passed by the first respondent in I.D.(T) No.6 of 2008 dated 03.01.2013, quash the same.

For Petitioner : Mr.R.Parthiban

For Respondent : R1-Court

Mr.R.Jagdeesan for

M/s.K.V.Subramanian for R2

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O R D E R

This writ petition is filed challenging the award passed by the Industrial Tribunal and Pondicherry dated 03.01.2013. Management is the writ petitioner. The second respondent herein raised the industrial dispute seeking for regularisation of her service. The Tribunal through the impugned award directed the Management to confirm the service of the second respondent with

retrospective effect and to give her the backwages and continuity of services and all attendant benefits.

2. The case of the petitioner/Management is as follows:

The Government of Pondicherry issued a Gazette Notification on 04.07.2005, thereby transferring the petitioner to the Company Swadeshee Bharathi Textile Mills Limited, Pondicherry. The said arrangement was made only as a welfare measure and not for earning profit. Even after taking over, the Mill is suffering heavy loss and the working capital of the Mill has been completely eroded. The second respondent raised an industrial dispute on the basis that she was working in the petitioner Mill as daily wager from the year 1995 to 2008. The petitioner filed a detailed counter statement before the Tribunal and denied all the averments made in the claim petition. The petitioner specifically stated that the second respondent started to work in the Mill as a casual employee and that she was engaged, whenever the work was needed. She is not doing a regular job. She was given work on piece rate basis and as soon as the job is over, she was given payment for the work done. She was engaged along with other casual labourers to finish the job. Under the above circumstances, the second respondent raised the industrial dispute as if her service has to be regularised and she had to be paid on par with permanent workers. Though the second respondent examined three witnesses, she had not filed any documents in support of her claim petition. On behalf of the petitioner Mill, one witness was examined and few documents were also marked. However, the Tribunal passed the impugned award.

3. The second respondent filed a counter affidavit, wherein it is stated as follows:

The second respondent joined the petitioner Company on 02.10.1995 in the category of Scavenger and Sweeper. The second respondent was working continuously for more than 240 days in each and every year in the same category for 13 years. Therefore, the Management has to confirm and regularise her service. She was granted increments regularly. 9 documents were marked on behalf of the second respondent. The industrial Tribunal, after going through the documents and evidences found that the second respondent is working in the Mill from 02.10.1995 as casual labourer. The Management also admitted through their witness that the second respondent herein is employed in the Mill from 02.10.1995. The second respondent's service is to be regularised from the date of initial appointment dated 02.10.1995. The Management has not come before this Court with clean hands. They have suppressed many facts what they admitted before the Industrial Tribunal. The second respondent had worked for 13 years and therefore, regularisation is her legal right. Only when the second

respondent filed E.P. for execution of the award, the present writ petition is filed to avoid the action in the said E.P.

4. Learned counsel for the petitioner submitted as follows:

a) The second respondent is only a casual employee. The ESI card is given to all kind of such labourers. Therefore, issuance of such card cannot be construed, as if the second respondent is a regular employee. Retrospective regularisation cannot be given. The second respondent had only made self serving statement before the Tribunal without marking any relevant documents. The second respondent did not call for the Attendance Register to prove her that she had worked for 240 days. The Mill is running in loss. The burden to prove that she was working for 240 days in a year lies on the second respondent.

b) In support of the above contention 2006(1) LLN 7(SC), R.M.Yellatti vs Assistant Executive Engineer and 2009 (2) LLN 527 MAD (DB), A.V.Rajan vs. Presiding Officer, Labour Court are relied on.

c) In support of the contention that even assuming the regularisation can be granted, it could be done only prospectively and not retrospectively, 2007(4) LLN 964 (SC), State of Uttaranchal vs. Prantiya Sinchai Avam Yogana Shramik Mahaparishad and 2007 (1) LLN 721 (SC), Union of India vs. Sheela Rani, are relied on.

d) In support of the contention that the second respondent is not entitled for backwages, when the petitioner Mill suffers loss, 1980 LIC 1292 (SC), Surendra Kumar Verma vs. The Central Government Industrial Tribunal cum Labour Court, is relied on. When the claim of the second respondent before the Tribunal itself is for reinstatement with backwages, the award was passed for regularisation of service retrospectively, which is beyond the scope of the relief sought for in the claim petition.

5. Learned counsel for the second respondent contended as follows:

In the claim petition, the second respondent has specifically averred that she was working for 240 days in a year, is not denied by the Management in the counter. The second respondent is still working. Financial constraint cannot be a reason to deny the legitimate right of the second respondent. The case laws relied on by the learned counsel for the petitioner are not applicable to the present case, as those cases are related to retrenchment or termination or seniority issues.

b) In support of the above contention, the learned counsel

for the second respondent relied on the following decisions:
i) CDJ 2005 MHC 1735, Indian Council of Medical Research Rep.
by its Director General vs. K.Rajalakshmi and another;
ii) CDJ 2013 MHC 4341, Union of India vs. S.Subramani.
iii) CDJ 2011 MHC 5561, The Special Officer, Salem Cooperative
Sugar Mills vs. The Deputy Chief Inspector of Factories;
iv) 1996 (2) SCC 293, Chief Conservator of Forests vs.
Jagannath Maruti Kondhare.

6. Heard both sides.

7. The second respondent husband viz., one Purushothaman was working as Scavenger/Sweeper at the petitioner Mill on daily wages basis. The said Purushothaman rendered such service for 26 years, as admitted by the Management. After his death, the second respondent herein, who is the wife of the said Purushothaman was engaged as Sweeper at the Petitioner Mill with effect from 02.10.1995. In support of her claim that she is working continuously from 02.10.1995 onwards, the second respondent herein examined P.W.1 to P.W.3 and marked Exs.P1 to P9. Based on those documents and the oral evidence, the Labour Court found that the second respondent herein is working in the petitioner Mill from 02.10.1995 onwards and that she is getting salary by putting signature in the voucher. RW1, the Management witness admitted that ESI deduction was made from the salary of the second respondent and that the Management has not filed any document to show that the second respondent is only a contract labourer.

8. It is to be noted at this juncture that except examining RW1 as Management witness, no other person was examined before the Labour Court and no exhibits were marked on the side of the Management. Therefore, it is not right to contend that the regularisation ordered by the Labour Court was based on self serving statement made by the second respondent. It is an admitted case of the petitioner Management that the second respondent was engaged as a Sweeper in the petitioner Mill and that she was doing such job for 7 or 8 years, as spoken by RW1. However, it is strange for RW1 to state that such sweeper work is required as and when it is warranted. Needless to state that cleaning the premises is a regular work need to be attended to daily and therefore, the person, who is engaged to do such work, cannot be termed as a temporary or intermittent employee of the petitioner Mill. Therefore, the Labour Court has rightly granted the relief of regularisation of the service of the second respondent, after giving a finding that she is continuously working for the past 13 years as of 2014.

9. Learned counsel for the petitioner relied on 2006(1) LLN 7 (SC), R.M.Yellatti vs Assistant Executive Engineer and 2009(2)

LLN 527, A.V.Rajan vs. Presiding Officer, Labour Court, in support of his contention that burden of proof lies on the employee that she is continuously working in the petitioner Mill. I do not think that he is justified in relying on the above decisions in view of the fact that the second respondent herein has discharged such onus by examining P.Ws.1 to 3 and marking Exs.P1 to P9 in support of her claim. Apart from the above said fact, it is to be noted that RW1 has also not stated anywhere in the deposition that the second respondent was not at all working in the petitioner Mill. On the other hand, he has clearly admitted that the second respondent was working for 7 to 8 years as a Sweeper and that the ESI contribution has been deducted from her salary. Therefore, I am of the view that the above two decisions are factually distinguishable and not helping the case of the petitioner.

10. The next contention of the learned counsel for the petitioner is that the regularisation cannot be granted retrospectively and on the other hand, it could be granted prospectively. In support of the above contention, the learned counsel relied on 2007(4) LLN 964 (SC), State of Uttaranchal vs. Prantiya Sinchai Avam Yogana Shramik Mahaparishad and 2007 (1) LLN 721, Union of India vs. SHEELA RANI. In this case, the Tribunal has found that the second respondent was continuously working for 13 years and therefore, it has chosen to grant the relief of regularisation, however by granting such relief from the date of initial appointment to the second respondent viz., 02.10.1995. In 2007 (1) LLN 37, Indian Drugs and Pharamaeuticals Ltd., vs. Workmen, Indian Drugs and Pharamaeuticals Ltd., the Hon'ble Supreme court has observed that the regularisation can only be done in accordance with the rules and not de hors the rules.

11. Regularisation of service of the daily wager can be considered and granted on completion of 480 days in 24 calendar months, in view of the provision made under Section 3 of the Tamilnadu Industrial Establishments (Conferment of permanent status to Workmen) Act, 1981. Under the said provision, it is contemplated that an employee, who has put in 480 days of service in 24 calendar months, is entitled for permanency. Explanation 2 to Section 3 of the said Act further contemplates that any law including any award, agreement, settlement, instrument or contract of service whether made before or after the commencement of the said Act, if runs contra to the benefit provided under Section 3 of the said Act, the same shall not stand in the way of workman in getting permanent status, if he or she satisfies the requirement under Sub Section (1) of Section 3. The Division Bench of this Court in the case reported in 2019 (4) LLN 790, (Mad) DB, The Management, Tamil Nadu State Transport Corporation (Madurai) Ltd. Vs. The Labour

Inspector, Virudhunagar, considered the above issue and found that even a settlement arrived between the parties cannot override the provisions of the above said Act. Therefore, in this case, regularisation of the second respondent is to be granted from the date on which she completed 480 days in 24 calendar months and the petitioner Management is liable to regularise the service of the second respondent on completion of her 480 days in a period of 24 calendar months. Accordingly, the petitioner Management shall grant the regularisation to the second respondent on completion of 480 days in 24 calendar months.

12. Learned counsel for the petitioner relied on 1980 LIC 1292 (SC), Surendra Kumar Verma vs. The Central Government Industrial Tribunal cum Labour Court, New Delhi, to contend that if there is loss in the business, no backwages can be ordered. On the other hand the learned counsel for the second respondent relied on 1996(2) SCC 293, Chief Conservator of Forests vs. Jagannath Maruti Kondhare, to contend that financial strain cannot be the reason for denying the legitimate right of the second respondent. At paragraph No.28 of Jagannath case, it is observed as follows:

"28. In so far as the financial strain on State exchequer is concerned, which submission is sought to be buttressed by Shri Dholakia by stating that in the Forests Department itself the casual employees are about 1.4 lacs and if all of them were to be regularised and paid at the rate applicable to permanent workmen, the financial involvement would be in the neighbourhood Rs 300 crores a very high figure indeed. We have not felt inclined to bear in mind this contention of Shri Dholakia as the same has been brought out almost from the hat. The argument relating to financial burden of State is one of despair or in terrorem. We have neither been impressed by the first not frightened by the second inasmuch as we do not intend that the view to be taken by us in these appeals should apply, proprio vigore, to all casual labourers of the Forests Department or any other Department of the Government."

Thus the financial constraint cannot be a reason for denying the legitimate monetary benefits to the workmen.

13. The other decisions reported in CDJ 2005 MHC 1735, Indian Council of Medical Research Rep. by its Director General vs. K.Rajalakshmi and another, CDJ 2013 MHC 4341, Union of India vs. S.Subramani and CDJ 2011 MHC 5561, The Special Officer, Salem Cooperative Sugar Mills vs. The Deputy Chief Inspector of Factories, relied on by the learned counsel for the second

respondent have already been dealt with by the Labour Court itself and hence, I am not reiterating the same.

14. In view of the above stated facts and circumstances, I do not find any merits in this writ petition to interfere with the order of the Labour Court except to the extent of observing that the relief of regularisation should be granted to the second respondent on completion of 480 days in 24 calendar months. Thus, the writ petition is disposed of by modifying the award of the Labour Court to the extent that the petitioner Management shall grant regularisation to the second respondent on completion of her 480 days service in 24 calendar months. The petitioner Management shall comply with this order within a period of six weeks. The writ petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar (CCC)

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Sub Assistant Registrar

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To

The Presiding Officer,
Industrial Tribunal (FAC),
Pondicherry.

+1cc to Mr.K.V.Subramanian, Advocate, S.R.No. 8965

+1cc to Mr.R.Parthiban, Advocate, S.R.No. 8280

सत्यमेव जयते

W.P.NO.3635 OF 2015

VG II(CO)

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