



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.08.2020

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

WEB COPY

W.A. (MD)No.607 of 2020

and

C.M.P. (MD)No.3899 of 2020

against

WP (MD)No.20193 of 2014

The Director,
STAMIN,
Kudimiyanmalai,
Pudukottai District.

... Appellant/Writ Petitioner
Vs.

1.R.Devaraj

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

... Respondents/Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent Appeal against the order passed by this Court in W.P.(MD)No.20193 of 2014, dated 18.11.2019.

Prayer in WP (MD). 20193 of 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ or any other order or direction in the nature of Writ of Certiorari to call for the records relating to the impugned order in Industrial Dispute No.141/2004 Labour Court, Tiruchirappalli (Camp at Pudukottai) dated 09.11.12 issued by the 2nd respondent and quash the same.

For Appellant : Mr.K.P.Krishnadoss
Special Government Pleader

For 1st Respondent: Mr.K.Baalasundaram

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J U D G M E N T

(Judgment of the Court was delivered by M.SATHYANARAYANAN,J)

The Writ Petitioner is the appellant and aggrieved by the impugned order dated 18.11.2019, passed in W.P.(MD) No.20193 of 2014, in and which, the challenge made by the appellant/writ petitioner/Management to the Award of the second respondent dated 09.11.2012 in I.D.No.141 of 2004 came to be rejected, has filed this Writ Appeal.

2.The facts leading to the present litigation have been

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narrated in detail and in extenso in the order passed in the Writ Petition and therefore, it is unnecessary to narrate the same in the Writ Appeal.

3.The respondent raised an Industrial Dispute under Section 2 (A)(2) of the Industrial Disputes Act, 1947, in I.D.No.141 of 2004, challenging the oral termination and requested for reinstatement with continuity of service and back wages. It is the case of the respondent that he was appointed as a daily wager on 20.08.1982 at the rate of Rs.75/- per day and he had received a sum of Rs.1,950/- per month and he used to render service from 9.00 a.m. to 8.00 p.m. or 8.00 p.m. to 9.00 a.m. every day. It is the further case of the respondent/workman that on 02.10.2003, while he was discharging his night duty, a B.P.L. T.V. kept in the guest house was stolen by somebody between 9.00 p.m. to 9.45 p.m. Immediately, the petitioner had informed the said fact to his official superior. He was asked to lodge a complaint and a complaint was also lodged by him to the jurisdictional police station. As a sequel to the said incident, the Assistant Director of Agriculture enquired about the incident and instructed him not to report for duty from 07.10.2003 onwards and in this regard the petitioner has also submitted a representation dated 10.10.2003. Since it was not considered, he raised an Industrial Dispute. Originally, an Award was passed in his favour on 11.11.2012 and the Management made a challenge by filing W.P.(MD) No.11259 of 2009 and by order dated 16.09.2009, the said ex-parte Award was set aside and the matter was remanded to the second respondent for fresh disposal and accordingly, the second respondent has redone the exercise and vide Award dated 11.11.2012, had found that the principles of natural justice have not been followed in the form of non-issuance of show cause notice and other formalities and therefore, partly allowed the Industrial Dispute by setting aside the oral termination of the workman and directed his reinstatement with of 25% back wages with attendant benefits and also permitted deduction of any amount paid to him and challenging the same, the Management has filed W.P.(MD) No.20193 of 2014 and it was entertained and after contest it came to be dismissed on 18.11.2019 and aggrieved by the same, the present appeal is filed.

4.Mr.K.P.Krishnadosh, the learned Special Government Pleader appearing for the appellant would submit that even assuming for the sake of arguments that the oral termination of the respondent without adhering to the principles of natural justice is bad in law, the second respondent ought to have ordered *de nova* enquiry afresh, whereas, the second respondent straightaway ordered reinstatement with consequential benefits and in the Writ Petition, the said aspect has not been taken into consideration and the impugned order merely confirmed the Award of the Labour Court dated 11.11.2012, made in I.D.No.141 of 2004 and hence, prays for interference.

5.Per contra, the learned counsel for the respondent/workman would submit that the respondent has filed O.A.Nos.5644 to 5654,



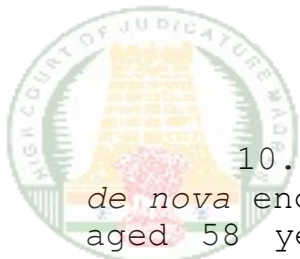
5723 to 5725 of 1993 along with other persons, who are employed continuously in the services of the appellant herein, on the file of the Tamil Nadu Administrative Tribunal at Chennai and the Tribunal vide common order dated 11.12.2008, has issued order and direction stating other things that non-sponsoring by Employment Exchange need not be a criteria for rejecting their case and appointment can be made to those persons according to seniority and age, after obtaining relaxation with regard to the relevant rules and the Government shall formulate a scheme under which, regularisation can be made to as many persons as possible. Despite such positive direction, the appellant/writ petitioner did not adhere to the same and further points out that the services of the persons similarly placed like that of the petitioner has been regularised in terms of G.O.Ms.No.109 Agricultural Department dated 04.03.2016, subject to certain conditions and but for the oral termination, the respondent's services would have been regularised. By ordering de nova enquiry, no purpose would be served as the petitioner is aged 58 years and prays for dismissal of the Writ Appeal.

6.The second respondent Labour Court on an appraisal and appreciation of the materials placed, had rightly reached the conclusion that it was a case of oral termination, without adhering to the principles of natural justice and despite grave allegation has been made, taking into consideration the cumulative facts and the surrounding circumstances, has ordered his reinstatement with 25% back wages and other attendant benefits and also permitted deduction of any amount paid to him.

7.The learned Judge had also found that the oral termination is illegal and contrary to well settled principles and even assuming that respondent/workman is found guilty of serious charges, there is no reason to dispense with enquiry and also taken note of the fact, no evidence has been let in before the second respondent that the workman is guilty of any serious irregularity or about his involvement in the alleged theft and therefore, reached the conclusion to confirm the Award passed by the Labour Court.

8.In the considered opinion of the Court in exercise of judicial review, this Court would not normally interfere with, unless it finds that the findings are not in tune with the evidence or perverse and the learned Judge on going through the materials had rightly found that no such parameters are available to interfere with the award of the Labour Court.

9.This Court has also independently applied it's mind to the entire materials and is of the considered view that the Award of the second respondent Labour Court has taken into consideration the materials/evidence placed and the conclusion has been rightly reached and the Award has also been confirmed by the learned Single Judge on thorough consideration and appreciation of the materials under the facts and circumstances.



10. Though the learned Special Government Pleader prays for *de nova* enquiry, in the light of the fact that the petitioner is now aged 58 years, it would be cruel to subject him to undergo the ordeal of *de nova* enquiry. It is pertinent to be pointed out at this juncture that but for the oral termination, the respondent's services would have been regularised along with other persons similarly placed, in terms of G.O.Ms.No.109 Agriculture Department dated 04.03.2016.

11. In the result, the Writ Appeal is dismissed, confirming the order dated 18.11.2019, made in W.P.(MD) No.20195 of 2014. The appellant/writ petitioner/Management is directed to take note of the common order **dated 11.12.2008 in O.A.Nos.5644 to 5654, 5723 to 5725 of 1993 [R.Adaikalam and others v. The Director of Agriculture, Chempauk, Madras - 5 and the Additional Director, State Agricultural Management, Extension Institute, Kudimianmalai, Vayalagam - 622 104, Pudukkottai District]** and comply with the award dated 11.11.2012, made in I.D. No.141 of 2004 on the file of the second respondent, as confirmed by the order dated 18.11.2019, made in W.P.(MD) No.20193 of 2014, which has been confirmed by this Court by this judgment passed in this Writ Appeal, within a period of 10 weeks from the date of receipt of a copy of this order and communicate the decision taken to the respondent/workmen. Consequently, connected Miscellaneous Petition is also dismissed. However, in the circumstances of the case, there shall be no orders as to the costs.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)

Sj

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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

+1 CC to M/s.GP (SR-15267[F] dated 28/08/2020)

W.A. (MD) No. 607 of 2020

and

C.M.P. (MD) No. 3899 of 2020

27.08.2020

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