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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2021

:CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.11486 of 2012

1. M.Munirathinam
2. Mahendran

... Petitioners

-vs-

1. Divisional Forest Officer,
Thirupattur.
2. The Conservator of Forests,
Fort, Vellore-632 004.
3. The Presiding Officer,
Principal Labour Court,
Vellore, Vellore District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandams to call for the records relating to the Award dated 05.01.2011 of the third respondent passed in I.D.Nos.239 and 240 of 2010, quash the Award and consequently direct the 2nd respondent to reinstate the petitioner with continuity of service, back wages and other attendant benefits.

For Petitioner : Mr.S.T.Varadarajulu

For Respondents: Mr.LSM. Hasan Fizal
Government Advocate

O R D E R

The petitioners have come forward with this Writ Petition challenging the Award passed by the third respondent dated 05.01.2011 made in I.D.Nos.239 and 240 of 2016 and quash the same and consequently direct the second respondent to reinstate the petitioner with continuity of service, back wages and other attendant benefits.



2. The case of the petitioners is that they Joined the services of the respondents in the year 1980 and 1986 as Garden Watchman and worked till 28.03.2001 and 31.12.2008 respectively and though they have worked for more than 240 days of continuous service every year, the respondents had not chosen to regularise them in service on the ground that their names does not find place in the seniority list. Hence, the petitioners raised an Industrial Dispute before the Labour Officer, Vellore, and after receipt of failure report from the Conciliation Officer, the disputes was numbered as I.D.No Nos. 239 and 240 of 2010 by the Presiding Officer, Principal Labour Court, Vellore, Vellore District, in which the Petitioners sought for reinstatement in service, continuity of service, backwages and all other attendant benefits Labour Court, vide order dated 05.01.2011 dismissed the I.D.Nos.239 and 240 of 2019. Aggrieved by which, the petitioners are before this Court seeking for aforesaid relief.

3. According to the petitioners, the issue of non employment has not been answered by the Labour Court and that the Labour Court observed that since the petitioners have worked as temporarily on daily wage basis, they have no right to seek permanency in the respondent office. Further, the Petitioners raised the Industrial Dispute after a lapse of eight years and therefore, they are not entitled to get relief.

4. An affidavit has been filed by Mr.M.Munirathinam, the first petitioner herein stating that since he crossed 60 years now, even if he succeeds in the writ petition, he cannot get reinstatement. He further stated therein that since he remains without employment for past 13 years from 2008, he is willing to forgo the entire backwages for non employment period, if he is granted continuity of service with pension and other backwages.

5. In the counter statement filed before the Labour Court, it was stated that the petitioners worked as Mazdoor on daily wage basis in Tiruppur Range and they never worked for 240 days continuously and there is no employee-employer relationship. Their temporary engagement was only based on the scheme sanctioned and the fund availability. Further, the first petitioner abandoned his work on 28.02.1995 and without informing the Management came to work on 14.01.2000 and abandoned on 28.03.2001 and thereafter, he never turned for duty. It is further stated that since the first petitioner was not in employment at the time of preferring seniority list as per G.O.No.64 E & F dated 08.03.1999, the First petitioner is not entitled for reinstatement in service. As far as the second petitioner Mr.Munirathinam is concerned, he worked during October 1986 and from December 1980 to January 1987, August 1994



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to September 1994, December 1994 to July 1995, September 1995 to May 1996 and May 1998 to August 1998 and that he never worked for more than 240 days on any of the year and abandoned the work in the month of August 1998 and thereafter, never turned up for work.

6. The learned Government Advocate appearing for the respondents submitted that since the Workmen did not show any interest to work continuously, there is no need for the employer to maintain their records. He further submitted that the counter statement filed before the Labour court and the report of the Conciliation officer amply prove that the petitioners are not entitled for any relief. It is his further contention that the first petitioner was examined as W.W.1 and marked Ex.W2-Certificate of duty was marked to show the number of days worked by him and the second petitioner was not at all examined and no documents were marked on his behalf and based on the Joint Memo filed by the petitioners, both the disputes were taken up together. He further submitted that the petitioners claimed permanent employment, which has been deprived and they have approached the Court belatedly, the Labour Court rightly dismissed the I.D.'s filed by the petitioners by observing that they are not entitled to any relief and therefore the same need not be interfered with and hence prays for the dismissal of the writ petition.

7. Heard both sides. Perused the records.

8. It is not in dispute that the petitioners have been employed on temporary basis. In view of the Judgment of the Hon'ble Apex Court, in the case of R.M. Yellati Vs. Assitant Executive Engineer, reported in, (2006) 1 SCC 106, it is the duty cast upon the employee to establish that they have rendered continuous service and call for the documents from the employer so that the burden can be shifted on the Management. In the present case on hand, employees did not take any interest to produce any documents except two mentioned supra and did not file I.A. to call for the records interms of the Section 11 of the Industrial Dispute Act 1947. Further second petitioner Mahendiran did not evince any interest to get into the box. A Joint Memo dated 16.09.2010 has been filed to try both the disputes together. Though the counsel for the Respondents has not signed the said Memo, the Labour Court has taken it on record and passed a common order. On behalf of Mahendiran common evidence was let in by Muniratinam, the first petitioner herein. In the cross examination, the Management elicited the fact that employee have not produced any documents to show that they worked for 15 years continuously in the respondents department. Except Ex.W1 & Ex.W2, no other documents have been produced by the first petitioner. The first petitioner admitted



that there are no documents to show that he worked continuously for fifteen years.

9. A reading of the evidence would make it clear that there is not even an iota of evidence with the regard to cross examination by the Mahendiran by the Management, the second petitioner herein, whereas the First petitioner categorically rendered evidence on behalf of both the employees. Of course, similar to the documents like Ex.W1 and W2 no documentary evidence was filed on behalf of Mahendiran, the second petitioner herein.

10. The Respondent is a State within the meaning of Article 12 of Constitution of India following the provisions of Industrial Disputes Act 1947. This Court, in the case of Madras Aluminium Company Ltd., Versus Labour Court, Coimbatore and another, reported in 1992 II LLN 101 held that no disputed documents without any form can be entertained and in the light of the Judgment of this Court fresh documents cannot be entertained by this Court. But, however, Government order and the Conciliation Officer's report or Government records can be looked into by the Labour Court. If it is not marked, the Labour Court can look into the report of the Conciliation Officer and all the records obtained from the Conciliation Officers as Exhibits to arrive at a that it can come to the conclusion about the contradictory stand taken by both the parties. In this case, the Management has categorically stated that Mahendiran was an employee and rendered services, of course no iota documentary evidence was let in and the employee did not take any steps to call for the documents.

11. Taking note of the evidence, moreso, with regard to the cross examination on the Management that the employees have not been asked to come for work, when they took a stand that they abandoned the services, inference can be drawn in favour of the workmen. When a finding of fact is rendered, even if another view is possible, this Court cannot reappraise evidence or give a different interpretation to the evidence rendered and the factual aspect ought to be seen as per Judgment of the Kerala High Court in the case of Instrumentation Employees Union Versus Labour Court, Kozhikode reported in 1993 1 LLN 75. In this context, it is useful to extract Paragraph 16 which reads as under:

"16.As pointed out by the Supreme Court in Syed Yukoob Versus K.S.Radhakrishnan [AIR 1964 S.C.477], the Jurisdiction of the High Court to issue Writ of certiorari or direction under Article 226 or Article 227 of the



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Constitution of India is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. Findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in work proceedings. An error of law which is apparent on the face of record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of Certiorari can be issued if it is shown that in recording the said finding, the Tribunal has erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which had influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by the writ of certiorari under Article 226 or Article 227 of the Constitution of India. It is further pointed out by the Supreme Court, in Syed Yakoob case [AIR 1964 S.C.477], (vide Supra), that a finding of fact recorded by a Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy and sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding being within the exclusive jurisdiction of the Tribunal, the points cannot be agitated before a writ Court, under Article 226 or Article 227 of the Constitution of India, In Harbans Lal V. Jagmohan Sarun [1985 4 SCC 333], also the above principles have been reiterated by the Supreme Court. It was held that the findings by the authorities rested on evidence and there was no warrant for disturbing



the finding of fact in writ proceedings. "

12. When the evidence let in has not been taken into account at all then this Court can come to a conclusion that there is perversity in the order passed by the Labour Court. From the public document, it is clear that two employees were in employment. From Exs.W1 and W2, it is clear that Munirathinam was employed and that employer has given certificate for the common evidence rendered by the Workmen, there was no examination by the Management with regard to Mahendiran.

13. Admittedly, there is no evidence on the side of the second petitioner/Mahendiran. The Management has not disputed about the factum of employment. But however, they deny the fact that the employees worked continuously and taken a stand that they have themselves abandoned the work. They have admitted in the cross examination that no notice was issued to the employees asking them to report for work. The employees have taken their own time to approach the Labour Court for redressal.

14. It cannot be lost sight to the fact that they have been working for Department and the Respondent thus, after having waited for judgment in other cases, approached this Court. The approach adopted by the employees is not correct. It is a clear case of gambling on the part of employees. An affidavit has been filed by the Petitioners, wherein it has been stated that the employees are willing to give up backwages, and therefore, this Court is inclined to modify the award into one of continuity of service only for the purpose of pensionary benefits.

15. Accordingly, the award of the Labour Court is modified into one of continuity of service only for the purpose of pensionary benefits. The employee will not be eligible beyond the period of abandonment for backwages, gratuity and other benefits as they have slept over the matter for decades. If this Court remanded the matter back to the Labour Court for passing fresh award, there will be no end to the litigation. The employees are at fault in belatedly approaching the Court and in case, they succeed before the Labour Court on remand, it will set a bad precedent and everyone will start knocking at the doors of the Court after waking up from slumber belatedly by citing this order. In such view of the matter, this Court moulds the relief into the one of continuity of service in respect of terminal benefits for the purpose of pension alone and not for other benefits.



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16. In the result, this Writ Petition is ordered to the extent indicated above. No costs.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

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To

1. Divisional Forest Officer,
Thirupattur.
2. The Conservator of Forests,
Fort, Vellore-632 004.
3. The Presiding Officer,
Principal Labour Court,
Vellore, Vellore District.

+1cc to Mr.S.T.Varadarajulu, Advocate SR.No.30633

+1cc to Special Government Pleader (Forest)
XXVII High Court, Chambers, Chennai SR.No.30934

W.P.No.11486 of 2012

AK II(CO)
GMY(27/10/2021)