

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2021

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

W.P.NO. 9041 OF 2004

The Management,
Tamil Nadu Water Supply and
Drainage Board,
Cuddalore - 1.

... Petitioner

Vs.

1.Murugan
2.The Presiding Officer
Labour Court
Cuddalore.

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records in the impugned award passed in I.D.No.6 of 1998 dated 28.05.2003 on the file of the second respondent and quash the said award.

For Petitioner : Mr.M.Arokiyaraj

For Respondent - 1 : Mr.R.Muralidharan

सत्यमेव जयते
O R D E R

Challenging the Award passed by the Labour Court in I.D.No.6 of 1998 dated 28.05.2003 directing the employer to reinstate the employee with 50% of back wages, the present Writ Petition has been filed.

2.The brief facts of the case is that the first respondent was employed as N.M.R. by the Writ Petitioner and he worked as Watchman between 17.04.1988 and 31.10.1991. Thereafter, he is said to have been terminated by the Writ Petitioner.

3.The contention of the Writ Petitioner is that it is a casual employment and the first respondent was discharged from service in the year 1991 and he raised an industrial dispute in the year 1998 after a period of seven years. The delay itself vitiates the claim and the first respondent has failed to prove that he was in continuous employment under the Writ Petitioner, for more than 480 days.

4.The Labour Court, considering the appointment order dated 21.03.1988 marked as Ex.W1, and the Service Register marked as Ex.W2, has found that the petitioner was in continuous employment for 1072 days with artificial breaks. This fact was not disproved by the Petitioner Management. Apart from that, there was a Settlement under Section 12 (3) of the Act, between the Management and the Union, for regularizing the employment of the casual labourers. The Labour Court has held that the first respondent had put in continuous service for more than 480 days under the Writ Petitioner and the workman should not have been terminated without following the ingredients of Section 25(F) of the Industrial Disputes Act and set aside the termination.

5.The learned counsel for the petitioner would also produce the details of the back wages paid to the first respondent from 01.11.1991 to 31.01.2020.

6.I have considered the submissions.

7.The writ petitioner has raised two points viz., (i) there is a delay of 7 years in raising the industrial dispute; and (ii) the workman has failed to prove that he was in continuous employment under the writ petitioner for more than 480 days. From the perusal of the evidence of M.W.1, it is seen that the management's witness has clearly admitted that the workman was in continuous employment between 05.02.1988 and 25.09.1991 for a period of 1072 days as per Ex.W2. On the side of the workman, the attendance register was marked as Ex.W1. Both Exs.W1 and W2 clearly proved that the first respondent / workman worked for more than 1072 days. There is no contra evidence produced by the management to disprove the same. The petitioner has not produced the attendance register nor any document to show that the first respondent workman was not in continuous employment of the petitioner.

8.Secondly, the management witness (MW1) would categorically admit during cross examination that the first respondent was orally terminated from service with effect from 31.10.1991. Further, the termination order was passed on the instructions of the higher officials and the fact was not informed to the employment exchange, through whom the first

respondent was appointed to service. Therefore, it is clear that the first respondent workman has put in more than 1072 days of service. The Labour Court, also has given a categorical finding based on Exs.W1 and W2 that the first respondent was in continuous employment under the writ petitioner for more than 480 days. This finding does not warrant any interference. In so far as the illegal termination is concerned, it is categorically admitted by the management witness (MW1) that the petitioner was orally terminated without notice and that no domestic enquiry was conducted. Such procedure adopted by the writ petitioner is violative of Section 25(F) of the Industrial Disputes Act, 1947. Therefore also, the finding of the Labour Court that termination is illegal is sustainable.

9. In so far as the contention with regard to the delay of 7 years between the date of termination viz., 31.10.1991 and the dispute raised by the first respondent in the year 1998 is concerned, the first respondent has let in evidence that pursuant to 12(3) settlement, a list was forwarded to the management for regularization of employees. As per settlement under Section 12(3), those who were in service before 1988 and put in more than 480 days continuous service are entitled to be regularized. However, this report was not forwarded by the writ petitioner till 1996. Vide Exs.W5 and W6 dated 19.09.1996, proceedings were forwarded by the writ petitioner in which the first respondent / workman's name was not found. Therefore, he raised a dispute only in the year 1997. The delay was not occasioned on account of lethargy of the workman. But it is due to the deliberate action of the writ petitioner. I do find some force in the above contention. However, considering the delay, the Labour Court has reduced the backwages by 50%. The reduction of backwages by 50% by itself will compensate the delay.

10. Therefore, in the considered opinion of this Court, the Award passed by the Labour Court is based on sound reasons and is legally sustainable. The contention of the petitioner to interfere with the award passed by the Labour Court, cannot be acceded to.

11. Accordingly, the Award passed by the Labour Court in I.D.No.6 of 1998 dated 28.05.2003 is confirmed and the Writ Petition is dismissed. No costs.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

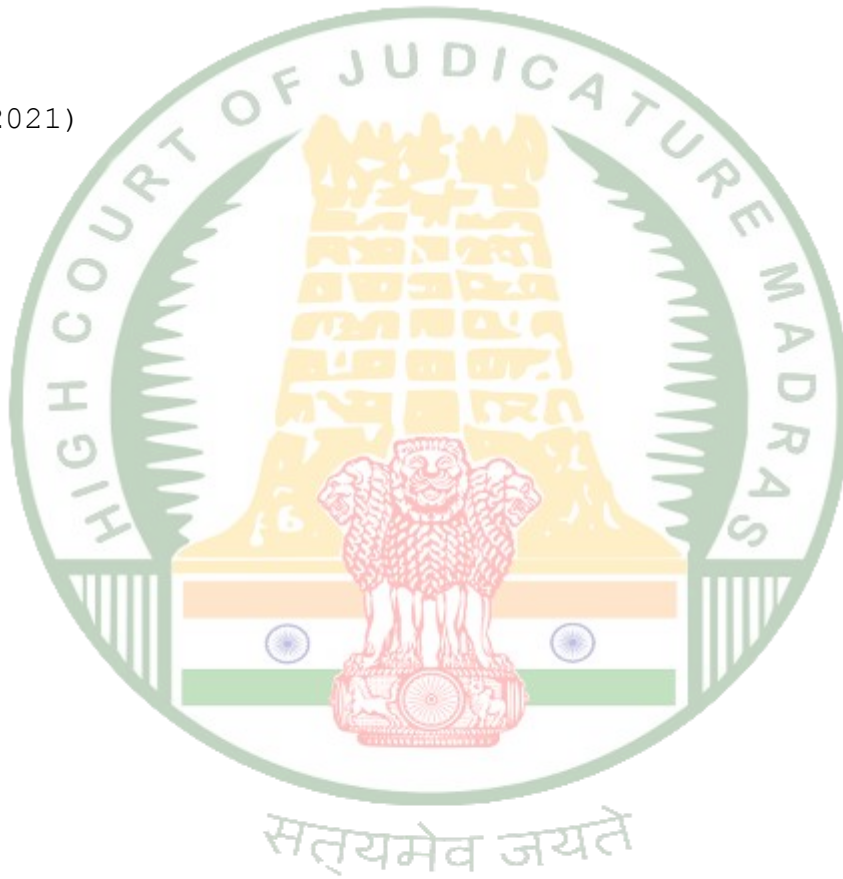
To

The Presiding Officer
Labour Court
Cuddalore.

+1 Cc to Mr.R.Muralidharan, Advocate sr 9414.

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