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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.NO.32175 OF 2013

AND

M.P.NO.1 OF 2013

The Tamil Nadu Pollution Control Board,
Rep.by its Member Secretary,
No.76, Mount Salai,
Chennai 600 032.

... Petitioner

..Vs..

1. The Presiding Officer,
I Additional Labour Court,
Chennai 600 104.

2. D.Murugan

... Respondents

PRAYER:-

This Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records pertaining to the award dated 12.03.2013 passed by the first respondent herein in I.D.No.701 of 2001 and quash the same.

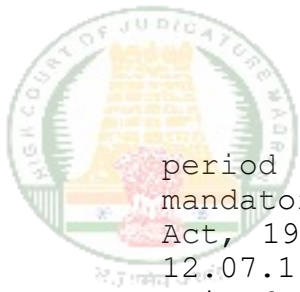
For Petitioner : Mr.Kasirajan

For Respondent : Mr.Balan Haridas for R2

ORDER

The petitioner/Tamil Nadu Pollution Control Board has come forward with the present writ petition challenging the award of the labour Court dated 12.03.2013 in I.D.No.701 of 2001.

2. According to the employee/second respondent he joined the services of the Tamil Nadu Pollution Control Board as a cleaner on 11.07.1996 in the mobile Environmental Laboratory at Manali and had been working continuously from 11.07.1996. Even though, he has completed more than 240 days of continuous service in a



period of 12 calendar months without complying with the mandatory provision of Section 25-F of the Industrial Disputes Act, 1947, he has been disengaged from service with effect from 12.07.1997. As the non-employment is not justified, the employee raised a dispute, which culminated into an award in the aforesaid Industrial Dispute and the Labour Court has granted the relief of reinstatement without back wages but with continuity of service and other benefits. According to the employee, he is aggrieved as to the denial of back wages. However a Memo has been filed stating that he is willing to give up back wages till 31.07.2001, if he is provided with employment with effect from 01.08.2021.

3. The petitioner/Management has denied the said averment before the labour Court contending that the employee has worked for only 145 days and that his name has not been sponsored by the Employment Exchange. He was engaged as a Casual Labour. On and off and he has not rendered 240 days of continuous service, and hence, the question of compliance with Section 25-F of the Industrial Disputes Act, 1947 does not arise. He was not appointed by the Board and there was no order of termination. According to the petitioner/Management, the question of denial of employment and violation of principles of natural justice cannot be canvassed in this case as the employee has no right of employment and that, there was no written order of termination. Since it has been reiterated that, as the employee has worked for 140 days only during the year 1996-1997, he will not be entitled to any benefits. A detailed counter has been filed by the Management before the Labour Court, wherein it has been stated that the employee has worked for 14 days in July 1996 and various dates in other months and that he has worked for 14 days in April 1997, totaling 145 days.

4. In reply, it has been contended by the learned counsel for the second respondent that national holidays, Saturdays and Sundays, which are paid holidays are not taken into account for the purpose of computing 240 days, even assuming for the sake of argument that the number of days stated by the Management in the counter is correct. Hence the learned counsel appearing for the workman/second respondent prays that, the award of the Labour Court may be confirmed.

5. Heard both sides.

6. It is not in dispute that the employee was a casual labour engaged on various dates and he has completed the actual number of working days from July 1996 to April 1997, totaling 145 days. The actual number of working days will have to be looked into in terms of Section 25-B of the Industrial Disputes Act, 1947. In this regard, the Apex Court in the case of Workmen



of American Express International Banking Corporation Vs
Management of American Express International Banking Corporation
reported in (1985) 2 LLJ 539, has held as follows:-

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"We may straightaway say that the present question whether Sundays and paid holidays should be taken into account for the purpose of reckoning the number of days on which an employee actually worked, never arose there. The claim was under the Payment of Gratuity Act. All permanent employees of the employer claimed that they were entitled to payment of gratuity for the entire period of their service, that is, in respect of every year during which they were in permanent employment irrespective of the fact whether they had actually worked for 240 days in a year or not. The question there was not how the 240 days were to be reckoned; the question was not whether Sundays and paid holidays were to be included in reckoning the number of days on which the workmen actually worked; but the question was whether a workman could be said to have been actually employed for 240 days by the mere fact that he was in service for the whole year whether or not he actually worked for 240 days. On the language employed in Section 2(c) of the Payment of Gratuity Act, the court came to the conclusion that the expression 'actually employed' occurring in Explanation I meant the same thing as the expression 'actually worked' occurring in Explanation II and that as the workmen concerned had not actually worked for 240 days or more in the year they were not entitled to payment of gratuity for that year. They further question as to what was meant by the expression 'actually worked' was not considered as apparently it did not arise for consideration. Therefore, the question whether Sundays and other paid holidays should be taken into account for the purpose of reckoning the total number of days on which the workmen could be said to have actually worked was not considered in that case".

7. Since Saturdays and Sundays are paid holidays, that has got to be taken into account for the purpose of computing 240 days and that, in a calendar year, there are 52 weeks which made the number of paid holidays as 104 in the present case on hand.



8. It is seen that M.W.1 has admitted that the employee has worked continuously from 11.07.1996 to 11.07.1997 without any break, which has been observed by the Labour Court. The Labour Court has also further held that, some other employees viz., Balakumar, Manivannan and Aruldoss have been regularised as per Ex.W.21 to Ex.W.23.

9. Dr.Selvam, Member Secretary was also present to assist the Court and submitted that there are similar number of employees like that of the employee herein. He further stated that while other employees have been recruited through Employment Exchange, by-passing the procedures contemplated, the employee in the case on hand cannot be granted the relief sought for by him, as it would amount to encouraging back door entry.

10. It is worth referring to the decision in the case of Excise Superintendent Malkapatnam, Krishna District, Andhara Pradesh Vs K.B.N.Visweshwara Rao and others reported in (1996) 6 SCC 216, wherein the Apex Court has held that the Employment Exchange cannot be the only source of recruitment. Paper advertisement and other methods of informing all the candidates have got to be followed. Relevant paragraph of the said judgment is extracted below.

"Having regard to the respective contentions, we are of the view that contention of the respondents is more acceptable which would be consistent with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidates are unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate are deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning Departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate Department or undertaking or establishment, should call for the names by publication in the newspapers having wider circulation and also



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display on their office notice boards or announce on radio, television and employment news-bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates”.

11. In view of the above, this Court opines that, recruitment only through Employment Exchange cannot be the correct procedure, when sponsorship through Employment Exchange is only directory in nature and not a mandatory one. Since the award of the labour Court is based on the finding of fact, even if there is another view possible, this Court cannot substitute its view in the place of the one taken by the labour Court. Hence this Court finds that there is no perversity in the award as the Labour Court has held that the 2nd respondent/employee, more so in view of the admission by M.W.1, has completed twelve months of service under the employer and that, in terms of the judgment of the Apex Court in the case of Mohan Lal Vs Management of Bharat Electronics Ltd., reported in (1981) 1 LLJ 70 (SC), the total number of 240 days have to be counted moving backward to a period of 12 months just preceding the date of termination and then ascertain as to whether within 12 months the workman has rendered 240 days of service. In the case on hand, the second respondent/employee has completed 240 days and there is a violation of Section 25-F of the I.D.Act, 1947 and that, sponsorship through Employment Exchange is not mandatory.

12. The relief sought for by the second respondent/employee before the labour Court is perfectly justified. The learned counsel for the employee submitted that the employee is giving up back wages till 31.07.2021. Hence, the second respondent/employee shall be reinstated into service with effect from 16.08.2021 with all other benefits with continuity of service, consequential and other benefits. The award passed by the labour Court is modified accordingly. In case the modified award is not implemented, it is open to the employee to initiate steps under Section 29 of I.D.Act, 1947 and the Government must sanction prosecution to punish person falling under Section 32 of the said Act. The undertaking given by the employee as regards giving up back wages vide memo dated 28.07.2021 is taken on record.

13. This Court appreciates the assistance given by Dr.Selvam, Member Secretary of the Tamil Nadu Pollution Control Board.



14. With the above observation the writ petition is disposed of. No costs. Consequently connected miscellaneous petition is also closed.

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Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

dpq

To

1. The Presiding Officer,
I Additional Labour Court,
Chennai 600 104.
2. Thiru.Dr.Selvam,
The Member Secretary,
The Tamil Nadu Pollution Control Board,
No.76, Mount Salai,
Chennai - 32.

W.P.NO.32175 OF 2013 AND
M.P.NO.1 OF 2013

SJ(CO)
PBS/06/08/2021