



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.01.2021

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

WEB COPY

W.P.(MD)Nos.5009, 5010, 5011, 5012, 5013,
11942, 11943, 11944, 11945 and 11946 of 2011

and

M.P.(MD)Nos.1, 1, 1, 1, 1, 1, 1, 1, 1, 1, 3, 3, 3, 3 and 3 of 2011

1.The Assistant Director
Sericulture Department, Dindigul.

2.The Regional Deputy Director,
Sericulture Department,
Lala Lajapathy Street,
Chiinachokkikulam,
Madurai-625 002.

3.The Director
Sericulture Department,
Salem. ...Petitioners in W.P.(MD)Nos.5009, 5010,
5011, 5012, 5013 of 2011

K. Karuppasamy	... Petitioner in WP(MD). 11942 of 2011
Irulappan	... Petitioner in WP(MD). 11943 of 2011
Ramachandran	... Petitioner in WP(MD). 11944 of 2011
Jeyakumar	... Petitioner in WP(MD). 11945 of 2011
Samayan	... Petitioner in WP(MD). 11946 of 2011

Vs.

1.The Presiding Officer,
Labour Court, Madurai.

2.K.Karuppusamy : Respondents in WP(MD).5009 of 2011

1. The Presiding Officer, Sericulture Department, Madurai.
2. Irulappan, S/o.Irulappan, Ladanenthal, Manamadurai Taluk,
Sivagangai District

... Respondents in WP(MD). 5010 of 2011

1. The Presiding Officer, Labour Court, Madurai.
2. Jayakumar S/o.Kamatchi,
Ladanenthal, Manamadurai Taluk, Sivagangai District
... Respondents in WP(MD). 5011 of 2011



1. The Presiding Officer, Labour Court, Madurai.
2. Samayan S/o.Pitchai Ladanenthall, Manamadurai Taluk,
Sivagangai District

... Respondents in WP(MD). 5012 of 2011

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1. The Presiding Officer, Sericulture Department, Madurai.
2. Ramachandran, S/o.Muniandi, Ladanenthall, Manamadurai Taluk,
Sivagangai District

... Respondents in WP(MD). 5013 of 2011

1. The Presiding Officer Labour Court, Madurai.
2. The Assistant Director Sericulture Dept., Dindigul.
3. The Regional Deputy Director Sericulture Dept., Lala
Lajapathy St., Chinnachokkikulam, Madurai - 2.
4. The Director Sericulture Dept., Salem.

... Respondents in WP(MD). 11942 of 2011

1. The Presiding Officer Labour Court, Madurai.
2. The Assistant Director Sericulture Dept., Dindigul.
3. The Regional Deputy Director Sericulture Dept., Lala
Lajapathy St., Chinnachokkikulam, Madurai - 2.
4. The Director Sericulture Dept., Salem.

... Respondents in WP(MD). 11943 of 2011

1. The Presiding Officer Labour Court, Madurai.
2. The Assistant Director Sericulture Dept., Dindigul.
3. The Regional Deputy Director Sericulture Dept., Lala
Lajapathy St., Chinnachokkikulam, Madurai - 2.
4. The Director Sericulture Dept., Salem.

... Respondents in WP(MD). 11944 of 2011

1. The Presiding Officer Labour Court, Madurai.
2. The Assistant Director Sericulture Dept., Dindigul.
3. The Regional Deputy Director Sericulture Dept., Lala
Lajapathy St., Chinnachokkikulam, Madurai - 2.
4. The Director Sericulture Dept., Salem.

... Respondents in WP(MD). 11945 of 2011

1. The Presiding Officer Labour Court, Madurai.
2. The Assistant Director Sericulture Dept., Dindigul.
3. The Regional Deputy Director Sericulture Dept., Lala
Lajapathy St., Chinnachokkikulam, Madurai - 2.
4. The Director Sericulture Dept., Salem.

... Respondents in WP(MD). 11946 of 2011



COMMON PRAYER:- Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, to call for the records on the files of the first respondent pertaining to its order passed in I.D.No.147, 148, 150, 151, 149, 147, 148, 149, 150 & 151 of 2005, dated 11.11.2009 and quash the same.

For Petitioners:

(in W.P.(MD)Nos.5009, 5010, 5011, :Mr.Muthugeethayan,
5012, 5013/2011) Special Government Pleader

(in W.P.(MD)Nos.11942, 11943, :Mr.S.M.Mohan Gandhi
11944, 11945 and 11946 of 2011)

For Respondents:

(in W.P.(MD)Nos.5009, 5010, 5011, :Mr.S.M.Mohan Gandhi
5012, 5013/2011)

(in W.P.(MD)Nos.11942, 11943, :Mr.Muthugeethayan,
11944, 11945 and 11946 of 2011) Special Government Pleader

COMMON ORDER

Challenging the Award passed by the first respondent, in I.D.Nos.147, 148, 149, 150 and 151 of 2005, dated 11.11.2009, respectively, these Writ Petitions have been filed.

2.Since the issues involved in these Writ Petitions are similar, these Writ Petitions are disposed of by way of this common order.

3.The petitioners in W.P.(MD)Nos.5009 to 5013 of 2011 are Sericulture Department referred as Management and the petitioners in W.P.(MD)Nos.11942 to 11946 of 2011 are workmen.

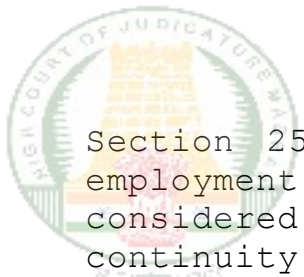
4.It is the case of the petitioners' Management that the petitioners' Management was involved in the development of Sericulture and the petitioners have got regular work on daily rated basis and carry out the day-to-day work. The petitioners' Management further fixed the responsibilities on those workers along with the duties carried out by them. Since the silk production happens to be a seasonal one, it requires persons to maintain the farm. At the time of exigencies, the person like that of workmen were engaged on daily rated basis. Since it is difficult to pay the amount every day and the work carried out by



the workmen happens to be a seasonal one, the payment would be made on daily rated and monthly paid basis for the actual number of days worked. Further, the workmen were contributed to the provident fund. The said contribution shall not confer any right on the workmen and further, the petitioners' corporation were running in heavy loss due to non-cooperation of the workforce like that of workmen and it was decided to close down the same. Therefore, the petitioners were not engaged in future days of employment. Aggrieved by non-engagement, the petitioners filed claim petitions before the Labour Court in I.D.Nos.147, 148, 149, 150 and 151 of 2005, dated 11.11.2009 on the ground that the petitioners' Management had not followed Section 25(F) of the Industrial Disputes Act before passing the termination order. However, the Labour Court, after adjudication, arrived at a conclusion that non-engagement of the petitioners is unsustainable one and ordered for reinstatement with continuity of service, however, denied the back wages. For reinstatement with continuity of service, the petitioners filed a writ petitions in W.P.(MD) Nos.5009 to 5013 of 2011 before this Court. For denial of backwages, the workmen filed a writ petitions in W.P.(MD)Nos.11942 to 11946 of 2011 before this Court.

5.The learned Special Government Pleader appearing for the petitioners' Management would submit that though the employment of the workmen is a seasonal one in the Sericulture Department. However, the workmen had not properly done their work and two workers, namely, Ramachandran and Irulappan are spraying the poisons in respect of the other employees concerned and the silk product of Sericulture Department is running in loss and they are not able to run the Sericulture Unit and expenditures incurred by the petitioners for Sericulture Department are more than the salary and the Sericulture Unit is not running properly. Hence, the petitioners Management was forced to close the Unit for which, the services of the workmen were not engaged. However, the procedures contemplated under Section 25(F) of the Industrial Disputes Act were scrupulously followed. Hence, he prayed for allowing the petitions filed by the petitioners' Management and if the workmen did not establish their case, as if they are not gainfully employed anywhere, thereby, they denied backwages, he prayed for dismissal of the petitions filed by the workmen.

6.The learned counsel appearing for the workmen would submit that though the procedures contemplated under Section 25(F) of Industrial Disputes Act were not followed, before oral termination, no notice was issued and no opportunity was given. Even the petitioners' Management incurred the loss for running the unit and they have to follow the procedures under Section 25(F) of the Act and without following the procedures contemplated under



Section 25(F) of the Act, retrenching the petitioners from the employment is unsettled one. Further, the dispute was elaborately considered by the Labour Court and order for reinstatement without continuity of service cannot be interfered with and further, the Labour Court failed to award the backwages is unsustainable one. Accordingly, he prayed for allowing the petitions filed by the workmen.

7. Heard the learned Special Government Pleader appearing for the Management, the learned counsel appearing for the workmen and perused the materials available on record.

8. Before this Court venture into the merits of the contention raised on either side, it would be first necessary to bear in mind the scope and jurisdiction of this Court under Article 226 of the Constitution of India, while examining the correctness of the award of the Labour Court. The Hon'ble Supreme Court in a catena of decision has held that normally a writ court should not interfere with the award of the Labour Court, unless the award is perverse. It has been further held that if the award is not irrational or perverse, the High Court should not interfere with the reasons in the award. Further, it has been held that this Court should not re-appreciate the evidence placed before the Labour Court and substitute its own conclusions, merely because this Court is of the opinion that a different conclusion could have been arrived at on the available evidence. Bearing this legal principle in mind, this Court proceeds to examine the correctness of the impugned award. First, it has to be seen, whether the Employer Management was able to exactly establish as to guilt committed by Employee and whether there was evidence to show that the Employee concerned is solely responsible for the guilt and the same is affected the reputation of the Employer Management.

9. Considering the facts and circumstances of the case, the issue involved in the present case is that before retrenching the employees from the Unit, they have to follow the procedures contemplated under Section 25(F) of the Industrial Disputes Act and on perusal of the above said procedures, makes it clear that before retrenching the workman, they have to issue notice and no workman employed in any industry, who has been in continuous service for not less than one year under an employer, shall be retrenched by giving one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice. Further, the workman has been paid, at the time of retrenchment, compensation shall be equivalent to fifteen days average pay. However, on perusal of the award of the Labour Court, it is seen that none of such provisions were followed and no documents were filed in order



to establish as if the petitioners' Management followed the procedures contemplated under Section 25(F) of the Act.

10.Hence, this Court is fully satisfied with the award passed by the Labour Court. Further, the workmen did not establish as if they are not gainfully employed anywhere and further, the Hon'ble Apex Court in catena decisions clearly held that when the persons are out of employment, it is for the workmen to establish that they were not gainfully employed anywhere unless the workmen proved that they are not gainfully employed for claiming the backwages.

11.For the reasons stated above, these Writ Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

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/ /2021

Sub Assistant Registrar(CS)

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To

1.The Presiding Officer, Labour Court, Madurai.

2.The Assistant Director, Sericulture Department, Dindigul.

3.The Regional Deputy Director,
Sericulture Department, Lala Lajapathy Street,
Chiinachokkikulam, Madurai-625 002.

4.The Director
Sericulture Department, Salem.

5. The Presiding Officer, Sericulture Department, Madurai.

+1 CC to Mr. Special Government Pleader, SR.No. 1120

W.P. (MD)Nos.5009, 5010, 5011, 5012, 5013,
11942, 11943, 11944, 11945 and 11946 of 2011
18.01.2021

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