



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P(MD)No.15329 of 2012

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V.Rathina Ganeshan

... Petitioner

Vs.

1.The Registrar,
Alagappa University,
Alagappapuram,
Karaikudi-630 001.

2.The Presiding Officer,
Labour Court,
Madurai.

... Respondents

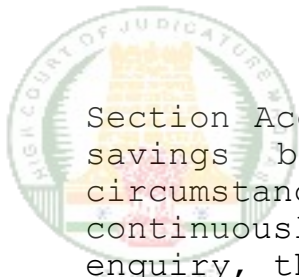
Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records from the file of the second Respondent Labour Court in I.D.No.90 of 1998 and to quash the order dated 28.06.2012 passed therein and consequently direct the first Respondent to reinstate the Petitioner with continuity of service and back wages.

For Petitioner	:	Mr.V.O.S.Kalaiselvam for Mr.G.arunachalam
For Respondents	:	Mr.Prabhu for M/s Isaac Chambers for R.1 : R.2-Court

ORDER

The writ petition has been filed seeking for issuance of a writ of Certiorarified Mandamus to call for the records from the file of the second Respondent Labour Court in I.D.No.90 of 1998 and to quash the order dated 28.06.2012 passed therein and consequently direct the first Respondent to reinstate the Petitioner with continuity of service and back wages.

2. The case of the petitioner is that the petitioner has worked as Office Assistant in the first respondent concern from 02.08.1993 to 21.10.1994. The petitioner has also passed 10th standard and having the qualification for the said post. During the said period, the petitioner has worked for 340 days including Saturday, Sunday and on festival holidays. The first respondent has paid the salary to the petitioner on monthly basis. The petitioner received the salary every month through the General Fund, Distance

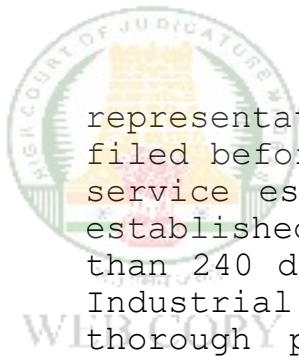


Section Account Cheque and credited the amount by collection in his savings bank account No.262 in the Indian Bank. In such circumstances, while the petitioner has worked for 340 days continuously in 14 months, without any notice, charge sheet and enquiry, the first respondent has not allowed the petitioner to work with effect from 22.10.1994 and orally terminated the services of the petitioner. Immediately after the said dismissal, the petitioner approached the first respondent and sent several representations with a request to reinstate him into service. However the first respondent did not allow him to work. Finally, the petitioner raised a dispute before the Labour Officer, Sivagangai by filing a petition under Section 2-A of the Industrial Disputes Act, however, the Labour Officer, Sivagangai submitted the failure report, dated 04.02.1998, under Section 12(4) of the Industrial Disputes Act and after the receipt of the said report, the petitioner raised the dispute before the second respondent in I.D.No.90 of 1998.

3. Before the Labour Court, though notice was served on the first respondent, the first respondent did not appear before the Labour Court and hence, the first respondent was set exparte and an exparte order was passed on 18.11.2006 and the Labour Court directed the first respondent to reinstate the petitioner with continuity of service and back wages with costs. Subsequently, the first respondent filed a petition to set aside the exparte order along with the delay condonation petition and the delay condonation petition was numbered as I.A.No.26 of 2008 and after the said petition was allowed, the petition filed to set aside the exparte order was numbered as I.A.No.8 of 2010. Thereafter, the Labour Court restored the I.D., and both parties were allowed to examine their respective evidences and thereafter, the Labour Court dismissed the petition filed by the petitioner on the ground that there was a delay of four years in approaching the Labour Court. Challenging the said order of dismissal, the present writ petition is filed.

4. Learned Counsel appearing for the petitioner would submit that the petitioner has worked as Office Assistant in the first respondent continuously from 02.08.1993 to 21.10.1994 and he continuously worked for 340 days and his services have to be terminated in terms of Section 25 F of the Industrial Disputes Act and without following the provisions, the oral termination passed by the first respondent is *non-est* in law and accordingly, the learned Counsel would pray for appropriate orders.

5. Per contra, the learned Counsel appearing for the first respondent University would submit that even the petitioner claimed that he entered into service as temporary employee on 02.08.1993 and his service was terminated on 22.10.1994, however, the fact remains that the industrial disputes are raised before the Labour Court only



representations for his reinstatement. However, no document was filed before the Labour Court to establish that he was in continuous service especially for more than 240 days. Unless the petitioner established that he was in continuous service especially for more than 240 days, the procedure contemplated under Section 25 F of the Industrial Disputes Act need not be followed. After having a thorough perusal of the entire records only, the Labour Court dismissed the petition filed by the petitioner, which does not need any interference. Hence, the learned Counsel appearing for the first respondent would pray for dismissal of the writ petition.

6. Heard the learned Counsel for the petitioner and the learned Counsel appearing for the first respondent and perused the materials placed on record.

7. Before this Court ventures 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 decisions 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.

8. The facts in the present case are not in dispute. Admittedly, the petitioner entered into service as temporary employee on 02.08.1993 and his service was terminated on 22.10.1994 by the first respondent. However, the petitioner approached the Labour Court by raising industrial dispute only in the year 1998. Further, the petitioner claimed that he made several representations for his reinstatement. However, no document was filed before the Labour Court to establish that he was in continuous service especially for more than 240 days. Unless the petitioner established that he was in continuous service especially for more than 240 days, there is no need to follow the procedure contemplated under Section 25 F of the Industrial Disputes Act. Therefore, the Labour Court, after proper appreciation of facts and law, dismissed the petition filed by the petitioner, which does not warrant any interference.

9. For the reasons aforesaid, the writ petition is devoid of merits. Accordingly, the same is dismissed. Consequently,
<https://hccservicescourts.gov.in/hccservices/>



connected Miscellaneous Petition is also dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar (T&P)

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Sub Assistant Registrar(CS)

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,
Labour Court,
Madurai.

Copy to

The Records Keeper, (2C)
V.R.Section
Madurai Bench of Madras High Court, Madurai

(for returning records if any)

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-9736[F] dated
09/03/2021)

W.P (MD) No.15329 of 2012
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PM(CO)
KB(19.03.2021) 4P 5C