



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.03.2021

CORAM:

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

W.P. (MD)No.6363 of 2012

and M.P. (MD) .No. 1 of 2012

WEB COPY

The Management,
SUNDARAM TEXTILES LTD.,
Nanguneri-Tirunelveli District,
Through its Manager.

.. Petitioner

Vs

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.V.S.Velayutham

.. Respondents

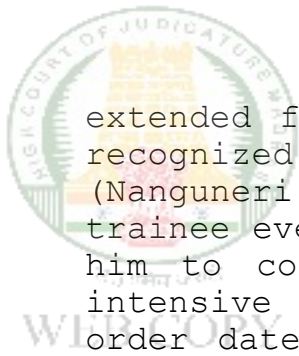
Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the award passed by the 1st respondent in I.D.No.68 of 2006, dated 01.07.2011 received on 21.12.2011 and to quash the same.

For Petitioner	: Mr.P.Chandra Bose
Respondent No.1	: Labour Court
For Respondent No.2	: Mr.D.Saravanan

O R D E R

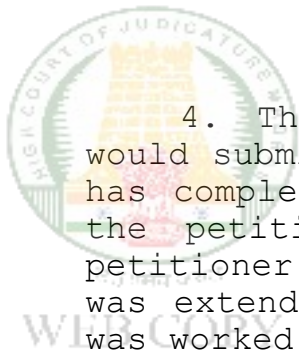
This writ petition has been filed challenging the award passed by the 1st respondent in I.D.No.68 of 2006, dated 01.07.2011.

2. The case of the petitioner is that the petitioner Textiles Mill has been registered under the Factories Act and the rules framed thereunder. The petitioner Mill has evolved a scheme for providing training to persons in order to equip themselves with sufficient knowledge and ability to work independently in the Mill. While so, the second respondent has made an application on 18.06.1999 requesting to join apprenticeship scheme provided by the petitioner Mill. Accordingly, he was recruited to the apprenticeship scheme on the basis of the interview conducted on 21.6.1999 and thereafter, apprenticeship order dated 24.06.1999 was issued to him with effect from 27.6.1999. He was voluntarily given his consent for accepting the apprentice training and he has also stated in his application submitted on 18.06.1999 that he has no previous experience in textile industries. As per the above order, he was allowed to undergo the training for a period of one year and on expiry of the said period on 26.6.2000, he was given an extension of training period for one year as per the extension order dated 24.6.2000. Subsequently, the petitioner's training period was



extended for every year up to 24.06.2005. In this connection, the recognized union of the petitioner Mill, namely, TVS Workers' Union (Nanguneri Branch) also requested the petitioner to continue as trainee even after completion of 5 years training period and allowed him to continue as trainee so as to enable him to get further intensive training in certain fields. As per the final extension order dated 24.6.2005, his training period was ended on 27.6.2006 and the extension orders were marked as Ex.M14 to Ex.M.21. However, from 08.09.2005 onwards, the second respondent did not attend the apprenticeship training. Subsequently, on 11.10.2005, he submitted his leave application enclosing a treatment certificate issued by Thiraviam Orthopedic Hospital, Nagercoil about his treatment taken from 8.9.2005 to 13.9.2005. Thereafter, he made another leave application for the period between 14.11.2005 and 21.11.2005 enclosing medical certificate. On 21.11.2005 at night shift, he attended the practical training and in the month of December, 2005, he attended the training class on 6.12.2005 and requested for change of shift. But he neither attended the class on 7.12.2005 nor turned up for apprenticeship training, but submitted Form-I under the Payment of Gratuity Act on 12.12.2005 claiming gratuity for a sum of Rs.12,825/- as if he was a permanent employee of the petitioner Mill. Thereafter, he raised industrial dispute under Section 2(A) of the Industrial Disputes Act before the Labour Officer, Tirunelveli on 12.12.2005 as if he was prevented to enter into the Mill on 7.12.2005 during the day shift. No such event has happened as alleged by him. On 7.12.2005 onwards, he did not turn up for apprenticeship training and as stated above, he submitted Form-I as if he was a regular employee and raised a dispute in I.D.No.68 of 2006 under Section 2 (A) of the Industrial Disputes Act before the Labour Court, Tirunelveli. The Labour Court arrived a conclusion that the second respondent was a permanent employee in the Mill and hence he is entitled for reinstatement of service with all the terminal benefits without backwages. Challenging the said order of reinstatement, the petitioner Mill filed the present writ petition.

3. The learned counsel for the petitioner would submit that though the second respondent entered into service as apprentice in the year 1999 and he was periodically given extension upto the year 2005. He would further submit that after 2005, the second respondent was not regular in attending his duty and he made an application for medical leave and medical leave was also granted to him. Thereafter, he raised an industrial dispute stating that he is a permanent employee and entitled for gratuity and other terminal benefits. But as per the scheme, the second respondent is only a trainee in the Mill. Hence, the claim made by the second respondent before the Labour Court is baseless. However, without considering the said fact, the Labour Court awarded reinstatement of service with all the terminal benefits without backwages is non-est in the eye of law. Hence, he prays for allowing the writ petition.

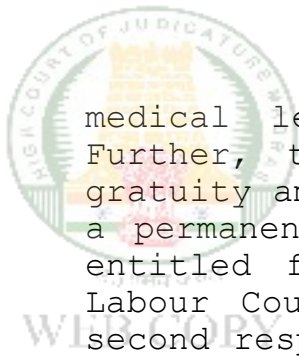


4. The learned counsel appearing for the second respondent would submit that even as per the present scheme, the labourer, who has completed 5 years of training is entitled for gratuity. Though the petitioner joined as apprentice as per the scheme in the petitioner Mill in the year 1999, however, periodically his training was extended upto 2005 and the petitioner is not a trainee and he was worked as regular employee including day and night shift and the said facts also clearly established before the Labour Court and the petitioner Mill did not produce any evidence to prove that the second respondent is not the regular employee of the Mill. After considering the entire materials placed before the Labour Court, the Labour Court came to the conclusion that the second respondent is entitled for reinstatement of service with all monetary benefits without backwages. However, the second respondent was not able to establish the fact that he has not gainfully employed in the interregnum period, based on which the Labour Court denied the backwages. However, the second respondent did not prefer any writ petition before this Court as against the denial of backwages. However, the petitioner Mill preferred this writ petition as against the reinstatement with all monetary benefits, which is liable to be dismissed.

5. Heard the learned counsel appearing on behalf of the petitioner Mill and the learned counsel appearing on behalf of the second respondent. This Court has also perused the materials placed before this Court.

6. 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.

7. The fact in the present case regarding the employment of the second respondent is not in dispute. The second respondent was appointed as apprentice in the petitioner Mill in the year 1999 as per the scheme of the Mill and his apprenticeship training was extended upto the year 2005. The petitioner Mill did not dispute the fact that the second respondent was in continuous service in the



medical leave application and later, he did not attend duty. Further, the second respondent claimed that he is entitled for gratuity amount for which the petitioner Mill denied that he was not a permanent employee and he was only a trainee. Hence, he is not entitled for gratuity and the said issue was considered by the Labour Court and the Labour Court came to a conclusion that the second respondent rendered more than 6 years service as a permanent employee and for disproving the said statement, no documents were filed before the Labour Court by the petitioner Mill. On perusal of the Ex.M.12 Standing Orders of the Mill makes it clear that there was several categories of the post available in the Mill, viz., permanent employee, temporary employee, probationers and trainees. As per the Standing Orders, the training period of a person, who was appointed as a trainee with technical qualification should not be beyond 3 years and a person, who was appointed as trainee without technical qualification should not be beyond 5 years and as per the Standing Orders 2(i), after completion of 5 years, the trainee is not entitled to seek permanent employment in the petitioner Mill. Based on the standing orders, the petitioner Mill objected that the second respondent is not entitled for permanent employee. However, the reasons best known to the second respondent, he was allowed to continue for more than 5 years and he rendered service as a regular employee for a period of 6 years and 5 months. Whenever the second respondent was working in the petitioner Mill beyond the training period, ie., 5 years, he may be treated as a permanent employee. So, in the considered view of this Court, the second respondent has continued his work as permanent employee in the petitioner Mill, after completing the training period. Thus, the claim of the second respondent for permanent employee cannot be find fault with. Therefore, for non-providing the employment to the second respondent is legally unsustainable one. Hence, the order of the Labour Court need not be interfered with.

8. Accordingly, the writ petition stands dismissed and the award passed by the Labour Court, Tirunelveli, in I.D.No.68 of 2006, dated 01.07.2011, is confirmed herewith. No Costs. Consequently, connected miscellaneous petition is closed. However, it is made clear that the second respondent is not entitled for any backwages from the date of training till reinstatement, however, he is entitled for continuity in service with all monetary benefits.

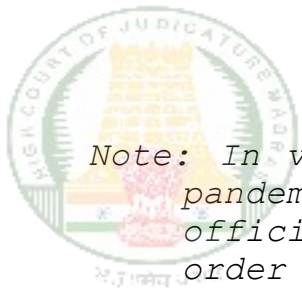
Sd/-

Assistant Registrar(CS-)

// True Copy //

/ /2021

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 Labour Court,
Tirunelveli.

+1 CC to M/s.D.SARAVANAN, Advocate (SR-9554[F] dated 09/03/2021)

**W.P. (MD) .No.6363 of 2012
08.03.2021**

al(CO)
TR(23.06.2021) 5P 3C