



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P (MD)NO.2659 OF 2013

and

M.P (MD)No.2 of 2013

WEB COPY

- 1.Rajasekaran Thambi
- 2.Jeyanthi Kumari Thangachi
- 3.Sudha Devi
- 4.Manjula Devi
- 5.Rajalakshmi
- 6.Balagopalan
- 7.Thara J.Lakshmi

... Petitioners

.vs.

- 1.The Labour Court,
Tirunelveli,
Tirunelveli District.

- 2.R.Mosai

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records relating to the award passed in I.D.No.57 of 2011, dated 27.11.2012 passed by the first respondent herein and to quash the same.

For Petitioners	: Mr.M.Gnanagurunathan
For Respondent-1	: Court
For Respondent-2	: No appearance

O R D E R

The Writ Petition is filed to issue a Writ of Certiorari to quash the impugned award passed in I.D.No.57 of 2011, dated 27.11.2012 passed by the first respondent herein.

2.It is brought to the notice of this Court that notice to the second respondent was served long back through Court. Private notice was also served and the proof of service is produced before this Court by letter, dated 27.2.2013. Despite notice being served on the second respondent, the second respondent did not choose to appear before this Court either in person or through counsel. In such circumstances, this Court has no other option except to proceed to dispose of the Writ Petition, on merits with the available records.



3.The Petitioners state that they have purchased a Rubber Estate from one Ganesh, Lakshmi and Prema of Thiruvananthapuram in the year 2002. After purchase, the Petitioners renamed the estate as 'Vinayaga Estate'. It is the case of the Petitioners that the second respondent was appointed as Watcher by the erstwhile owners of the second respondent. Further, it is stated that at the time of their purchase in the year 2002, the second respondent was engaged by an agreement, by which, the second respondent agreed that his service can be terminated at the will of the Petitioners, if it is no more required. Since the agreement was not renewed for a further period, it is further stated that the second respondent was not a workmen under the Petitioner.

4.The second respondent filed I.D.No.57 of 2011 before the first respondent alleging illegal termination on the ground that he was originally engaged as a Watcher by the erstwhile owners on 28.6.1991 and that he continued in employment under the Petitioners after their purchase. It was further stated in the petition that the Petitioner was denied employment from 1.3.2010.

5.The Labour Court framed specific issues whether the second respondent is a workman under the Petitioners and whether the second respondent was denied employment unlawfully.

6.Stating that the Petitioners have admitted that the second respondent was employed after their purchase, the Labour Court found that the second respondent is an employee, who was engaged as a Watchman. Based on appreciation of evidence, the Labour Court also came to the conclusion that the second respondent was denied employment. The reason given by the Labour Court was that during cross examination a suggestion was put to the second respondent that he did not come to work after February 2010. Since the suggestion is contrary to the stand taken by the Petitioners in the counter filed before the Labour Court, the Labour Court held that the case of the second respondent that he was denied employment was probable. Based on some discrepancies between the counter affidavit of the Petitioners in I.D.No.57 of 2011 and the evidence adduced on behalf of the management, the Labour Court held that the Petitioners' case is unbelievable and that the second respondent is entitled to get reinstatement with backwages.

7.The learned counsel appearing for the Petitioners submitted that the petitioners have executed a Release Deed in favour of the erstwhile owners, dated 31.03.2001 and that therefore, the employment under the Petitioners was not one in continuation of his service under the erstwhile owners. It is brought to the notice of this Court that the second respondent had surrendered the possession of the building, in which, he was allowed to reside and agreed to retire from duty as Care-taker for a consideration of Rs.15,000/-.Therefore, it is submitted that the document filed by

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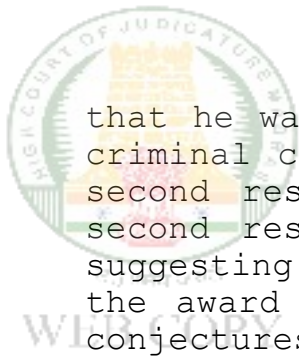


afresh by the Petitioners, after purchase of the property. The learned counsel also produced before this Court the copy of the agreement which was marked as a document before the Labour Court. By this agreement, the second respondent had agreed to take employment on new terms, subject to several conditions. The agreement was for a specific period with provision to extend the period of employment thereafter, subject to the payment of monthly salary. The first respondent agreed that he cannot continue in service unless the new employer is satisfied with his performance as a Watchman for extending his service for a further period. The agreement also enables the employer to terminate his service at any point of time, if they no more require the service of the second respondent.

8.The learned counsel for the petitioners referring to the documents, submitted that the findings of the Labour Court are perverse, as the Labour Court did not consider the inference that can be drawn from the documents regarding the terms and conditions, on the basis of which, the second respondent was engaged as a Watchmen for the estate. There is much force in the arguments of the learned counsel for the petitioners. When the Petitioners have produced several documents before the Labour Court, the Labour Court did not consider any of the documents relied upon by the petitioners. Therefore, the findings of the Labour Court are unacceptable, as the Labour Court has not even bothered to consider the case of the petitioners in the light of the documents produced by the second respondent.

9.Secondly, the Labour Court has drawn some inferences from the suggestion put to the second respondent during cross-examination which is totally unacceptable in the light of documents and evidence adduced. Though the irregularity committed by the Labour Court can be elaborated with reference to the context, this Court is able to see that the impugned award of the Labour Court is based on surmises without looking into the contents of the terms of agreement or the evidence.

10.While appreciating the evidence, the Labour Court cannot go behind the records. The minor discrepancies between the counter affidavit filed by the petitioners and the management witness is cited as a reason to disbelieve the whole case of the Petitioners before the Labour Court. When it is a fact that the second respondent was engaged as a Watchman on fresh terms and conditions and the agreement also was for a particular period, in the absence of any document, extending the service, it cannot be presumed that the service of the second respondent was continued. It is the specific case of the Petitioners that the second respondent did not report duty after getting salary on 4.2.2010. The second respondent had miserably failed to produce any independent witness or material to prove that he reported to work after 4.2.2010. During the course of cross-examination, the second respondent himself has admitted



that he was attacked by several persons while he was on duty and a criminal case registered, is also pending. When the conduct of the second respondent shows that no prudent person will engage the second respondent as a Watchman, in the absence of any evidence suggesting that the second respondent was continuously engaged, the award of the Labour Court appears to be on presumptions and conjectures and hence, cannot be upheld. In the facts and circumstances, this Court is unable to sustain the award of the Labour Court.

11. Accordingly, the Writ Petition is allowed and the impugned award of the Labour Court in I.D.No.57 of 2011, dated 27.11.2012 stands quashed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS II)

// 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,
Tirunelveli District.

+1 CC to M/s.M.GNANAGURUNATHAN, Advocate (SR-29532)

+1 CC to M/s.SPL GP (SR-29748)

ORDER MADE IN
W.P (MD) NO.2659 OF 2013
and
M.P (MD) No.2 of 2013
17.09.2021

RS (28.09.2021) 4P 4C