



WEB COPY

W.A.No.3



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2022

CORAM:

**THE HON'BLE MR.JUSTICE T.RAJA
AND
THE HON'BLE MR.JUSTICE K. KUMARESH BABU**

**W.A.No.3 of 2011
and M.P.No.1 of 2011**

Tamil Nadu Palvala Niruvana Oozhiyur
Sangam, Rep. by its General Secretary,
No.3, Dr.Vasudevan Street, Kilpauk,
Chennai – 600 010.

... Appellant

vs.

1.The Management of Tamil Nadu Pal
Oorpathiyalur Kooturavu Inaiyam,
Rep. by its Managing Director,
Aavin Illam, Madhavaram Milk Colony,
Chennai – 600 051.

2.The Presiding Officer,
Industrial Tribunal,
City Civil Court Buildings,
Chennai – 600 104.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, against the order
passed by this Court dated 21.10.2010 made in W.P.No.2501 of 2005.

For Appellant	:	Mr.K.M.Ramesh
For Respondents	:	Mr.Gowarthan for R1 for M/s.Row & Reddy



JUDGMENT

(Judgment of the court was delivered by K.KUMARESH BABU, J.)

The instant Writ Appeal has been filed against the order of the learned

Single Judge made in W.P.No.2501 of 2005 dated 21.10.2010, wherein the learned Judge has allowed the Writ Petition setting aside the Award dated 13.09.2004 made in I.D.No.23 of 2001.

2.Heard Mr.K.M.Ramesh, learned counsel for the appellant and Mr.Gowarthan, learned counsel appearing for the first respondent.

3.Learned counsel for the appellant would contend that the learned Judge without considering the well founded Award of the Industrial Tribunal, had interfered with the factual findings which is unsustainable. According to him, the worker by name P.Rajasekaran was working in the first respondent organization from the year 1980 and he had participated in the flash strike on 19.11.1980 which resulted in his non-employment. According to the appellant, an industrial dispute had raised in I.D.Nos.31 of 1985 and No.70 of 1986 with respect to the non-employment of workers pursuant to the strike.



4.It is his case that in the Award, the Industrial Tribunal held that the non-employment was unjustified and had directed reinstatement with continuity of service and 25% back wages. The name of the worker P.Rajasekaran is also found at S.No.142 of the annexure to I.D.No.70 of 1986. He further contended that the worker P.Rajasekaran was not reinstated as the first respondent was disputing the identity of him and claimed that under the Award, one A.Rajasekaran was the employee and he had been reinstated in compliance with the Award. Hence, an industrial dispute was raised which was referred to the Industrial Tribunal in I.D.No.23 of 2001 and after a detailed enquiry an Award has been passed holding that the name of Rajasekaran in S.No.142 of annexure of the Award in I.D.No.70 of 1986 refers only to P.Rajasekaran and hence he should be reinstated into service. However, the said Award was challenged by the first respondent in W.P.No.2501 of 2005 and the learned Judge by his order dated 21.10.2010 had allowed the Writ Petition setting aside the well considered Award passed by the Industrial Tribunal.

5.He would contend that the learned Judge had re-appreciated the evidence and had held that the name Rajasekaran mentioned in S.No.142 of the annexure, to Award in I.D.No.70 of 1986 would not refer to P.Rajasekaran and



would only refer to A.Rajasekaran. According to him, the learned Judge has wholly erred in discarding various reasonings and findings of the Industrial Tribunal in arriving at an Award and had given a different reasonings which is uncalled for. He would vehemently contend that the Court cannot substitute its view and hold otherwise when two views are possible on the same set of facts. He also disputed the claim of the first respondent that the worker P.Rajasekaran was not in service as he had been removed from the service much before the date of the flash strike. According to him, there was no documents filed before the Industrial Tribunal to substantiate the removal of P.Rajasekaran. Hence, he had sought to set aside the order of the learned Judge and restore the Award passed by the Industrial Tribunal and direct the first respondent to reinstate the said P.Rajasekaran with continuity of service and full back wages.

6.Countering his arguments, learned counsel appearing for the first respondent would submit that Thiru.P.Rajasekaran was removed from the service in September, 1980, for which, the Wage Register relating to the worker P.Rajasekaran was marked as exhibits M13 to M18. He would contend that under M17 the Wage Register for the month of September, 1980, it has been clearly mentioned that the worker P.Rajasekaran was terminated from the



service vide proceedings No.14742/M1/80 dated 9.9.80. In that aspect, he could not have participated in the lightening strike that was made by the employees on 19.11.1980. Therefore, he could not be a person shown at S.No.142 of the annexure to the Award in I.D.No.70 of 1986.

7.It is his further case that there was one other A.Rajasekaran who was working under it and pursuant to the Award passed in I.D.No.70 of 1986, the said Rajasekaran was reinstated into service on 01.08.1987. He further argued that taking advantage of the non mentioning of initial to the said Rajasekaran at S.No.142, the worker P.Rajasekaran made a claim on 27.10.1999. The said claim has been made much belatedly trying to take advantage of the non mentioning of initial in the Award. Hence, his claim is that the learned Judge has correctly appreciated the facts in a proper prospective and set aside the perverse reasonings and findings of the Industrial Tribunal and hence prayed this Court to dismiss the appeal.

8.Heard the learned counsel on both sides.



9.The dispute between the appellant union and the respondent management is with regard to the identity of a person by name Rajasekaran who has been ordered to be reinstated in I.D.No.70/86, whether it is P.Rajasekaran or A.Rajasekaran. As per the records, both Rajasekaran were in the employment of the management before 19.11.1980, the date of illegal token strike. Both P.Rajasekaran and A.Rajasekaran have been absorbed into the service of the management federation as Junior Mazdoor. The appointment orders dated 14.12.1978 and 25.03.1980 of both A.Rajasekaran and P.Rajasekaran respectively have been marked as Exs.M7 and M1.

10.Mr.P.Rajasekaran was posted at Madhavaram Control Room as Junior Mazdoor on 02.05.1980 and likewise, Mr.A.Rajasekaran was posted at Madhavaram Central Dairy as Junior Mazdoor on 14.11.1978. Before the Tribunal, Mr.A.Rajasekaran, who was examined as MW1, deposed that he was initially working as casual labourer at Guindy Zonal Office from 10.07.1975 and thereafter, he was transferred to Mandaveli Zonal Office and on 14.12.1978, he was appointed as Junior Mazdoor by the respondent management and posted at Central Dairy, Madhavaram. Therefore, it is claimed by the appellant union that only Mr.P.Rajasekaran alone was in the employment of the management as



Junior Mazdoor prior to the date of strike on 19.11.1980 and no such person by name A.Rajasekaran was working in the respondent management, however, the claim of the respondent management is that Mr.A.Rajasekaran lost his job due his participation in the one day token strike on 19.11.1980. To substantiate their claim, the respondent management examined Mr.A.Rajasekaran as MW1 and that Ex.M-17 marked by the respondent management discloses that one Rajasekaran who was terminated from service on 12.09.1980 had no initials, besides, Ex.M18-Wage Register for the month of October, 1980, discloses that the name of Rajasekaran said to have been terminated from service carries no initial. MW2-Dharmaraj in his proof affidavit stated that Mr.P.Rajasekaran was terminated from service on 09.09.1980 after framing charge memo, but, Union has not disproved the said fact. Therefore, for the reasons stated above, in our considered view, the findings of the learned Single Judges deserve to be approved.

11.The next reasoning that has been arrived at is also not acceptable for the reason that an extract of the admission of A.Rajasekaran alone would show that he was not a member of an Union of which one Kulasekaran was a leader is also without any basis. Further, the appellant has also not challenged the



reinstatement of A.Rajasekaran, who has been reinstated on 01.08.1997, pursuant to the Award in I.D.70 of 1986. Hence, we are of the view that no interference is called for in the impugned order made in W.P.No.2501 of 2005 dated 21.10.2010.

12.In the result, the Writ Appeal fails and is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(T.R., J.) (K.B., J.)
15.06.2022

Index: Yes/no
Speaking order: Yes/no
pam



W.A.No.3



To

The Presiding Officer,
Industrial Tribunal,
City Civil Court Buildings,
Chennai – 600 104.



WEB COPY

W.A.No.3 of



T.RAJA, J.
AND
K. KUMARESH BABU, J.

pam

W.A.No.3 of 2011

15.06.2022