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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.NO.16359 OF 2012

AND

M.P.NO.1 OF 2012

U.Janaki

... Petitioner

Vs.

1. The Labour Court,
Coimbatore - 641018
rep.by its Presiding Officer,

2. The Management of Sheep Breeding Research Station,
Sandinalla, Udagamandalam,
Nilgris - 643 237
Rep by its processor and head

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the award dated 14.09.2009 in Id No.301 of 2005 passed by the 1st respondent Labour Court and set aside the same as being illegal arbitrary and perverse and consequently direct the 2nd respondent to reinstate the petitioner in service with back wages, seniority and all attendant service and monetary benefits.

For Petitioner : Mr.C.K.Chandrasekhar

For Respondent-1 : Labour Court

For Respondent-2 : Mr.A.R.Shiva Kumar
for K.M.Vijayan Associates

ORDER

The writ petition is filed to call for the records relating to the award dated 14.09.2009 in I.D No.301 of 2005 and to set aside the same and to consequently direct the second respondent



to reinstate the petitioner in service with back wages, seniority and all attendant service and monetary benefits.

2. Brief facts relating to the case are set out hereunder:

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2.1 The petitioner joined the second respondent Research Station in October 1991 and had worked in their farm taking care of Rabbits, ducks, buffaloes and other research related works. Initially, the petitioner was paid Rs.30/- per day and after periodical increments in April 2000 she was paid Rs.80/- per day.

2.2. It is the case of the petitioner that she had worked for more than 240 days in each calendar year starting from 1992 until April 2000. The appellant went on maternity leave for 5 months and when she reported back to work she was denied employment. The petitioner made repeated requests which was not considered thus the petitioner approached the District Collector and gave a representation on 23.06.2002. Initially, the Management agreed and gave the petitioner work on 29.04.2004. Thereafter, without assigning any reasons the respondent stopped the petitioner from employment. Hence, the petitioner raised an industrial dispute before the Labour Officer and the respondent conceded to give employment to the petitioner and gave employment to her on 15.02.2005. Thereafter, the respondent again stopped the petitioner from working.

2.3 The petitioner again forwarded a petition dated 03.05.2005 to the Labour Officer seeking reinstatement and permanent employment. The conciliation ended in failure and a report dated 30.08.2005 was submitted by the Labour Officer. Thereafter, the petitioner approached the Labour Court in I.D.No.301 of 2005 and the Labour Court dismissed the petition on finding the following:

a. That the petitioner would submit that she had worked from October 1991 onwards and she had worked for more than 240 days in a year, however, the petitioner had not submitted/produced any documents in support thereof.

b. That the respondent engaged the petitioner only for some seasonal work and only for a few days in a year and on daily wage basis, thus, the petitioner is not entitled to seek permanent employment under the respondent.

2.4. Aggrieved by the same the petitioner has approached this Court challenging the award passed by the Labour Court on the premise that the award suffers from perversity and gross non application of mind to the materials on record. The learned



counsel would submit that the impugned order suffers from the following infirmities that are fatal:

a. The learned Labour Court ought to have seen that there is categorical admission of the following aspects by the respondents during his cross-examination.

(i). That salary was not paid against any vouchers.

(ii) There has been regularisation of similarly placed employees/ workers during the year 2006.

(iii) That the petitioner had stated that she has been employed continuously with the respondents from the year 1991 onwards and it is also her claim that she had worked for more than 240 days in each year and that she had gone on maternity leave during April, 2000.

(iv) In the deposition, it was further admitted by the respondents that they maintain records in the form of attendance register, wage register, from which one could find out the number of days which a particular worker had worked during a period/ year.

It was submitted by the learned counsel for the petitioner that the Labour Court grossly erred in failing to see that once the petitioner had stepped into the witness box and claimed that she had worked for more than 240 days in a given year, the burden to prove that she had worked for more than 240 days in a given year stood discharged. In the present case, inasmuch as it has been admitted by the respondents that no documentary evidence was issued to the petitioner either in the form of order of appointment or salary slip or voucher to show that they had worked for a particular number of days in a given year, while admitting that there are records/ documents available with the respondents in the form of attendance register, wage register from which one could find out the number of days in which a worker had been employed / worker in a year, the claim of the petitioner of having worked for more than 240 days in a year could not have been rejected on the basis of burden not having been discharged.

(b) Secondly, the Labour Court ought to have seen that the very fact that similarly placed workmen had been regularised would indicate that the case of the respondent that the nature of work is temporary is clearly perverse.

(c) Thirdly, the very fact that after she had returned from her maternity leave the petitioner was given employment twice for short periods, pursuant to her complaint would show that the respondent recognised her right to be granted work/ employment.



The Labour Court having failed to take into account relevant factor and having grossly misdirected itself on the above aspects, arrived at a wrong conclusion. It was thus submitted that the order of the Labour Court stood vitiated for all the above reasons.

3. To the contrary, it was submitted by the learned counsel for the respondents that the nature of work was temporary and there is no material evidence let in by the petitioner to show that she had worked for 240 days in a given year.

4. Heard both sides, perused the material available on record.

5. We see merit in the submission of the petitioner that though the burden is on the workmen to show that he/she had worked for more than 240 days in a given year, however, the burden would stand discharged once he/she gets into the witness box and deposes/ claims that he/she had worked for more than 240 days, more so, in a case where admittedly, there is no documentary evidence with the workmen, but instead there are documentary evidence with the employer, as in the present case. In this regard, it may be relevant to refer to the following judgments:

i) Govt. of Gujarat (Fisheries Terminal Dept.) v. Bhikubhai Meghajibhai Chavda, reported in (2010) 1 SCC 47 :

"7.It is further submitted that the workman in his evidence, categorically had made statement before the Labour Court that he had worked for more than 240 days in a preceding year and, since that evidence is not rebutted by the employer by producing the relevant oral and documentary evidence which would be in their possession, the Labour Court was justified in drawing adverse inference against the employer.

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17. Applying the principles laid down in the above case by this Court, the evidence produced by the appellant has not been consistent. The appellant claims that the respondent did not work for 240 days. The respondent was a workman hired on a daily-wage basis. So it is obvious, as this Court pointed out in the above case that he would have difficulty in having access to all the official documents, muster rolls,



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etc. in connection with his service. He has come forward and deposed, so in our opinion the burden of proof shifts to the appellant employer to prove that he did not complete 240 days of service in the requisite period to constitute continuous service."

ii) R.M. Yellatti v. Asstt. Executive Engineer, reported in (2006) 1 SCC 106 :

"17.we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily-waged earners, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (the claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case....."

iii) Sriram Industrial Enterprises Ltd. v. Mahak Singh, reported in (2007) 4 SCC 94 :

" 32. The said approach, in our view, was erroneous in view of the decision of this Court in U.P. Drugs & Pharmaceuticals Co. Ltd. [(2003) 8 SCC 334 : 2004 SCC (L&S) 46] The petitioner had wrongly described the documents relating to attendance for the years 1991 onwards as far as the respondents are concerned, as being irrelevant and the Tribunal has also accepted the said reasoning. Consequently, instead of drawing an adverse presumption for non-production of the said records, the Tribunal accepted the contention of the petitioner that the workmen had not worked for more than 240 days in the year preceding the date of their termination nor had the workmen filed any proof to show otherwise.

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34. Having correctly interpreted the provisions of Section 6-N of the U.P. Act, the High Court rightly drew an adverse presumption for non-production of the attendance registers and the muster rolls for the



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years 1991 onwards. The best evidence having been withheld, the High Court was entitled to draw such adverse inference. The views expressed by this Court on the question of burden of proof in Range Forest Officer case [(2002) 3 SCC 25 : 2002 SCC (L&S) 367] were watered down by the subsequent decision in R.M. Yellatti case [(2006) 1 SCC 106 : 2006 SCC (L&S) 1] and in our view the workmen had discharged their initial onus by production of the documents in their possession."

It thus appears that the order of the Tribunal rejecting the claim of the petitioner that she had worked for more than 240 days in a year only on the ground of non-production of document when admittedly the respondent had not issued any document in the form of salary slips, voucher and order of appointment, at the same time, failing to produce documents in the form of attendance register, wage register which were in the possession of the respondents is perverse and arbitrary.

6. Secondly, it has been admitted by the respondents in cross examination that similarly placed workmen had been regularised, which contradicts their submissions that the nature of work in which the petitioner was employed was temporary, for it were so, the question of regularisation of similarly placed work men would not arise.

7. It thus appears that the Labour Court had passed the order in a perfunctory manner and had failed to take into account the relevant thereby vitiating the conclusion. It is well settled that failure to take into account the relevant and taking into account the irrelevant would vitiate the conclusion. The order of the Labour Court thus suffers from the above stated vice.

8. In view of the above, this Court is of the view that the matter is to be remitted back to the Labour Court for reconsideration after taking into account all factors that are relevant and leave out factors that are not relevant and come to a conclusion in accordance with law. The Labour Court shall endeavour to dispose of the appeal within a period of 12 weeks from the date of receipt of a copy of this order after granting reasonable opportunity to both parties.



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9. With the above directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

smn/mka

To:

1. The Presiding Officer,
Labour Court,
Coimbatore - 641 018.
2. The Professor and Head,
The Management of Sheep Breeding Research Station,
Sandinalla, Udagamandalam,
Nilgris - 643 237.

+1cc to M/s.C.K.Chandrasekhar, Advocate, S.R.No.24860

+1cc to M/s.K.M.Vijayan Associates, Advocate, S.R.No.25314

W.P.No.16359 of 2012
in
M.P.No.1 of 2012

SSI(CO)
RLP(02/06/2022)