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W.P.No.21201 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2022

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.20201 of 2004
and
W.P.M.P.No.25594 of 2004

The Commissioner,
Bhavani Municipality,
Bhavani,
Erode District.

...Petitioner

vs

1. The Presiding Officer,
Labour Court, Salem.

2. A.Durairaj (Deceased)

3. Mathammal

W/o A.Durairaj

(R3 impleaded as LR in the place of
the deceased 2nd respondent as per order
dt.23.11.2011 by SRJ in WPMP.445/2011)

.. Respondents

Writ petition filed under Article 226 of the Constitution to issue a Writ of
Certiorari to call for the records of the 1st respondent in his order in I.D.No.224/97
dated 24.04.2003 and quash the same.

For Petitioner : Mr.P.S.Jayakumar

For Respondents : R1-Court
R2-died
R3 – not served.



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ORDER

Challenging the order of reinstatement passed by the Labour Court in favour of the 2nd respondent, the petitioner/Municipality has come before this Court by way of this writ petition.

2. The case of the petitioner is that the 2nd respondent was appointed as a Sanitary Worker on daily wage basis from 30.11.90 as per the petitioner's Municipality Resolution dated 08.10.1990 in Resolution No.319. His appointment was purely a temporary one for three months and therefore, the 2nd respondent can be terminated without assigning any reason. The 2nd respondent was appointed temporarily along with 7 others. The petitioner's Municipality utilized the service of the 2nd respondent, whenever the Municipality needed the service of the 2nd respondent. The appointment order itself would show that the 2nd respondent's appointment was purely temporary one for 3 months and therefore, the petitioner need not give any explanation for the termination of the 2nd respondent. However, the 2nd respondent had stated that he was working under the petitioner Municipality continuously for 4 1/2 years, which according to the petitioner is completely a false statement. The 2nd respondent has approached the 1st respondent under Section 25(F) of Industrial Dispute Act 1947 for his remedy, but in fact, the 2nd respondent is not entitled to claim the benefits under the Industrial



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Disputes Act, 1947. Contending so, the writ petition has been filed by the petitioner Municipality.

3. Heard the learned counsel for the petitioner.

4. Perusal of the records shows that the 2nd respondent died and his only legal representative/wife viz., the 3rd respondent was brought on record by the petitioner, but no steps have been taken to serve notice on the 3rd respondent.

5. Learned counsel for the petitioner would submit that the order passed by the first respondent regularising the service of the 2nd respondent with backwages is unsustainable in law. The 1st respondent has not taken into account that the appointment of the 2nd respondent is purely temporary one. Further, he has not worked continuously under the petitioner for more than 240 days and he was receiving daily wage of Rs.19/- only as casual worker and the order passed by the 1st respondent/Labour Court is without application of mind. Hence, the learned counsel for the petitioner would pray to set aside the order passed by the 1st respondent.

6. This Court, considered the submission made by the learned counsel for the petitioner and perused the materials available on record.

7. This writ petition is filed as against the order of the Labour Court passed in I.D.No.224/97 dated 24.04.2003 in favour of the workmen/2nd respondent herein. The writ petition is of the year 2004. Though the writ petition was admitted



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on 22.07.2004, no notice was served on the 2nd respondent. The 2nd respondent died in the year 2011. Immediately, the 3rd respondent, wife of the 2nd respondent has been impleaded by order of this Court in WPMP.No.445/2011 dated 23.11.2011. Thereafter, no notice has been served on the 3rd respondent also.

8. It is also seen from the award passed by the Labour Court that the Labour Court has found that the 2nd respondent had worked from 1990 and had put in 240 days of continuous service. The Labour Court has also found that no opportunity was given to the 2nd respondent before the issuance of termination order and only on that ground the Labour Court has passed an award, setting aside the order of termination and regularising the service of the 2nd respondent herein along with backwages. Moreover, in this writ petition also, the petitioner has not taken any steps to serve notice on the 2nd and 3rd respondents. Therefore, this Court finds no illegality or infirmity in the award passed by the Labour Court and thus, this Court is not inclined to interfere with the same.

9. In the result, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No
Speaking/Non-speaking order
vsi



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To

The Presiding Officer,
Labour Court, Salem.



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J.NISHA BANU,J.

vsi

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