



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2022

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THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.18465 of 2010,

M.P.No.1 of 2010

and

W.M.P.No.31498 of 2019

The Management of TANFAC Ltd.
Rep. by its Company Secretary
D.M.Thiyagesh,
SIPCOT Complex,
Cuddalore Taluk, Cuddalore.

... Petitioner

Vs.

1. The Presiding officer,
Labour Court, Cuddalore.

2. A.Balaiah

... Respondent

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records of the 1st respondent pertaining to his Award dt 12.7.2010 made in Industrial Dispute No.6 of 2005 on the file of the Labour Court Cuddalore and quash the same.

For Petitioner : Mr.K.S.Karthik Raja

For Respondent No.2 : Mr.R.Thanjan

O R D E R

The petitioner Management is respondent before the Labour Court. The second respondent herein has filed I.D.No.6 of 2005 before the Labour Court by alleging that the second respondent herein has worked in the petitioner Management not less than 300 days per year from 1978 to 1985. While he was working in the petitioner Management, the petitioner sustained multiple fracture and he took treatment for the injuries sustained by him. After recovery, the petitioner seeks to join duty. However, the second respondent/employee was not permitted to join duty in the petitioner company. Therefore, the second respondent has approached Labour Officer as well as Labour Court. According to the petitioner, the grounds raised by the



petitioner herein were not duly considered by the Labour Court in proper perspective. The petitioner Management has specifically averred in the affidavit that the second respondent/employee did not work for more than 300 days per year from the year 1975 to 1985. The learned counsel appearing for the petitioner Management also placed reliance on the evidence adduced before the Labour Court as the same was not properly appreciated by the Labour Court and passed an award of reinstatement with continuity of service in the petitioner company without any backwages. Therefore, the award passed by the first respondent is liable to be set aside.

2. The learned counsel appearing for the second respondent would submit that the Labour Court has considered the evidence of the petitioner Management as well as the second respondent/employee and passed the reasoned award. On the side of second respondent/employee, he was examined as W.W.1 and three documents were marked as Ex.W.1 to W.3. On the side of the petitioner Management, M.W.1 and M.W.2 were examined and no documents were marked. Considering the oral and documentary evidence, the Labour Court has correctly come to a conclusion that the second respondent is entitled for reinstatement. Therefore, writ petition is liable to be dismissed.

3. Heard the rival submissions of the parties and perused the materials available on record.

4. The issue involved in the writ petition is that whether the Court below has considered the specific grounds raised by the petitioner Management before the Labour Court that the second respondent claimed that he worked in the petitioner Management for more than 300 days per year from 1978 to 1985. There is no evidence placed before the Labour Court to prove that the second respondent/employee worked in the petitioner Management during the period 1978 to 1985. Secondly, there is an inordinate delay of 19 years from the date of termination in the year 1985, in filing the aforesaid I.D.

5. Insofar as the first issue, the petitioner Management relied on the evidence adduced by M.W.1 who worked in the petitioner Management from the year 1983, has stated that if separate Special register for issue of cards is produced, it may give details on which date the gate pass was issued to the petitioner. He further stated that there was attendance register for temporary workers and the second respondent was not at all the employee of the petitioner Management during the relevant period. Therefore, based on the evidence of M.W.1 and M.W.2 and non production of record before the Labour Court, the award has been passed in favour of the second respondent/employee. It is specific case of the petitioner



Management that as per the evidence of M.W.2 erection work started in the respondent/Management in the year 1983 and production started in the year 1985, and he worked in the petitioner Management from the year 1983. However, there is no evidence or materials to show that he continuously worked in the petitioner/ Management for more than 240 days per year. From the evidence of M.W.1 and M.W.2, the Labour Court has come to the conclusion that a separate register regarding the details of issuance of gate pass to the second respondent/employee. However, in the cross examination, there was no evidence adduced by the second respondent to prove that the second respondent worked in the petitioner Management for more than 240 days per year during the period 1978 to 1985.

6. The next contention of the petitioner is that there was inordinate delay in filing the I.D. petition. According to the petitioner, the second respondent/employee worked in the petitioner Management till 1985. Thereafter, he approached Labour Court in the year 2005 i.e. there is an inordinate delay of more than 19 years on the part of the second respondent in filing the I.D. petition before the Labour Court. As rightly pointed out by the petitioner Management, there is no discussion or reason assigned by the Labour Court regarding the maintainability of I.D. petition due to inordinate delay and therefore, the same is liable to be rejected on the ground of laches and the award passed by the Labour Court is liable to be set aside.

7. Consequently, the impugned award passed by the Labour Court is set aside. The writ petition stands allowed. No cost. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Presiding officer,
Labour Court, Cuddalore.

+1cc to Mr.R.Thanjan, Advocate, S.R.No.2319

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SS[co]
NSK 15/02/2022