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W.A.No.1749 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.No. 1749 of 2021 and
C.M.P.No.10958 of 2021

The Management
Tamil Nadu Minerals Ltd.,
Chepauk, Chennai-600 005.

... Appellant

-VS-

1. The Presiding Officer,
Labour Court,
Cuddalore.

2. M.Manibalan

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the order dated 05.02.2020 made in W.P.No.22534 of 2012 and allow the Writ Appeal.

For Appellant : Mr.K.V.Sajeevkumar
For Respondents : M/s.D.Bharathy (R2)

J U D G M E N T

This Writ Appeal has been filed challenging the order dated 05.02.2020 made in W.P.No.22534 of 2012, by which the Writ Petition was dismissed.



W.A.No.11 of 2017

2. The case of the 2nd Respondent/Workman in brief is as follows:

(i) The 2nd Respondent was appointed as Escalator Operator on 11.02.2004 and worked under such capacity continuously from 11.02.2004 to 16.03.2007 except on Sundays and therefore requested for permanent employment. But the Appellant-Management without reasons stopped the 2nd Respondent from doing his duty from 17.03.2007 orally, for which he raised an Industrial Dispute before the Labour Officer, Cuddalore on 16.08.2007. As the conciliation proceedings ended in failure, he raised an Industrial Dispute to set aside the verbal order of dismissal dated 17.03.2007 and to reinstate him with continuity of service, back wages and other attendant benefits.

(ii) Before the Labour Court, the Appellant herein has stated that the 2nd Respondent was engaged as a Daily Wage employee on temporary basis and he was not a regular employee. It was further stated that he was not a permanent employee of the Management, and that his services were utilized as and when required. A stand was also taken that no formal appointment order was issued to him and he was engaged only for a few days in a month and was not employed continuously for 240 days in a calendar year. It was further submitted that there was no need for the Management to terminate the service of the 2nd Respondent herein, as he was not a regular employee, but engaged as and when required.



W.A.No.11 of 2011

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(iii) Before the Labour Court, the Workman examined two witnesses and marked four documents in support of his claim. Though the Management examined one witness, no exhibits were marked on their side. The Labour Court, taking note of the evidence let in by the Workman viz., Exs.W2 to W4 came to the conclusion that the 2nd Respondent worked in the Management for the period from 08.10.2004 to 27.02.2007 and that there was absolutely a need for continuous engagement of the Workman in the Management for years together. The Labour Court has also taken note of the admission made by the Management Witnesses that the original document with reference to Exs.W2 to W4 may be in the office of the Management under the custody of the Divisional Manager and that they were not aware as to why those documents were not produced before the Court. It was also noted by the Labour Court that in the deposition, the Management admitted the possession of details in respect of number of days of work attended by the 2nd Respondent herein in the office of the Respondent Management and the attendance details would be available in the office of the Divisional Manager. It was also pointed out by the Labour Court that the Workman, though filed I.A.No.144/2011 directing the Management to produce the documents and that the said I.A. was allowed on 18.07.2011, the Management has not produced any documents before the Labour Court. In view of the aforesaid facts and circumstances of the case, the Labour Court drew adverse inference



W.A.No.11 of 2020

against the Management for suppressing the material documents and by considering the evidence let in by the workman, the Labour Court has passed the award dated 21.02.2012 directing reinstatement of the Workman with continuity of service with 25% of the backwages with further observation that the Workman is not entitled to other attendant benefits. The said order was questioned before the Writ Court in W.P.No.22534 of 2012, in which the learned Single Judge has observed that the Management had failed to prove their case before the Labour Court by adducing any evidence, despite giving sufficient opportunity to them. Learned Single Judge also took note of the statement made by the learned counsel for the Appellant herein that the 2nd Respondent was taken in service in lieu of paying Section 17-B wages. Hence, the learned Single Judge, by an order dated 05.02.2020, dismissed the Writ Petition, which is impugned in this Writ Appeal.

3. The learned counsel appearing for the Appellant-Management submitted that the burden is on the Workman to substantiate his case for reinstatement and the Labour Court had awarded reinstatement to the 2nd Respondent only for non production of documents on the side of the Appellant. It was vehemently argued that that the Workman had not rendered 480 days of service in two calender years.

4. The contention of the Appellant cannot be accepted. It is no doubt true that the



initial burden is on the part of the employee to prove his case in the light of the judgment of the Supreme Court in the case of ***R.M.Yellatti Versus Assistant Executive Engineer*** reported in ***(2006) 1 SCC 106***. However, in the present case on hand, the burden is shifted on the Management to establish their case on the score that inspite of the 2nd Respondent obtaining a favourable order in I.A.No.144 of 2011 in respect of production of documents by the Management, for the reasons best known to the Management, documents were not produced by them.

5. When similar issue arose regarding non-production of available documents by the Management, this Court, while referring to the judgment of the Apex Court and this Court, held as under:

“4.....the decision of the Two Judges' Bench of Supreme Court, cited by the Bank in the case of Range Forest Officer Versus S.T.Hadimani reported in (2002) 3 SCC 25, holding that initial burden of proof is with the Workman to establish that he / she had completed required period of service, was rendered at that relevant point of time and subsequently, the Three Judges' Bench of Apex Court in the case of R.M.Yellatti vs Assistant Executive Engineer reported in (2006) 1 SCC 106 shifted burden on the employer to prove that the Workman had not worked for 240 days continuously. The relevant portion of the said judgment is extracted hereunder:

“13.... In the present case, the defence of the management was that although Ex.W1 refers to the period 22.11.1988 to 20.6.1994, the workman had not worked as a daily wager on all days during that period. If so, the management was duty bound to produce before the labour court the nominal muster rolls for the relevant period, particularly when it was summoned to do so. We are not placing this judgment on the shitting of the burden. We are not placing this case on drawing of adverse inference. In the present case, we are of the view that the workman had stepped in the witness box and his case that he had worked for 240 days in a given year was supported by the certificate (Ex.W1). In the



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circumstances, the division bench of the High Court had erred in interfering with the concurrent findings of fact.”

9. The next contention of the Bank was that even if it is taken that the Employee worked as a Casual Worker, no document has been produced by the Employee to prove that she had completed 240 days in a period of 12 Calendar month. When the documents are with the Bank, it is the duty on the part of the Bank to produce the same before the Court, as, admittedly, no employee would be provided with the Attendance Register every month so as to enable them to maintain records.

10. In the present case on hand, the Employee discharged the entire burden by filing a petition, calling for documents and number of days worked with the Bank. When an order to produce those documents had been ordered, the Bank cannot keep all the documents close to their chest and contend that still the burden is on the workmen. The Karnataka High Court in the case of Siruguppa Sugars and Chemicals Limited, Gauribidanur vs. The Commissioner of Labour, Government of Karnataka and Others, reported in 2002 (3) LLN 465, held that even though the burden of proof is on the workmen, it is the management, who has the muster roll of the Workmen to produce the same that the Workmen are casual workers. To add further, Hon'ble Punjab and Haryana High Court in Madhusudan's case, reported in 2003 (102) FJR 310 held that Bank is bound to produce the records, failing which the reference should be answered in favour of the Workman, by observing as follows:

“A party seeking equitable relief from the courts, has a bounden duty to disclose all material facts and documents which may have a bearing on the decision of the case. The party, be it the petitioner or the respondent, is not allowed to omit certain documents, which if disclosed, would perhaps lead to an unfavourable order being passed against that party. If by not disclosing such a document any favourable order is taken from the court, the same is liable to be rescinded / vacated on the correct facts being brought to the notice of the court.”

11. This Court, in The Madras Race Club vs. M.Victor, reported in (2013) 8 MLJ 609, was pleased to hold as under:

“42...There is no difficulty in accepting the fact that a party to a dispute is entitled to raise all kinds of defence available under law. But they cannot be allowed to keep all cards close to their chest and non suit the workers from the civil court, only with a view eventually to non suit them even from the Labour Court.”

12. Admittedly, the Bank did not produce any document in support of their



W.A.No.11 of 2012

contention and withheld the evidence in their possession, which forced the Authority to rightly draw adverse inference against the Bank and granted relief to the Workman. The Industrial Tribunal categorically held that even after filing the petition to produce the documents, the Bank buried certain documents, stating that they are not available with them. In the absence of any documents to be produced by them, the contention of the Employee has to be accepted. Taking note of the long period of services, the Tribunal has held that it would not be proper to disturb the services of the Employee, thereby depriving her legitimate status.”

6. The contention of the Management before the Labour Court that the Workman had not rendered 480 days of service, cannot be accepted for the simple reason that the Workman has been granted continuity of service as per the Award dated 21.02.2012 and therefore, the Workman is deemed to have attained permanent status on or from completion of 480 days from the date of entering into service in terms of Section 3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (in short 'Act, 1981').

7. In the present case on hand, admittedly there is no document produced by the Management and in view of Section 3 of the Act, 1981, the employee is deemed to have attained permanent status and is entitled to other benefits as rightly held by the Labour Court, except those that were deprived in Paragraph 12 of the Award. We find that there is no reason whatsoever to interfere with the order of the learned Single Judge.

S.VAIDYANATHAN,J
and



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MOHAMMED SHAFFIQ,J

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In the result, this Writ Appeal stands dismissed. No costs. Consequently,
connected Miscellaneous Petition is closed.

[S.V.N., J.] [M.S.Q., J.]
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Internet: Yes / No
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To:

The Presiding Officer,
Labour Court,
Cuddalore.

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