



W.P.No.6726 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	18.08.2022
<i>Pronounced on</i>	29.09.2022

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.6726 of 2010
and
M.P.No.3 of 2010

K.V.Krishnamurthy

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Salem.

2.The Management of Chemicals and
Plastics India Limited,
Now known as
Chemplast Sanmarc Limited,
Industrial Alcohol Plant I,
Krishnagiri.
Rep. by its
Vice-President-Personal,
P.B.No.16,
Krishnagiri.

... Respondents

Writ Petition filed under Article 226 of Constitution of India, praying for
issuance of Writ of Certiorarified Mandamus, calling for the records relating to



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the award dated 18.10.2007 passed by the first respondent in I.D.No.426 of 1998 and quash the same and consequently direct the second respondent to reinstate the petitioner in employment in any of its sister concern.

For Petitioner : Mr.K.Shakespeare

For Respondents 1 : Court

For Respondent 2 : Mr.Sai Prasad

ORDER

The case of the petitioner is that the petitioner viz., K.V.Krishnamurthy was appointed as Temporary Excise Assistant under the second respondent management on 07.02.1984. The above said appointment was extended for a period of three months by order dated 22.05.1984. It was extended by another period upto 22.08.1984. By another order dated 21.11.1984, it was extended upto 21.05.1985. This being so, the petitioner was terminated from service on 20.11.1985, without issuing show cause notice or conduction domestic enquiry. Therefore, the petitioner has approached the Labour Officer, Krishnagiri to initiate conciliation. But, the conciliation was failed and the Labour Officer has filed a failure report and forwarded the same to Government. Instead of referring the matter to the Labour Court, the Government has refused the



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reference on the ground that the petitioner was employed as Trainee for specific period and he is not entitled to reinstatement.

2. Aggrieved over the aforesaid refusal by the Government, the petitioner has preferred a writ petition in W.P.No.3219 of 1987 before this Court. This Court passed an order dated 03.01.1997, directed the Government to make reference to the concerned Presiding Officer, Labour Court and further directed the Presiding Officer, Labour Court to dispose of the matter on merits, within 90 days from the date of that order. Hence, the Government has issued a G.O.(D) No.222 dated 17.03.1997, referred the issue of the petitioner to the Labour Court, Vellore. The reference was taken up for adjudication as I.D.No.426 of 1998 before the Labour Court, Salem. But the said I.D.No.426 of 1998 was dismissed for default for non filing of claim statement on 21.08.1998.

2.1. Therefore, the petitioner has preferred an application bearing I.A.No.45 of 2001 to set aside the ex-parte award, along with an application bearing I.A.No.170 of 2000 for condoning the delay in filing the restoration



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petition. The Labour Court has considered I.A.No.170 of 2000 filed to condone the delay and allowed the same vide order dated 06.07.2001. However, the same Labour Court has dismissed I.A.No.45 of 1999 filed to set aside the ex-parte award by an order dated 13.12.2001. Challenging the order dated 13.12.2001, the petitioner has filed a writ petition in W.P.No.23632 of 2002 before this Court.

2.2. This Court passed an order in W.P.No.23632 of 2002 dated 27.03.2007 allowed the petition, by directing the first respondent herein to restore the I.D.No.426 of 1998 and dispose of the same within a period of six months from the date of receipt of a copy of that order. Again, the said I.D.No.426 of 1998 was taken up for adjudication. The petitioner was examined as P.W.1 and on the side of the petitioner, Ex.P.1 to Ex.P.3 were marked. The Senior Officer (Personal) was examined on behalf of the second respondent management and Ex.R.1 to Ex.R.5 were marked.

3. Before the Labour Court, the second respondent has submitted that the appointment of petitioner was temporary and he was appointed for a specific



period and further submitted that the petitioner was not worked for a continuous period of 240 days and moreover, the second respondent management has paid compensation for the termination. The first respondent has not accepted the claim of the petitioner so far as reinstatement in another sister concern of the second respondent taking recourse to the standing order. Thus, the first respondent passed an award in I.D.No.486 of 1998 dated 18.10.2007, directed the second respondent management to pay a sum of Rs.70,000/- as compensation to the petitioner in lieu of reinstatement in service with other consequential benefits with costs of Rs.1000/-. Aggrieved over the said order dated 18.10.2007, the petitioner has come forward with the present writ petition.

4. The learned counsel for the petitioner submitted that on a perusal of Ex.P.1 to Ex.P.3, it is very clear that the employment was continuous and there was no gap between the three appointment orders and the petitioner's period of service as Temporary Excise Assistant was extended time to time without interruption. Further, the petitioner was placed as trainee for six months from May 1985 to November 1985. Usually, a workman after completing the



training or the apprentice period will be appointed to any post to which he is eligible. However, keeping the petitioner as trainee for six months after serving as temporary Excise Assistant cannot be acceptable.

5. The learned counsel for the petitioner further submitted that it is true that it would not be possible to trace the document relating to the petitioner due to lapse of time. Any how the documents on records clearly prove the employment of the petitioner as temporary Excise Assistant from 07.02.1984 to 21.11.1985 and the petitioner was paid a consolidated monthly salary of Rs.400/-. But for the wrongful dismissal, the petitioner has lost the opportunity of serving in the establishment from 1985 to 2003 and the petitioner would have been in employment till the closure of the establishment. For about 18 years, the petitioner lost the opportunity of serving in the respondent establishment. The materials on record shows that the petitioner was initially appointed on a consolidated monthly salary of Rs.400/-.

6. The learned counsel for the petitioner further submitted that if the petitioner has not been dismissed wrongly, he would have completed at least 17



or 18 years of service in clerical cadre. Moreover, the minimum wage prescribed for the clerical post in the year 2005 was Rs.3,148/-. According to section 25F of the Industrial Disputes Act, 1947, a workman who is in continuous service for more than 240 days is entitled to retrenchment compensation of 15 days average pay for every completed year of continuous service.

6.1. The learned counsel further drew the attention of this Court by stating that the last drawn salary of one Chandrasekaran, Shift Chemist in the second respondent management was Rs.5334.41/- as on October 1994 and his date of joining is 01.01.1977 and the date of leaving the service is 08.11.1994, which means he has worked for 16 years. Further, another person viz., K.Sountharan, who worked for 13 years was paid Rs.1,70,829/- as a compensation by the second respondent management. However, in the present case on hand, the petitioner was awarded compensation only for a sum of Rs.70,000/- by the first respondent/Labour Court.



7. The learned counsel appearing for the second respondent submitted that though the second respondent had sufficient number of accounts and administrative personnel working in the Industrial Alcohol Plant at Krishnagiri, solely with a view not to displease Mr.Jaganathan, the Central Excise Inspector, the second respondent has agreed to take the petitioner as trainee and the so called Jaganathan is the brother of the petitioner and on that context, he was engaged as a trainee from 07.02.1984 to 21.11.1985. When the said Jaganathan was shifted out of Mettur, the petitioner also wanted to try his chance for a secured employment in some other establishment falling in the jurisdiction of his brother Jaganathan.

8. The learned counsel appearing for the second respondent further submitted that it was in the aforesaid background, the petitioner was engaged as a trainee and he was terminated from service on 21.11.1985. As he was a only trainee, he has no right for permanent employment. In any event, the second respondent plant itself was closed long ago and there is no scope to provide him employment. Added to it, to the knowledge of the second



respondent, the petitioner acquiesced to the cessation of his employment and had taken up employment as Village Administrative Officer in a Municipal Administration Department of the Government of Tamil Nadu.

9. Heard the learned counsel on either side and perused the material documents available on record.

10. It is not in dispute that the petitioner was appointed as Temporary Excise Assistant on 07.02.1984 and terminated on 21.11.1985, which means he was worked for only 21 months. In the appointment order itself, it was clearly mentioned that the petitioner was only appointed as temporary labour for a period of three months i.e., from 07.02.1984 to 22.05.1984. Thereafter, the service of the petitioner was extended to another three months i.e., from 22.05.1984 to 22.08.1984. Subsequently, the service of the petitioner was extended for another three months i.e., from 22.08.1984 to 22.11.1984. The second respondent has issued another extension order, extending the service of the petitioner for six months i.e., from 22.11.1984 to 21.05.1985.



11. It is pertinent to note that the petitioner is only appointed as trainee and worked for only 21 months. Moreover, the post for which he was appointed is Excise Assistant, which is inferior post to that of Chemist. **The copy of the appointment orders which were marked as Ex.P.1 to Ex.P.3 were clearly shows that the petitioner was appointed for a specific period of time. Admittedly, the factory was closed in the year 2003. Even in the cross-examination, the petitioner has admitted that the factory was not functioning and he came to know the same only in the year 2004.**

12. It is evident that before the closure of the establishment, Voluntary Retirement Scheme was announced and many number of employees and executives retired from service on their own by taking compensation for the services rendered by them. It is already stated that the petitioner cannot be reinstated in the service of the sister concern of the second respondent company.

13. The materials on record show that the petitioner was initially appointed on a consolidated monthly salary of Rs.400/-. If the petitioner had



been in employment, he would have drawn a good salary. But unfortunately no evidence has been adduced by both sides and what was the amount paid to those persons like the petitioner, when they go on voluntary retirement under Voluntary Retirement Scheme. Hence, the Labour Court has rightly invoked the section 25F of the Industrial Disputes Act, 1947 and computed the compensation along with gratuity as Rs.70,000/-. Therefore, the compensation of Rs.70,000/- awarded by the Labour Court is correct and sustainable in law.

14. It is a well settled law that this Court under Article 226 of the Constitution of India cannot interfere with the findings, order, award passed by the Labour Court unless it is perverse, arbitrary, unconstitutional, error apparent on the face of the record, illegal and unsustainable in law.

15. Considering the above facts and circumstances of the case, this Court is not inclined to interfere with the award passed in I.D.No.426 of 1998 dated 18.10.2007 on the file of the first respondent/Labour Court, Salem and the same is hereby confirmed. Accordingly this writ petition stands dismissed, and the second respondent is directed to pay the compensation to the petitioner a



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sum of Rs.70,000/- as awarded by the first respondent/Labour Court in I.D.No.426 of 1998 dated 18.10.2007 along with of 6% interest from the date of award of the Labour Court to till the date of payment within a period of six weeks from the date of receipt of a copy of this order.

16. In the result, this writ petition stands dismissed with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

29.09.2022

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Index : Yes/No

Speaking Order : Yes/No



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J.SATHYA NARAYANA PRASAD,J.

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To:

- 1.The Presiding Officer,
Labour Court,
Salem.
- 2.The Vice-President-Personal,
P.B.No.16,
Krishnagiri.
The Management of Chemicals and
Plastics India Limited,
Now known as
Chemplast Sanmarc Limited,
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Pre-delivery order in

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