



WP.No.1233 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2022

CORAM

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

WP.No.1233 of 2018
& W.M.P.Nos.1542 & 17996 of 2018

- 1.The President,
Ottiyampakkam Grama [Oratchi] Panchayat,
Ottiyampakkam, Chennai – 600 126.
- 2.The Block Development Officer [Grama Oratchi],
Saint Thomas Mount Onedriyam,
Chitlapakkam, Chennai – 600 064.
- 3.The Deputy Block Development Officer,
Saint Thomas Mount Onedriyam,
Chitlapakkam, Chennai – 600 064. .. Petitioners

Versus

- 1.The Presiding Officer,
II Additional Labour Court,
High Court Compound,
Chennai – 600 104.
- 2.M.Gopal
Rep. by G.Nandhakumar
Authorized representative .. Respondents



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Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari, calling for the records and papers from the file of the 1st respondent made in I.D.No.203 of 2013 on the file of the 1st respondent herein and quash the impugned award dated 18.04.2016 made in I.D.No.203 of 2013.

For Petitioner : Mr.G.Rajesh
for Mr.V.Jayaprakash Narayanan

For Respondents : Mr.S.T.Varadarajulu [For R2]
R1- Court

ORDER

The prayer sought for herein is for a writ of Certiorari, to quash the impugned award dated 18.04.2016 in I.D.No.203 of 2013 passed by the first respondent.

2.The second respondent was appointed as Office Assistant/Sweeper on 03.03.1997 by the petitioner Panchayat and from that date, the second respondent had been continuously working.



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3. Though it was contended by the petitioner Panchayat that the said engagement was not on regular basis and it is only on daily wage basis, the said statement is denied by the second respondent employee who stated that it was a regular appointment as he had been paid regular monthly salary.

4. When that being so, with effect from 26.11.2012 the services of the second respondent was dispensed with by the petitioner Panchayat. Felt aggrieved over such sudden termination by dispensing with the services of the second respondent, he has raised an industrial dispute by filing a claim statement before the Labour Court which was taken as I.D.No.203 of 2013 on the file of the II Additional Labour Court, Chennai.

5. The said industrial dispute was heard and disposed of by the Labour Court by award dated 18.04.2016 where the Labour Court has passed an award directing the petitioner Panchayat to reinstate the second respondent into service with full wages and with continuity of service with all other attendant benefits from the date of denial of employment.



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6.Felt aggrieved over the said award passed by the Labour Court, the petitioner Panchayat filed the present writ petition with the aforesaid prayer.

7.Heard Mr.G.Rajesh, learned counsel appearing for the petitioner and Mr.S.T.Varadarajulu, learned counsel appearing for the second respondent.

8.The Labour Court considering the issue raised before the Labour Court, has given the following findings:

“6.The petitioner has been examined as WW1. In his evidence, he has stated that the petitioner joined in the Panchayat Office on 03.03.1997 and he got salary of Rs.5,940/- per month. He was worked in this office for more than 15 years. The Tamil Nadu Government has issued a Government Order Ms.No.22 dated 26.02.2006 that “to pursue action to regularise the services of the daily wages employees working in all Government Departments who have rendered 10 years of service as on



01.01.2006”. This Government Order was marked as Ex.A1, Ex.W2 is the register for the attendance [Office Record Series], Ex.W3 is the order issued by the Commissioner, St.Thomas Mount, Chennai and Ex.W4 is the Identity Card. The petitioner was terminated from service on 26.11.2012.

7.On the other hand the first respondent himself examined as M.W.1 in his evidence he stated that the petitioner has been only engaged as Daily Wages employee under the Daily Wages and he has not been recruited as Assistant and the petitioner was unauthorisedly absent in daily wages work in this respondent's office and he has not been issued any prior notice/communication for unauthorised absence of work since 26.11.2012 and the petitioner has not been shown an reasonable grounds for unauthorised absence.

8.This respondent further stated that he has paid the daily wages regularly even to this petitioner also and the respondent has also maintained proper records in pertain to the employee under daily wages. On 28.11.202, this respondent office has been sent the show cause notice in pertain to the suspension and removal



from service and given 7 days time for reply. But, the petitioner has wantonly adamantly and wilfully failed to furnish reply within 7 days from the date of show cause notice. The petitioner has been sent a reply dated 03.01.2013, such reply has not been entice the confidence nor showing bonafide of the unauthorised absence of the petitioner. After the suspension from the service, this petitioner has sent a communication to this respondent, which communication was not entice, not bonafide so, this respondent has not accepted and refused the same.

9.The respondent marked Ex.M1 to M11 documents. Ex.M1 is the Meeting held at Ottiyampakkam Panchayat datd 28.03.2002. Ex.M2 is the Meeting held at Ottiyampakkam Panchayat dated 28.05.2008. Ex.M3 is the Meeting held at Ottiyambakkam Panchayat dated 24.01.2013. Ex.M4 is the Show Cause Notice given to the petitioner M.Gopal dated 02.02.2013. Ex.M5 is the Meeting held at Ottiyampakkam Panchayat dated 22.02.2013. Ex.M6 is the order of dismissal from the service to M.Gopal by the President, Ottiyampakkam Panchayat dated 22.02.2013. Ex.M7 is the letter of President, Ottiyampakkam



Panchayat dated 06.03.203. Ex.M8 is the letter of President, Ottiyampakkam Panchayat dated 06.03.2013. Ex.M9 is the letter received from Labour Department to the petitioner M.Gopal. Ex.M10 is the Abstract of G.O(Ms).No.74 dated 27.06.2013. Ex.M11 is the Resolution copy of the Ottiyampakkam Panchayat dated 29.12.2014.

10.The petitioner from his evidence and documents proved that he has put 15 years of service in the respondent office. The petitioner worked continuously for ten years and the service register shows his continuous service of ten years in the panchayat. There is no disciplinary action against the petitioner. He was terminated by the first respondent from 26.11.2012 without any legal notice nor conducting any enquiry as stipulated under proviso of I.D. Act, 1947. All at a sudden referring the Government Order No.74 dated 27.06.2013, the petitioner was terminated from the service and till today even though after so many representations he has not been reinstated in the service in that Panchayat. Though the Government Pleader refers G.O.Ms.No.74 which is not so particular to oust or terminate the petitioner after ten years of continuous



unblemished services and the explanation by the Government Pleader is not satisfactory and after completion of ten years of service by the petitioner as long been regularised by the Panchayat for which no proper explanation was given by the Government Pleader. The Government Pleader argued that after seven days of notice no appeal was taken by the petitioner is not applicable to the petitioner who has completed ten years of continuous service.

11.Having in mind the continuous service of the petitioner for ten years and since there is no disciplinary action taken against the petitioner, this Court is granting the relief of reinstate the petitioner into service with full wages and with continuity of services with all other attendant benefits from the date of denial of employment to the petitioner and the two issues are answered accordingly.

In the result, this Court has decided to comply with the prayer benefits mentioned in the petition i.e. granting the relief of reinstate the petitioner into service with full wages and with continuity of services with all other attendant benefits from the date of denial of employment



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to the petitioner.”

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9. Assailing this award, the learned counsel appearing for the petitioner Panchayat would submit that the second respondent was not appointed as a regular employee and moreover, it was not a regular appointment and it is only a daily wage engagement. When that being so, the second respondent even though had been continuously engaged from 1997 till 2012, he cannot claim any right of regularisation or absorption as the Government Orders issued in this regard, namely, G.O.Ms.No.22 P&AR Department dated 26.02.2006 and also G.O.Ms.No.74, P&AR Department dated 27.06.2013 has issued guidelines for various Department heads as to how the daily wage employees have to be regularised.

10. As per the Government Orders as on 2006 if any full time daily wages employee has completed ten years of service, those employees alone would be entitled to claim regularisation and in this case, since the second respondent has not completed ten years of service from 1997 to 2006, he



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was not entitled to get such benefit arising out of the aforestated Government Orders.

11.The learned counsel would also submit that since there has been unauthorized absence on the part of the second respondent, show cause notice was issued which was not responded, therefore he was placed under suspension initially and subsequently, by the termination order dated 26.11.2012, he was terminated from service.

12.In this regard, according to the learned counsel for the petitioner eventhough the necessary documents such as Government Orders, Panchayat resolution passed in this regard as well as the termination order were marked as documents and the Panchayat President himself has deposed before the Labour Court, those evidences adduced on behalf of the petitioner Panchayat were not considered in proper perspective by the Labour Court. Therefore, the learned counsel for the petitioner Panchayat seeks indulgence of this Court against the impugned award.

13.On the otherhand, Mr.S.T.Varadarajulu, learned counsel appearing



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for the second respondent employee would contend that it was a regular appointment made by the petitioner Panchayat as Office Assistant to the second respondent with effect from 03.03.1997. A service record also has been opened and a copy of the same also had been produced before the Labour Court and from 03.03.1997, without any break the second respondent had been continuously working for 15 years, however, all of a sudden by citing a flimsy reason or a reason which is non-est as the second respondent unauthorizedly absent, straight away termination order was issued before which no domestic enquiry was conducted. Therefore, on these grounds when the second respondent raised an industrial dispute where both the petitioner Panchayat and the second respondent employee were permitted to let in evidence. After having considered such evidence put forth by both sides, the Labour Court has come to a conclusion, of course rightly, that there was no disciplinary action against the employee and he had completed 15 years of service continuously, therefore, he is entitled to get the relief of reinstatement with backwages and continuity of service.

14.He would also submit that as against the said award when this writ



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petition was filed and pending before this Court, in the year 2019 pursuant to the order passed by this Court, the second respondent was reinstated by the petitioner Panchayat and the second respondent as of now has been continuously working.

15.Only in respect of the continuity of service benefit as well as the back wages benefit as ordered by the Labour Court should be paid by the petitioner Panchayat and if that is given, the second respondent employee may not have any grievance, he contended.

16.I have considered the said submissions made by the learned counsels for the parties and have perused the materials placed before this Court.

17.Insofar as the continuous service of the second respondent at the petitioner Panchayat is concerned, it is not in dispute as from 03.03.1997 till 26.11.2012, the date on which he was terminated, he had been continuously working with the petitioner Panchayat.



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18. Though it was claimed by the employee that it was a permanent appointment on monthly salary basis, it was the contention of the Panchayat that it was not a regular or permanent employment but it was only an engagement on daily wage basis.

19. But the fact remains that even on daily wages basis assuming that the statement made by the petitioner Panchayat in this regard is to be accepted, the second respondent employee had been continuously engaged from 1997 till his termination in 2012, thereby 15 years continuously the second respondent employee had been in service of the petitioner Panchayat.

20. Both the Government Orders referred above, i.e. G.O.Ms.No.22 P&AR Department dated 26.02.2006 and also G.O.Ms.No.74, P&AR Department dated 27.06.2013 makes it clear that if a person continuously being engaged on daily wages basis, he would be entitled to get absorption on completion of 10 years of service.



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21.The only exception was that if it is a part time employment, then only the relief of regularisation may not be accepted.

22.Moreover, G.O.Ms.No.22 P&AR Department dated 26.02.2006 initially issued in the year 2006 does not say so, however, the subsequent Government Order issued in this regard, i.e. G.O.Ms.No.74, P&AR Department dated 27.06.2013 has put this embargo.

23.Assuming that G.O.Ms.No.74, P&AR Department dated 27.06.2013 has put that embargo insofar as the employment of the second respondent employee is concerned, it is an admitted fact that even on daily wages basis the employee had been continuously engaged by the petitioner Panchayat from 03.03.1997 till the termination, i.e. 26.11.2012.

24.Moreover eventhough it was stated that it is a disciplinary action which followed by the termination, factually it was found by the Labour Court that no such disciplinary action was taken or no enquiry to that effect



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had been conducted. If at all any domestic enquiry had been conducted, who conducted the enquiry and what is the report of the enquiry officer could have been filed either before the Labour Court or before this Court, but no such report since has been filed, it can be taken or concluded safely that no such disciplinary proceedings was initiated. Hence, the termination made against the second respondent cannot be treated as termination arising out of any disciplinary proceedings but only can be treated as a termination simplicitor without any reason.

25.After having found all these factual aspects by taking into account the evidence let in by both sides, the Labour Court has come to the conclusion and the discussion made in this regard by the Labour Court has already been extracted herein above which discloses that the Labour Court having gone through these evidences, has come to a right conclusion that the second respondent employee is entitled for reinstatement.

26.Moreover, during the pendency of the writ petition the second respondent employee was reinstated and he has been continuously working



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now. Now the only question is whether the backwages allowed by the Labour Court is directed to be given by the second respondent or not.

27.In this context, it was contended by the learned counsel for the second respondent that since he is entitled for backwages, the same cannot be denied by this Court.

28.However, it was the fervent plea by the learned counsel for the petitioner Panchayat that the petitioner is a Village Panchayat which runs the administration of the Panchayat only based on the fund allotted to the Panchayat by the Government. Therefore, having such minimum or meagre fund, some welfare measures have to be taken in the Village Panchayat concerned. Therefore, if such backwages is allowed now by this Court, that will make the coffer of the Panchayat empty and therefore, he seeks indulgence of this Court in this regard.

29.Having considered the said financial position of the petitioner Panchayat which as stated by the learned counsel for the petitioner is always



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depending the Government fund even to run the show, to take some welfare measure for the people of the Village Panchayat, I am of the view that the backwages for non-working period can be denied to the second respondent employee.

30.However, the employee would be entitled for regularisation from 01.01.2006, i.e. the cut-off date given by the Government Orders or atleast from 02.03.2007, the date on which the second respondent employee has completed 10 years of service for regularisation and from that date, the second respondent employee would be entitled for continuity of service and the corresponding service benefits except backwages.

31.In that view of the matter, this Court is inclined to dispose of the writ petition with the following orders:

- ◆ That the impugned Labour Court award is hereby confirmed, of course, with the following modification.
- ◆ That in respect of the back wages allowed by the Labour Court, the same can be denied to the second respondent for



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the reasons set out herein above. However, the petitioner Panchayat is hereby directed to regularize the services of the petitioner with effect from 02.03.2007 atleast at the petitioner Panchayat and from that date, the employee shall be entitled to have the continuity of service and all other attendant benefits except backwages.

- ◆ The needful as indicated above shall be undertaken by the petitioner Panchayat within a period of eight weeks from the date of receipt of a copy of this order.

32.With these directions, the writ petition is disposed of by partly modifying the impugned award as stated supra. No costs. Consequently, connected M.Ps are closed.

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R.SURESH KUMAR, J.,

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