



W.A.No.1717 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2022

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE  
AND

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.A.No.1717 of 2022

Tamil Nadu Pollution Control Board  
rep. by its Member Secretary  
No.76, Mount Salai, Guindy  
Chennai – 600 032.

.. Appellant

vs

1. The Presiding Officer  
I Additional Labour Court  
Chennai – 600 104.

2. D.Murugan

.. Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 28.7.2021 made in W.P.No.32175 of 2013.

|                     |                                                                                         |
|---------------------|-----------------------------------------------------------------------------------------|
| For the Appellant   | : Mr.R.Shunmugasundaram<br>Advocate General<br>assisted by<br>Ms.Vijayakumari Natarajan |
| For the Respondents | : Mr.Balan Haridas<br>for 2 <sup>nd</sup> respondent                                    |



W.A.No.1717 of 2022

WEB COPY

## JUDGMENT

(Delivered by the Hon'ble Acting Chief Justice)

Tamil Nadu Pollution Control Board, represented by its Member Secretary, has filed this appeal questioning the correctness of the order dated 28.7.2021 passed in W.P.No.32175 of 2013 confirming the Award passed in I.D.No.701 of 2001, dated 12.3.2013 on the file of the Additional Labour Court, Chennai.

2. The brief facts are that the second respondent joined the services of the appellant as a Cleaner on 11.7.1996 in the Mobile Environmental Laboratory at Manali and had been continuously working from 11.7.1996 to 11.7.1997. However, the second respondent alleges that he was terminated from service with effect from 12.7.1997. The second respondent claims that he had worked for more than 240 days within a period of 12 calendar months prior to his termination and before terminating the services of the second respondent, the appellant has not complied with Section 25-F of the Industrial Disputes Act, 1947 [for short, "*the Act of 1947*"]. The



W.A.No.1717 of 2022

second respondent had also raised an Industrial Dispute before the Labour Officer-1, Chennai in I.D.No.701 of 2001 praying to set aside the termination order and to direct the appellant to reinstate him in duty with continuity of service, back wages and other attendant benefits.

3. By the award dated 12.3.2013, the Labour Court, set aside the termination order passed by the appellant and directed the appellant to reinstate the second respondent into service without back wages, continuity of service and other benefits. Aggrieved by the award dated 12.3.2013, the appellant had filed W.P.No.32175 of 2013.

4. The learned Single Judge, while disposing of the writ petition on 28.7.2021, recorded the submission made by learned counsel for the second respondent that the second respondent was giving up his claim for back wages till 31.7.2021 and hence, directed reinstatement of the second respondent into service with effect from 16.8.2021 with all other benefits with continuity of



W.A.No.1717 of 2022

service, consequential and other benefits. Challenging the award of the Labour Court and the order of the learned Single Judge, the employer has filed the present writ appeal.

5. Mr.R.Shunmugasundaram, learned Advocate-General appearing for the appellant, assailing the findings given by the Labour Court and the learned Single Judge, submitted that the second respondent employee was engaged as an unskilled labourer, namely as an NMR, on daily wages as Cleaner-cum-Attendant at the Mobile Environmental Laboratory at Manali, Chennai, for only 145 days with effect from 11.7.1996 to 30.4.1997 and there was no question of termination of services by the appellant. Challenging the refusal of employment, the second respondent raised I.D.No.701 of 2001 before the Labour Court and the Labour Court erred in holding that the second respondent worked for more than 240 days in a year. According to learned Advocate-General, the claim made by the second respondent before the Labour Court that he worked continuously from 11.7.1996 to 11.7.1997 is only an afterthought, which ought not to have been accepted.



W.A.No.1717 of 2022

WEB COPY

6. It is further submitted that the Labour Court taking into account the Sundays and other paid holidays erred in reckoning the total number of days for which the second respondent was employed as 240 days, inasmuch as the appellant had adduced evidence to prove that the second respondent worked only for 145 days. Therefore, the direction of the Labour Court that the appellant should treat the second respondent as a regular employee is untenable.

7. The learned Advocate-General further submitted that the appellant has not terminated the second respondent, nor there was any retrenchment and, therefore, there was no question of violation of Section 25-F of the Act of 1947.

8. It is further submitted that the Labour Court erred in arriving at the conclusion that the second respondent is similarly situated as that of Mr.Balakumar, Mr.Manivannan and Mr.Arulldhas, who earlier approached this Court and were subsequently regularised, inasmuch as the second respondent was only employed



W.A.No.1717 of 2022

on daily-wage basis. He, therefore, submitted that the writ appeal is to be allowed by setting aside the order of the learned Single Judge and the award of the Labour Court.

9. Mr.Balan Haridas, learned counsel appearing for the second respondent, submitted that the Labour Court after examining the oral and documentary evidence held that the second respondent had rendered continuous service for over 240 days during the period between 11.7.1996 and 11.7.1997 and that the termination order passed by the appellant is illegal. He submits that the Labour Court has rightly ordered reinstatement of the second respondent into service.

10. Learned counsel further submitted that assailing the award, the appellant filed W.P.No.32175 of 2013 and the learned Single Judge, after appreciating the oral and documentary evidence and considering the fact that under similar circumstances services of identically placed persons were regularized, rightly held that the second respondent has worked continuously from 11.7.1996 to



W.A.No.1717 of 2022

11.7.1997 without any break and that there is violation of Section 25-F of the Act of 1947. Since the award of the Labour Court and the order of the learned Single Judge are perfectly justifiable, there is no necessity to interfere with the same and, thus, he prayed for dismissal of the appeal.

11. We have considered the rival submissions and also perused the materials available on record.

12. On a perusal of the award of the Labour Court, we find that the second respondent was able to succeed before the Labour Court on the basis of the admission made by MW1 who during his cross-examination admitted that the second respondent had worked in their Board continuously with effect from 11.7.1996 to 11.7.1997 without any break. In paragraph 14 of the award, the findings of the Labour Court in this regard is recorded as under:

*"14. So it is seen from the judgment of the Supreme Court of India coupled with the counter statement filed by the respondent management that the petitioner had worked for more than 240*



W.A.No.1717 of 2022

*days in a year. During the cross examination MW1 categorically admitted that the petitioner had worked in their board with effect from 11.07.1996 to 11.07.1997 continuously without any break. So it is seen from the oral and documentary evidence of the parties that the petitioner had established the case that he had worked for more than 240 days in a year."*

13. The aforesaid findings of the Labour Court have not been disproved by the appellant. Since the management witness No.1 himself admitted that the second respondent worked continuously with effect from 11.7.1996 to 11.7.1997 without any break, there is no option but to hold that the second respondent worked continuously for more than 240 days. The period from 11.7.1996 to 11.7.1997 is inclusive of Saturdays, Sundays and other paid holidays, which are permissible to be taken into account for the purpose of reckoning the total number of days on which the workman could be said to have actually worked, as per the law enunciated by the Apex Court in the case of *Workmen of American Express International Banking Corporation v. Management of*



W.A.No.1717 of 2022

WEB COPY

*American Express International Banking Corporation, AIR 1986 SC 458.*

14. The learned Single Judge also in his order at paragraph 7 held as under:

*"7. Since Saturdays and Sundays are paid holidays, that has got to be taken into account for the purpose of computing 240 days and that, in a calendar year, there are 52 weeks which made the number of paid holidays as 104 in the present case on hand."*

15. Moreover, in ***Mohan Lal v. Management of Bharat Electronics Limited, (1981) 1 LLJ 70 (SC)***, the Apex Court held that the period of 240 days has to be counted moving backward to a period of 12 months just preceding the date of termination.

16. Since the findings of the Labour Court as well as the learned Single Judge regarding the continuous working of the second respondent for more than 240 days are based on oral and documentary evidence and, that too, based on the admission of



W.A.No.1717 of 2022

MW1, we find no infirmity in the said findings recorded by the Labour Court and the learned Single Judge. Consequently, the findings of the learned Single Judge that there is a violation of Section 25-F of the Act of 1947, in our considered view, cannot be faulted.

17. It is also the findings of the Labour Court that similarly placed employees, namely Mr.Balakumar, Mr.Manivannan and Mr.Aruldas, have been given benefit of regularisation on the basis of the orders passed by this Court, which were marked as Ex.W15 to Ex.W18.

18. Though the appellant raised an argument that the learned Single Judge committed an error by holding that few other employees' services have been regularized as per Ex.W21 to Ex.W23, nothing has been produced to establish the said contention.

Therefore, for all the reasons stated above, we do not find any



W.A.No.1717 of 2022

ground to cause interference with the concurrent findings recorded by the Labour Court as well as the learned Single Judge. The writ appeal fails and, accordingly, the same is dismissed. There will be no order as to costs. Consequently, C.M.P.No.12315 of 2022 is closed.

(T.R., ACJ.) (D.K.K., J.)  
11.10.2022

Index : Yes/No  
bbr

To:

The Presiding Officer  
I Additional Labour Court  
Chennai – 600 104.



WEB COPY



W.A.No.1717 of 2022

T.RAJA, ACJ.  
AND  
D.KRISHNAKUMAR,J.

bbr

W.A.No.1717 of 2022

11.10.2022