



W.P.(MD)No.15597 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.09.2022

PRONOUNCED ON : 20.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.15597 of 2012

and

M.P.(MD)Nos.2 of 2012 and 1 of 2013

The Executive Officer,
Markayankottai,
Town Panchayat,
Theni District.

... Petitioner

vs.

1.The President Officer,
Labour Court,
Madurai.

2.Murugesan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the impugned order passed in I.D.No.244 of 2001, passed by the 1st respondent on 10.05.2012 and to quash the same.



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For Petitioners : Mr.T.S.Mohamed Mohideen
For R1 : Court
For R2 : Mr.S.M.Mohan Gandhi

ORDER

This writ petition is filed for issuance of writ of Certiorari, to call for the records of the impugned order passed in I.D.No.244 of 2001, passed by the 1st respondent on 10.05.2012 and to quash the same.

2. The brief facts of the case are that the 2nd respondent was appointed as daily wages employee in Water Supply Division on 25.07.1997. Initially, the 2nd respondent was paid Rs.28/- per day. Thereafter, it was increased to Rs.57/- per day. His duty was to open and close the water pipe connection line. He has to work 2 hours in the morning and 2 hours at evening. He was not recruited as regular employee, his employment was temporary and he was not sponsored by employment exchange. From 1998, the 2nd respondent remained absent and hence, he was dismissed from service. The Labour Court had erroneously decided that when an employee himself, did not report for his work he should be put on notice



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by the employer. Since the 2nd respondent was not a regular employee, notice was not sent to the 2nd respondent. Only for the regular employee, the employer is duty bound to send notice seeking explanation for desertion and subsequent disciplinary proceedings ought to be initiated and enquiry should be conducted. In the present case, since the 2nd respondent himself stopped reporting to duty and the second respondent being a temporary employee, he has no right to dictate terms on an employer for issuing notice, the Labour Court has wrongly observed that Section 25(f) of Industrial Disputes Act must have been invoked. The Labour Court has stated that even if the appointment is illegal, the dismissal should be by following legal principle, but the Labour Court failed to note that there was no such dismissal, it is willful absence. Hence for willful absence, no rights will confer on the 2nd respondent. The Labour Court has held that the 2nd respondent did not take effective steps to conduct the case and has rightly held that the 2nd respondent is not a permanent employee. Hence, the Labour Court has declined backwages and there is no specific direction for regularization also. But has granted reinstatement with continuity of service in the same status in the same post. Aggrieved over the same, the present writ petition is filed.



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3. The learned Counsel appearing for the 2nd respondent submitted that the petitioner has not paid 17 B wages for the period when the writ petition was pending. Therefore, the petitioner ought to pay wages to the 2nd respondent. Moreover, the petitioner has not granted any reinstatement as ordered by the 1st respondent. If the petitioner had reinstated the 2nd respondent, then the 2nd respondent would have received salary and hence he is entitled to salary. Moreover, pending writ petition the 2nd respondent attained superannuation in May 2021. Since the petitioner has not implemented the award passed by the Labour Court, the petitioner ought to compensate the 2nd respondent and at least monetary benefits should be granted. The learned Counsel appearing for the 2nd respondent also circulated a calculation memo claiming Rs.12,12,300/-. Also submitted that the petitioner had paid Rs.3,50,000/- and petitioner is bound to pay the balance amount of Rs.8,62,300/-.

4. Heard Mr.T.S.Mohamed Mohideen, learned Counsel appearing for the petitioner and Mr.S.M.Mohan Gandhi, learned Counsel appearing for the 2nd respondent and perused the records placed before this Court.



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5. The claim of the petitioner is that the 2nd respondent is only a temporary employee and his work would be only for two hours in the morning and two hours in the evening and he was paid Rs.28/- per day initially, subsequently, it was increased to Rs.57/- per day. According to the petitioner, the 2nd respondent did not report to duty on his own, the second respondent being a temporary employee, hence he is not entitled to any disciplinary proceedings. This plea was not accepted by the Labour Court and held that if the 2nd respondent employee had stopped reporting to duty, the petitioner employer ought to have issued notice and thereafter proceeded further.

6. Further the Labour Court has held that the 2nd respondent had submitted a petition, dated 03.07.2000 seeking to permit the him to carry on with the duty. Based on this letter, the Labour Court had held that the 2nd respondent has not left the duty on his own. Hence, the Labour Court has directed the petitioner employer to reinstate the 2nd respondent in the same position in the same post. The Labour Court has also held that the employee has not taken any effective steps to conduct the case expeditiously and has denied back wages.



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7. The petitioner claims that the second respondent did not report to duty but the second respondent claims that the petitioner did not allow his to work. The Labour Court has rendered a finding that the second respondent had shown some lethargic attitude in conducting the case. The Labour Court has granted reinstatement with continuity of service but without backwages. As on date, the petitioner has attained superannuation. After hearing the rival contentions, this Court is of the considered opinion that there is no question of reinstatement. The 2nd respondent would be entitled to monetary benefits. The Labour Court has granted relief stating that the 2nd respondent ought to be reinstated in the same position in the same post. If the 2nd respondent was reinstated in the same position, he would be getting Rs.57/-per day. However, the learned Counsel appearing for the 2nd respondent submitted a calculation memo by fixing Rs.300/- per day as salary. Under the principles of “no work no pay”, the 2nd respondent may not be entitled to any backwages. In order to balance both, this Court is fixing the wages as Rs.150/- per day.



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8. The petitioner is directed to pay wages at Rs.150/- per day to the 2nd respondent. The petitioner is entitled to deduct the amount already paid, i.e., Rs. 3,50,000/-. The balance amount shall be paid with 6% interest per annum.

9. With the above said direction, the writ petition is disposed of. No costs.
Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes

20.12.2022

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To

The President Officer,
Labour Court,
Tirunelveli.



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S.SRIMATHY, J

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