



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 07.04.2022
DELIVERED ON : 14.06.2022
CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY
W.P. (MD)No.2032 of 2013

and

M.P. (MD)Nos.1 of 2013 & 1 of 2015

1. The Executive Officer,
Kanyakumari Special Grade Town Panchayat,
Kanyakumari District.
2. The Assistant Director of Town Panchayat,
Collector Office, Nagercoil. ... Petitioner

VS

1. S.Selvakumar
2. The Presiding Officer,
Labour Court,
Tirunelveli. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records on the files of the second respondent pertaining to its order in I.D.No.109 of 2005 dated 25.01.2011 and to quash the same.

For Petitioner : Mrs.D.Farjana Ghoushia
Special Government Pleader

For Respondents : Mr.P.Saravanakumar for R1
Labour Court for R2

O R D E R

This Writ Petition is filed to quash the order in I.D.No.109 of 2005 dated 25.01.2011.

2. The brief facts of the case are that the Water Supply Scheme was introduced in Kanyakumari District. There were regular work forces in the Town Panchayats. In order to overcome the exigencies which occurs from time to time, the petitioner / Town Panchayat engages people like the first respondent on daily wages. Though the work done by such persons neither permanent nor perennial, the payment would made on the basis of work done by the said workers. The first respondent was engaged with effect from 29.05.1985 for



Rs.10/- per day and he has worked for 11 years. However, through communication dated 30.07.2001, the second petitioner has decided the daily wages who are all working prior to 31.12.1996 shall be posted in the same Town Panchayat subject to the availability of vacancy. In case if no vacancy is available, they shall be accommodated in any other Panchayat in the available vacancy. The respondents shall also accommodate by relaxing the educational qualification. In pursuance of such guidelines, the second respondent herein, by an order dated 24.08.2001, in Na. Ka. No. 537 / 2000 / A1 posted the first respondent at Nalloor Town Panchayat as Electrical Assistant on consolidated pay basis and he was also relieved from Kanyakumari Town Panchayat on 24.08.2001. The said appointment was challenged by the first respondent before the Tamilnadu Administrative Tribunal, wherein, the second petitioner was directed to consider the case of the first respondent.

3. In pursuance to the same, vide proceedings, dated 03.10.2001, the first respondent was transferred and posted from Nalloor Town Panchayat to Keezhkulam Town Panchayat as Electrical Assistant. The first respondent despite the receipt of the order has not joined the transferred post. Therefore, the District Collector, vide proceedings, dated 30.07.2003 as well as the proceedings of the second respondent, dated 29.09.2004, the first respondent was directed to submit his explanation for not joining the duty since 13.10.2001 in the transferred post. The first respondent has not submitted any explanation but approached the second respondent, Labour Court, during 2005 and raised an industrial dispute. A detailed counter was filed stating that the first respondent has abandon the job on his own for the reasons best known. The Labour Court has passed an award dated 25.01.2011, to grant backwages and also reinstate the petitioner. In pursuance to the award, the first respondent has calculated the amount to the tune of Rs.7,11,702/- and filed a C.P.No.53 of 2012. Aggrieved over the same the present writ petition is filed.

4. The first respondent has not filed any counter affidavit but relied on the counter filed before the Labour Court.

5. Heard Mrs.D.Farjana Ghoushia, learned Special Government Pleader appearing for the petitioner and Mr.P.Saravanan Kumar, learned Counsel appearing for the first respondent.

6. The contention of the petitioner is that the first respondent was appointed as Pump Operator. Since the first respondent has put in service for more than 10 years, the Town Panchayat has decided to regularize the persons who are working as daily wage employees. A policy decision was taken to regularize such employees both in Municipalities as well as in Town Panchayats.



It was also decided to employ them in the available vacancy post. If there is no vacancy in the same Town Panchayat then such persons should be posted in the available vacancy in other Town Panchayats. Since there was no vacancy for the first respondent, the petitioner has issued a transfer cum posting order to Nalloor Town Panchayat. Aggrieved over the same, the first respondent has preferred a petition before the Tribunal. The Tribunal has directed the petitioner herein to consider and pass orders. After considering the first respondent's objection, the petitioner has transferred the first respondent from Nalloor Town Panchayat to Keezhkulam Town Panchayat. The first respondent was not satisfied with this and demanded the same post in the same Town Panchayat and has refused to join in the transferred post Keezhkulam Town Panchayat. It is a prerogative right of the employer to post its employee in the available vacancy. The employee has no right to demand any post or any place. Moreover, the transfer is incidents of service. The attitude of the first respondent can never be appreciated.

7. The learned Counsel for the first respondent submitted that since the respondent work was not regularized the first respondent approached the Inspector of Labour and the Authorized Officer has confirmed, vide order, dated 15.04.1996 and conferred permanent status. In spite of the same, the petitioner has not complied with said order. The first respondent was forced to file a claim petition under Section 33 C of Industrial Dispute Act as per the award the petitioner paid the salary to the first respondent on the basis of pay band as 2550-55-2600-60-3200 per month. However, on 30.07.2001 had passed an order, transferring the first respondent through Water Supply Attender to the post of Attender on a consolidated basis in Na.Ka.No.1044/2001/3A. The petitioner has failed to consider the fact that the first respondent is not having any technical knowledge about Electricity. The Tribunal has already passed an order and the petitioner has not implemented the order which is illegal.

8. On verifying the records, it is seen that even though there is some order passed by the Tribunal, the fact remains that the petitioner had issued a transfer order to the first respondent and the first respondent is bound to obey the transfer order and join the transferred post. Since the first respondent has failed to do so, he is not entitled to the relief as given by the Labour Court. Therefore, the first respondent is not entitled to any backwages for the period he has failed to join the transferred post. Therefore, the impugned order is set aside. If the 2nd respondent is willing to join in the transferred post in Keezhkulam Town Panchayat, the 2nd respondent shall join the place within two weeks from the date of receipt of the copy of the order. If the Keezhkulam Town Panchayat place is not available the petitioner shall post the 2nd respondent in any of the available vacancy. It is made clear the 2nd respondent is eligible for continuity of service but is not eligible for any



backwages at all.

9. With the above direction, the Writ Petition is disposed of.
No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

jbr

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The Presiding Officer,
Labour Court,
Tirunelveli.

Copy to
The Section Officer,V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.M. VEILKANI RAJU, Advocate (SR-25519[F] dated 14/06/2022)

+1 CC to M/s.SPL.GP (SR-25863[F] dated 15/06/2022)

Order made in
W.P. (MD)No.2032 of 2013
14.06.2022

ac(CO)
TR(22.06.2022) 4P 6C