



W.P(MD)No.9039 of 2013

BEFORE THE MADURAI BENGH OF MADRAS HIGH COURT

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Orders reserved on
11.08.2022

Orders pronounced on
24.08.2022

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

W.P(MD)No.9039 of 2013

V.Sukumaran

... Petitioner

Vs

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.The Secretary (Forest Department),
Government of Tamil Nadu,
St. George Fort,
Chennai.

3.The Chief Conservator of Forests,
Government of Tamil Nadu,
Saidapet,
Chennai.

4.The District Forest Officer,
Kanyakumari District at Nagercoil.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order of the Labour Court, Tirunelveli in I.D.No.74 of 2011, dated 22.10.2012 and quash the same and consequently, direct the respondents 2 to 4 to reinstate the petitioner together with backwages and all monetary benefits.



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For Petitioner : Mr.C.K.M.Appaji
For RR 2 to 4 : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, to quash the order of the Labour Court, Tirunelveli in I.D.No.74 of 2011, dated 22.10.2012 and consequently, directing the respondents 2 to 4 to reinstate the petitioner together with backwages and all monetary benefits.

2. The case of the petitioner, in brief, is as follows:-

2.1. The petitioner was appointed as Plot Watcher on 17.01.1982 in the fourth respondent Department on a monthly salary of Rs.80/- and then, it was enhanced to Rs.310/- in the year 1996. On 10.01.1987, there was a fire in Balamore Beat and he was deputed to set out the fire along with other forest officers. When he was involved in fire fighting, a poisonous snake had bitten him and he was taken to the Government Hospital, Nagercoil and then took treatment in a private Ayurvedic Hospital. When he reported for duty on 10.05.1987, he was not permitted to join duty. He raised a dispute before the Assistant Commissioner for Conciliation of Labour



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at Nagercoil. His petition was allowed with a direction to the fourth respondent to give employment to the petitioner from 27.08.1992 without backwages. Further, the petitioner raised a dispute before the Assistant Commissioner for Conciliation of Labour at Nagercoil to regularize his service and to pay a compensation of Rs.44,810/-, which ended in failure. In the meanwhile, two criminal cases had been registered against him. Both the cases ended in acquittal on 18.01.2001 and 16.11.2003 respectively. He made a representation before the fourth respondent on 07.05.2004 to reinstate him in service with all backwages. He also sent notice to the respondents 2 and 3 on 26.10.2004. There was no response from the Management. Therefore, he filed a Writ Petition in W.P(MD)No.1850 of 2005 seeking direction for allowing him to work and promote him as Forest Guard. That Writ Petition was disposed on 01.09.2006, with a direction to the respondents therein to consider the petitioner's representation, dated 07.05.2004 and the legal notice, dated 26.10.2004.

2.2. The fourth respondent, by proceedings, dated 19.07.2007, posted the petitioner as worker on daily wages at Karamalai Best Kaliyal Range, which is 80 kms away from his place



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for a meagre salary of Rs.60/- per day. When he reported to duty, he was not permitted to join. Therefore, the petitioner filed a Contempt Petition in Cont.P(MD)No.61 of 2008. That petition was closed on 27.08.2008 with a direction to the petitioner to challenge the order of the fourth respondent in the manner known to law. Then, the petitioner raised an Industrial Dispute in I.D.No.74 of 2011 on the file of the Labour Court, Tirunelveli, directing the respondents 3 and 4 to continue his initial post of Plot Watcher, treat him as permanent employee from 17.01.1982 and promote him as Forest Guard from the year 1998 with backwages and monetary benefits. However, the Labour Court, Tirunelveli, by an order dated 22.10.2012, dismissed the petition, necessitating the filing of this Writ Petition.

3. Learned counsel appearing for the petitioner submitted that the petitioner had been working continuously from the year 1982 as a Plot Watcher. He made several representations to regularize his services and for promotion. Only because of snake bite, while on duty, he was not able to attend the work for some time. Though there was a direction to give him employment, again he was given employment as Plot Watcher on a daily wage basis. The petitioner's attempt to conciliate the dispute before the



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Conciliation Officer resulted in failure. In the meanwhile, two false cases had been foisted against him. He was acquitted from the criminal charges. He had been taking several steps for sending representations by issuing legal notices, initiation of proceedings before this Court to get his claim of permanency and promotion. As mentioned earlier, the dismissal of I.D.No.74 of 2011, dated 22.10.2012, by the Labour Court, Tirunelveli, is for the reason that the petitioner had not initiated the proceedings before the Labour Officer and therefore, filing the petition before the Labour Court straightaway is not right. In this regard, learned counsel appearing for the petitioner relied on the Judgment of this Court reported in **2003 (Sup.4) LLJ 495 [A.Madasamy Vs. Presiding Officer, Labour Court, Tirunelveli]** for the proposition that Workman is entitled to approach the Labour Court directly under Section 2A(2) of the Industrial Disputes Act, 1947.

4. Learned counsel appearing for the petitioner further submitted that the other finding of the Labour Court that the petitioner was only a seasonal employee is also not correct. The finding of the Labour Court and the Award passed by the Labour Court is against the evidence and thus, liable to be set aside.



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5. In reply, learned Additional Government Pleader appearing for the respondents submitted that the petitioner was engaged for seasonal works like fire protection, watering of nurseries etc., only from the year 1984 on daily wages. The petitioner's claim for regularization and compensation of Rs.44,810/- was not allowed by the Assistant Commissioner of Labour, Nagercoil. He was engaged in the work from September, 1992 onwards on casual basis upto March, 1996. Thereafter, the petitioner stayed away from work. He was involved in two forest offences in O.R.Nos.54/96-97 and 66/96-97. He was not a permanent Plot Watcher under the fourth respondent. Therefore, his name is not entered in the statewide seniority of Plot Watchers. On the basis of the order passed in W.P(MD)No.1850 of 2005, dated 01.09.2006, he was offered a post as Plot Watcher on a daily wage basis. However, the petitioner had not accepted the offer. The contempt petition filed by him in Cont.P(MD)No.61 of 2008 was also dismissed on 27.08.2008. The Labour Court, Tirunelveli found from the evidence available that the petitioner has not produced any material to show that he worked as a permanent Plot Watcher from 17.01.1982. He was only a seasonal worker and therefore, he is not entitled for the claim made. The petitioner's claim was rightly dismissed by the Labour Court, Tirunelveli. A Temporary employee is not entitled to be absorbed in a



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regular service. In support of this proposition, he relied on the Judgment reported in **2006 SCC Online Mad 649 [D.Mohan Vs. Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Chennai and others]** and thus prayed for dismissal of this Writ Petition.

6. Considered the rival submissions and perused the records.

7. From the records produced and the submissions made, the claim of the petitioner is that he was working as a Plot Watcher from 17.01.1982. In support of his claim, he relied on Ex.W.1, a certificate issued by the Range Officer certifying that the petitioner was working as a Plot Watcher in Alagiapandipuram Range from 03.02.1984 to 28.02.1987. Though the petitioner claimed that he was working as a Plot Watcher from 17.01.1982, this certificate shows that he was working as a Plot Watcher from 03.02.1984 to 28.02.1987. Except this document, there is no other document produced by the petitioner to show that he was working as a Plot Watcher on a monthly wage. This certificate does not indicate whether he was paid daily wage or monthly salary. To prove this certificate, the petitioner has not examined the person who issued



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the certificate. The petitioner claimed in his affidavit that initially he was paid a sum of Rs.80/- as monthly salary and then, it was enhanced to Rs.310/- in the year 1996. In support of this claim, the petitioner has not produced any documents.

8. It is true that the petitioner raised a dispute before the Assistant Commissioner for Conciliation of Labour, Nagercoil, with regard to his non-employment. Through the proceedings in Na.Ka.No.1272 of 1992, dated 24.08.1992, the Assistant Commissioner of Labour, Nagercoil, directed the fourth respondent to give the job of Plot Watcher to the petitioner from 27.08.1992 without backwages. The petitioner again raised a dispute before the Assistant Commissioner of Labour, Nagercoil, claiming permanency and compensation of Rs.44,810/-. A conciliatory effort was made by the Assistant Commissioner of Labour and it ended in failure. The failure report, dated 07.11.1994 is produced. After this failure report, it appears that the petitioner had not approached the Labour Court.

9. As claimed by both the parties, two criminal cases were registered against the petitioner in Alagiapandipuram Range. The



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case in OR.No.54/96-97 was closed under Section 468 Cr.P.C for the reason that final report was not filed. This case was registered against the petitioner for the offence under Section 21(d)(e)(f) of the Tamil Nadu Forest Act, 1882. It attracts punishment of rigorous imprisonment for five years. Therefore, closing the case under Section 468 Cr.P.C for not filing the final report is against the law. However, there was no appeal against the closure of this report and therefore, it is not necessary to deal with this further except to record that OR.No.54/96-97 was closed under Section 468 of Cr.P.C. The other case in OR.No.66/96-97 ended in acquittal on 16.11.2003. Thereafter, the petitioner sent a representation, dated 07.05.2004 seeking employment. He sent a legal notice, dated 26.10.2004 reiterating his claim for employment as a regular workman with continuity of service, backwages etc. Not finding a positive response, the petitioner filed a Writ Petition in W.P(MD)No.1850 of 2005 for issuance of a Writ of Mandamus, directing the respondents to allow him to continue service on the basis of seniority and place him in the cadre of Forest guard, with his batch mates and pay all the monetary benefits. This Writ Petition was disposed on 07.09.2006, with a direction to the respondents therein to consider the petitioner's representation, dated 07.05.2004, legal notice, dated 26.10.2004 and pass appropriate



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orders of reinstatement with necessary benefits, if there are no legal impediments. Thereafter, the fourth respondent issued a proceedings in Na.Ka.No.6280/2004P2, dated 19.07.2007, appointing the petitioner as Plot Watcher on daily wage basis as and when required.

10. It appears that the petitioner had not joined duty as per this proceedings at Kaliyal Forest Range. Then he issued a legal notice, dated 13.10.2006 and another legal notice, dated 23.03.2011, seeking his re-employment as per the direction given in W.P(MD)No.1850 of 2005, dated 01.09.2006. Then he filed Contempt Petition in Cont.P(MD)No.61 of 2008 and that contempt petition was dismissed on 27.08.2008, giving liberty to the petitioner to work out his remedy in the manner known to law against the order passed by the Chief Conservator of Forest on 01.03.2007.

11. The sequence of events narrated above shows that the petitioner has not raised any dispute before the Labour Officer, after he was denied employment especially after the disposal of criminal cases. He straightaway filed a Writ Petition in W.P(MD)No.1850 of



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2005, followed by a petition before the Labour Court, Tirunelveli in I.D.No.74 of 2011.

12. Section 2A of the Industrial Disputes Act, 1947, reads as follows:-

"2A. Dismissal etc., of an individual workman to be deemed to be an industrial dispute.-

(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate



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Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1). "

13. It is seen from sub-section 2 of Section 2A of the Industrial Disputes Act, 1947, a workman may make an application directly to the Labour Court or Tribunal for adjudication of the dispute after the expiry of 45 days from the date he has made an application to the Conciliation Officer of the appropriate Government for conciliation of the dispute. It means that referring the dispute to the Conciliation Officer is a pre-condition for the workman to approach the Labour Court. As rightly pointed out by the learned Presiding Officer, Labour Court, Nagercoil, that without approaching the Labour Officer, the petitioner straightaway filed a petition before the Labour Court, which is against the provision of Section 2A(2) of the Industrial Disputes Act, 1947.



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14. It is seen from the Judgment relied on by the learned counsel appearing for the petitioner reported in **2003 (Sup.4) LLJ 495 [A.Madasamy Vs. Presiding Officer, Labour Court, Tirunelveli]** that it is a case of termination of a Driver. He raised an Industrial Dispute and had withdrawn the same for the reason that he had not joined the proper employer ie., the owner of the bus. Then, he started the exercise of the amicable settlement by way of conciliation proceedings and it ended in failure. Then, he filed a claim statement before the Labour Court on 13.03.1992. The respondents therein took a plea that the petitioner therein had approached the Labour Court under Section 2A(2) of the Industrial Disputes Act, 1947. The petitioner therein was terminated from service in the year 1986 and on that day, Section 2A(2) of the Act was not on the statute book. Therefore, it was urged that initiation of the proceedings under Section 2A(2) of the Industrial Disputes Act, 1947, was not proper. The Labour Court accepted this view and dismissed the claim petition. This Court found that the workman was perfectly within his rights to approach the Labour Court directly under sub-Section (2) of Section 2A of the Industrial Disputes Act, 1947, on the failure of conciliation. It was found that the date of termination or dismissal would have no relevance to sub-section (2) of Section 2A of the Industrial Disputes Act, 1947. The only factor



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which would be relevant would be the failure of conciliation proceedings. In the case cited, there was a conciliation proceedings and it ended in failure and then, the workman approached the Labour Court.

15. As submitted already, the petitioner without approaching the Labour Officer for conciliatory effort, after he was denied employment subsequent to the filing of criminal case, straightaway filed a petition before the Labour Court. In the considered view of this Court, this approach of the petitioner is against law and therefore, it cannot be entertained and the finding of the Labour Court, Tirunelveli in this regard does not suffer from any infirmity.

16. The respondents produced documents M.1 to M.11 to show that despite issuing orders to the petitioner to join as a Plot Watcher on daily wage basis in Kaliyal Forest Range, he had not accepted the offer of employment and he did not join. This fact is not disputed by the petitioner. It is pertinent to refer to the evidence of the petitioner, wherein, he accepted that he was taken for employment for dousing the fire at Forest; he was not appointed through employment exchange and that he has not stated in his



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chief-examination that he was offered permanent employment. He admitted that he did not accept the offer of employment of Plot Watcher at Kaliyal Forest Range. It is also evident that the petitioner has not produced any records to show that he was working as a Plot Watcher from the year 1982. He has also not produced any document to show that he was paid a monthly salary of Rs.180/-.

17. As it is clear that the petitioner has not established that he was working as a Plot watcher from 17.01.1982 continuously and therefore, he is not entitled for permanency and other benefits. It was held in **Secretary, State of Karnataka Vs. Umadevi [2006 (3) L.L.N 78]**, that "merely because a temporary employee or casual wage worker continued for a time beyond the terms of his appointment, he would not be entitled to be absorbed in a regular service or made permanent, merely on the strength of such discontinuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It was not open to the Court to prevent the regular recruitment at the instance of temporary employees whose period of employment has come to an end or of *ad hoc* employees who by the very nature of their appointment do not acquire any right".



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18. In the case beforehand, as discussed earlier, there is no evidence produced by the petitioner to show that he was working as Plot Watcher from 17.01.1982 and he was paid a monthly salary. That apart, he faced two criminal cases involving forest offences and subsequently, he was acquitted from these cases. The petitioner has not raised a dispute before the Labour Officer, but straightaway approached the Labour Court, which is against Section 2A of the Industrial Disputes Act, 1947. The petitioner admitted that he was asked to work for dousing the fire, meaning that, he was employed as a seasonal employee.

19. For all these reasons, this Court finds that there is no reason to interfere with the Award passed in I.D.No.74 of 2011, dated 22.10.2012 by the Labour Court, Tirunelveli and the Award is confirmed. Accordingly, this Writ Petition is dismissed. There shall be no order as to costs.

24.08.2022

Internet :Yes
Index :Yes / No
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Note:-

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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

- 1.The Presiding Officer,
Labour Court,
Tirunelveli.
- 2.The Secretary (Forest Department),
Government of Tamil Nadu,
St. George Fort,
Chennai.
- 3.The Chief Conservator of Forests,
Government of Tamil Nadu,
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- 4.The District Forest Officer,
Kanyakumari District at Nagercoil.



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G.CHANDRASEKHARAN, J.

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Order made in
W.P(MD)No.9039 of 2013

24.08.2022