



WEB COPY



W.P.No.10 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.03.2023

CORAM :

THE HON'BLE Mrs.Justice **J.NISHA BANU**

W.P.No.10 of 2015

and

M.P.No.1 of 2015

The Management,
Nellikuppam Municipality,
rep. by its Commissioner,
Nellikuppam Post, Panruti Taluk,
Cuddalore District - 607 105

..Petitioner

Vs

1. N.Mathiazghan

2. The Presiding Officer,
The Labour Court,
Cuddalore.

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India

to issue a Writ of Certiorari to call for the award of the 2nd respondent in

I.D.No.05/2013 dated 13.03.2014 and quash the same.

For Petitioner : Mr.N.Subramani

For Respondents : Mr.K.Arunagiri for R1
R2-Court.



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ORDER

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This Writ Petition has been filed challenging the award passed by the 2nd respondent dated 13.03.2014, setting aside the order of termination of the 1st respondent and directing the petitioner to reinstatement the 1st respondent with continuity of service and to pay backwages from the date of termination till the date of reinstatement.

2. Heard the learned counsel for the petitioner and the learned counsel appearing for the 1st respondent.

3. Learned counsel for the petitioner would submit that the 1st respondent was working as part time overhead tank operator in the petitioner Municipality from 2006. Since there were no sufficient staff to maintain the overhead water tanks, the then Commissioner appointed operators as daily wage employees at Rs.20/- per day (i.e., monthly salary of Rs.600/-). There was no formal appointment for the 1st respondent. The appointment was on temporary basis and he was not sponsored by



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employment exchange. The 1st respondent was not a workman to the petitioner management. As per G.O.Ms.No.1644 dated 12.10.1979, G.O.Ms.No.101 dated 30.04.1997, G.O.Ms.No.102 dated 15.05.1997, G.O.Ms.Nos.70 & 71 dated 05.05.1998 and G.O.Ms.No.198 dated 26.10.98 and proceeding of the Municipal Commissioner in Na.Ka.No.27350/99/F3 dated 28.04.1999, the petitioner management shall regularize the appointment those who were working before 01.10.1996 as daily wages. As per proceedings dated 29.09.1999, the Director of Municipal Commissioner sent a letter demanding to remove the persons who are appointed as daily wages after 01.10.1996. The candidates who were sponsored by employment exchange on the basis of the seniority, educational qualification and priority basis only, the appointment committee can select them as per the existing rules. But the 1st respondent was appointed as daily wages on temporary arrangement without following the existing municipal rules and Government orders. Subsequently, the petitioner stopped the 1st respondent since the Government appointed persons on the basis of existing rules and they are working now in the petitioner municipality. But the Labour Court



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Cuddalore mechanically allowed the I.D. and directed the petitioner to reinstate the 1st respondent in service.

4. i) Per contra, the learned counsel appearing for the 1st respondent would submit that the 1st respondent was working as overhead tank operator in the petitioner Municipality from 01.12.2004 with unblemished record of service. The 1st respondent worked for over 480 days in two years. He requested the management to confer permanent status to him. For this reason, the management terminated him from service orally on 31.01.2012. The petitioner did not issue any notice to the 1st respondent. Neither charge memo was issued nor conducted any domestic enquiry. Therefore, the termination is in violation of Section 25F of the Industrial Disputes Act.

ii) Learned counsel would further submit that at the time of admission, this Court has granted interim stay of the impugned order on condition that the petitioner management pays the last drawn salary to the 1st respondent without any default, till the disposal of the writ petition. But



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till date, the last drawn salary was not paid to the 1st respondent.

iii) Learned counsel would further submit that the Labour Court has considered all the aspects and had rightly allowed the I.D. and directed the petitioner management to reinstate the 1st respondent in service with backwages, which does not warrant any interference by this Court. Hence, he would pray to dismiss the writ petition.

5. This Court considered the submission made on either side and perused the materials available on record.

6. It is true that the 1st respondent was working as a part time time overhead operation in the petitioner Municipality for a monthly salary of Rs.600/- from the year 2004. There was no adverse remarks against him and he was not terminated as a measure of punishment. Therefore, the termination of the petitioner would amount to retrenchment. The 1st respondent had worked for 480 days in two years before his termination. the petitioner Management has not disputed this fact. Therefore, the 1st



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respondent is entitled to the benefit of Section 25F of the Industrial Disputes Act.

7. It is not in dispute that the 1st respondent was allowed to work for eight years. All of a sudden he was sent out of employment stating that his appointment was irregular. If at all the appointment of the 1st respondent was irregular, the petitioner management should have retrenched him in accordance with Section 25 F of the Industrial Disputes Act. Any retrenchment is invalid if the management fails to comply with Section 25 F of the said Act. There is also no evidence to show that retrenchment notice and compensation was paid to the 1st respondent. In the absence of the same, the termination is bad in law and liable to be set aside and the labour Court has rightly done so, with which, this Court is not inclined to interfere with.

8. It is also seen that at the time of admission, this Court has granted interim stay of the impugned order on condition that the petitioner



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management pays the last drawn salary to the 1st respondent without any default, till the disposal of the writ petition. The interim order passed by this Court has not been complied with till date.

9. For the reasons stated above, this Court is of the opinion that the writ petition is liable to be dismissed. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

28.03.2023

Index :Yes/No
Speaking/Non-speaking order
vsi

To
The Presiding Officer,
The Labour Court,
Cuddalore.



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J.NISHA BANU, J.

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