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W.A.No.1229 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2023

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.A.No.1229 of 2012
and M.P.No.1 of 2015

1.The Director of Agricultural Marketing
Thirumangalam, Chennai- 600 040.

2.The Secretary
Periyar Market Committee, Erode.
Vs

.... Appellants

T.Balakrishnan

.... Respondent

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 26.10.2010 made in W.P.No.40359 of 2006 in O.A.No.3741 of 2000.

For Appellants : Mr.K.V.Sajeev Kumar
Additional Government Pleader – for
1st appellant

Mr.V.Jayaprakash Narayanan
-for 2nd appellant

For Respondent : No appearance



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J U D G M E N T

(Judgment of the Court was delivered by R.SURESH KUMAR, J.)

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This writ appeal has been directed against the order passed by the writ court dated 26.10.2010 made in W.P.No.40359 of 2006 which was renumbered as writ petition after being transferred from O.A.No.3741 of 2000 from the Tamil Nadu Administrative Tribunal.

2. The respondent was an employee ie., Night Watchman at the appellant Market Committee and he has been engaged as such with effect from 16.06.1993 and he had been continuously working till 02.07.1998 of course with intermittent artificial break by the employer after 85 days of service every time. It is to be noted that after such artificial break, again the employee has been re-engaged and like that it goes upto 02.07.1998. After 02.07.1998 and from 03.07.1998, the employee was denied the job. Therefore, immediately he rushed to the Tamil Nadu Administrative Tribunal and filed an Original Application, where a direction was given to consider his appeal given for the absorption of the employee on permanent basis because, he had been working for nearly about five years and more.

3. Only at that juncture, the stand taken by the appellant Market Committee was that from 03.07.1998, the employee, on his own volition, has



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stopped coming or being absented for the job and therefore in his place, another incumbent had been appointed / engaged. The said stand taken by the appellant Market Committee was questioned and therefore O.A.No.3741 of 2000 filed by the employee has been transferred to this Court and renumbered as W.P.No.40539 of 2006. The said writ petition was taken up for hearing and disposed of by a learned Judge of this Court by the impugned order dated 26.10.2010.

4. Heard the learned counsel for the appellants.

5. In the impugned order, the learned Judge has culled out the factual aspects as averred in the counter affidavit filed by the appellant Department in the writ petition, where the continuous engagement of the employee / respondent from 1993 till 1998 has been found out and the relevant portion of the order of the learned Judge reads thus,

" 4. The respondents filed reply affidavit. In the reply affidavit, it is stated that the petitioner was appointed as Night Watchman from 16.06.1993 upto 02.07.1998 with breaks. It is stated that after 1981, appointments are not made through Employment Exchange and no appointment order was given to Night Watchmen for their appointment. The second respondent Market Committee was formed pursuant to the bifurcation of Coimbatore Committee in 1986. The second respondent Market



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Committee is functioning from 11.06.1986 with 23 regulated sales depot in and around the Erode District, for which 21 watchmen posts were sanctioned to safeguard the agricultural grains and the market committee buildings. These night watchmen are not allowed to work more than 80-85 days in a stretch. These Night Watchmen are not appointed in the time scale of pay. They are paid wages from the Market Committee funds. The petitioner is one among the Night Watchmen, employed from 16.06.1993. Since he absented himself from 03.07.1998 without permission, the petitioner is not entitled for reinstatement and regularisation.

5. I have considered the submissions made on either side. From the counter affidavit, it is seen that the petitioner was employed as Night Watchmen from 16.06.1993 to 02.07.1998. The Night Watchmen including the petitioner were appointed only for a maximum period of 85 days in a spell and thereafter a break is given and again these persons are employed at Coimbatore Regulated Committee. The details of the employment of the petitioner is given in Para 3 of their counter affidavit.

From 16.06.1993	to	08.09.1993
From 15.09.1993	to	08.12.1993
From 25.07.1994	to	17.10.1994
From 01.11.1994	to	24.01.1995
From 01.02.1995	to	26.04.1995
From 01.05.1995	to	24.07.1995
From 01.12.1995	to	23.02.1996
From 01.03.1996	to	24.05.1996
From 10.06.1996	to	02.09.1996



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From 17.09.1996	to	10.12.1996
From 26.12.1996	to	20.03.1997
From 27.03.1997	to	19.06.1997
From 26.06.1997	to	18.09.1997
From 24.09.1997	to	17.12.1997
From 23.12.1997	to	18.03.1998
From 23.03.1998	to	15.06.1998
From 21.06.1998	to	02.07.1998

The respondents also stated in Para 4 of the Counter affidavit as follows:

"..... While making appointment to the Market Committee, the appointment was made through the Employment Exchange till 16.11.1981.....

..... Thereafter, the respondent Market Committee, which was functioning under the control of Coimbatore Regulated Market Committee from 11.06.1986. The present Periyar Market Committee which is functioning from 11.06.1986 with 23 regulated Sales Depot, in and around the Erode District, for which 21 watchmen posts were sanctioned to safeguard the agricultural grains and the market committee buildings. The respondent committee engaged the Night Watchman from and out of the committee funds on daily wages basis. These Night Watchmen are not allowed to work 80-85 days. These Night Watchmen are not engaged or appointed in the time scale of pay. These wages are being paid from the Market Committee funds. Accordingly, the applicant is one among the persons engaged on daily wages basis from 16.06.1993."



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The aforesaid averment made in the counter affidavit, makes it clear that though posts were sanctioned, but appointment to these posts are made only on daily wages basis without resorting the employment exchange and without issuing appointment orders. Further, the appointment are made only for 80-85 days and after a break these persons (Night Watchmen) were appointed again. It is needless to say that such procedure adopted by the second respondent, which is stated under Article 12 of the Constitution of India, is highly arbitrary and violative under Article 14 of the Constitution of India. When the petitioner and other market buildings as averred by the respondents and also when the posts were sanctioned, the respondents are not justified in keeping the Night Watchmen on daily wages basis for years together.

6. The learned counsel for the petitioner produced the details that was obtained in the website. The following is the data obtained by the petitioner through the website.

"Staff Shortage

Shortage of staff is another area of concern for the Committee. As against the 148 sanctioned posts, only 88 are filled. From Watchmen, to office assistants to market superintendents, many posts are vacant."

7. The counter affidavit as well as the data from the Website makes it very clear that the respondents did not fill up the vacant post and they managed the affairs by appointing them only on daily wages basis."



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6. Having considered the said factual matrix, the stand taken by the appellant Market Committee who was the respondent in the writ petition that the post has not been sanctioned, the employee was not engaged through employment exchange, that he had been working only for 85 days and therefore he was not entitled to get absorption or permanency, was negated by the learned Judge.

7. The reason for giving such a finding by the learned Judge has been stated, where it is an admitted fact as culled out from the counter of the appellant Market Committee in the writ Court that the employee had been engaged continuously from 16.06.1993 to 02.07.1998. But, every time after 85 days, there has been an artificial break given. The very statement that has been given in the counter affidavit, as extracted in Para 5 of the impugned order, itself shows that it was only an artificial break that was given to the employee and therefore, there is absolutely no gain saying on the part of the appellant Market Committee that it was a temporary engagement and he has not been working continuously.

8. If a person worked for 240 days continuously in one calendar year, he is entitled for absorption. Even otherwise, if it is a sanctioned post, where merely because he has not been engaged through employment exchange,



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that will not *ipso facto* give rise to the reason of the employer to deny such absorption in view of the factual matrix that he has been continuously engaged for five years. Without a post being sanctioned, whether one could be engaged for five years continuously and more over, it is to be noted that after the denial of the job to the employee with effect from 02.07.1998, immediately on the very next day another incumbent has been appointed or engaged. That shows that the post is a permanent in nature and that has also been taken note of by the learned Judge while passing the order.

9. Having all these aspects, we are of the view that absolutely there has not been any error on the part of the learned Judge, who allowed the writ petition, against which the present writ appeal has been filed. For the aforesaid reasons, we do not find any reason to interfere with the order passed by the learned Judge. Resultantly, this writ appeal fails and hence it is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

(R.S.K.,J.) (K.B.,J.,.)
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KST

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