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W.P.Nos.16510 to 16514 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.09.2023

Pronounced on : 06.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.Nos.16510 to 16514 of 2015 and  
MP.Nos.1 of 2015(5 Nos.) and WMP.Nos.23811 to 23813 &  
26307 of 2016

WP.No.16510 of 2015

The Management of State  
Oil Seeds Firm,  
Musaravakkam,  
Kancheepuram District

... Petitioner

Vs.

1.R.Muniyan  
2.The Presiding Officer,  
I Additional Labour Court,  
Chennai-104

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India  
praying to issue a Writ of Certiorari calling for the records in connection  
with the order dated 05.11.2014 made in ID.No.291 of 2005 on the file of  
the I Additional Labour Court, Chennai, the second respondent herein



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and to quash the same.

For Petitioner  
in all WP's : Mr.V.Jayaprakash Narayanan

For Respondents  
in all WP's

R2 : Court

For R1 : Mr.K.Elango

### **COMMON ORDER**

These writ petitions have been filed separately as against the common award passed by the second respondent thereby ordered to reinstate the first respondent in all the writ petitions with continuity of service with 25% backwages from the date of their termination.

2. The first respondent in all the writ petitions are hereinafter called as 'workmen'. The petitioner is the management and is hereinafter called as 'management'. The workmen were working under the management farm as Watchman for the past several years on daily wage basis. While being so, they were terminated from their respective services without assigning any reason from 10.02.2004. They were



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drawing a salary of Rs.54/- per day at the time of their termination.

Therefore, they raised Industrial Dispute under Section 2-A of the Industrial Disputes Act. According to the workmen, the management is wholly owned by the Government of Tamilnadu. It owns 154 acres of land at Musaravakkam and out of which, 125 acres of land is being cultivated with oil yielding varieties of plants such as groundnut, coconut, sunflower, sesame, castor, etc. There were more than 200 workmen employed in the management farm. They were working as Watchman in the day shift and night shift. They were required to attend duty on all days, even Sundays, important festivals and Government holidays were not exempted as holidays.

2.1 They were employed as casual labour and there were no permanent employees. Their job is of perennial in nature. The management flouted many of the Labour Welfare Legislations and as such, the workmen were forced to form an Union by name 'Musaravakkam Manila Ennai Vithu Pannai Thozhilalar Sangam'. The workmen were active members of the Union. Through their Union, they



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made various demands and they were denied. Therefore, the management with an intention to victimise the workmen, terminated them from their services.

3. Mr.V.Jayaprakash Narayanan, the learned counsel for the petitioners would submit that the workmen were engaged by the management as casual and seasonal daily wage employees based on the availability of rains, ground water, seasonal conditions and crop growth conditions. Whenever the work is available, the willing labourers are engaged on daily wage basis. All the workmen were absented themselves requesting to work other agricultural operations. They were not employed as Watchman. The petitioner management is only the agricultural farm. It is not operated for any gain and it produces seeds in the interest of farmers. That apart, they were not served with any termination order. The agricultural operations are based on seasonal and their work is not perennial. It does not require any Watchman and as such they were never engaged as Watchman.



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3.1 He further submitted that there is no daily wages muster roll and no particular person is employed as Watchman. Whenever the groundnut crops are nearing harvesting stage and whenever electricity is available during night hours, the labourers were engaged only on temporary basis on daily wages. As per the records available, no specific names of the workmen have been assigned to work as Watchman. The agricultural operations in the farm are variety and limited by seasonal and water availability. There are no permanent labourers in the farm. Therefore, the order of the Labour Court is perverse and against the evidence.

4. The workmen filed counter and Mr.K.Elango, the learned counsel for the first respondent in all the writ petitions submitted that the management farm is wholly owned by Government of India, in which the workmen were working as Watchman. There were eight watchman employed by the petitioner, out of which four were asked to work in the day shift and the remaining four were asked to work in the night shift. They were working in all days including holidays. Their wages were paid



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once in a week. The management also maintained attendance register and the same was marked before the Labour Court. In fact, the management was contributing to Employees Provident Fund in respect of their share.

4.1 He further submitted that their nature of work is perennial and it is not seasonal as claimed by the management. Therefore, the Labour Court rightly ordered to reinstate the workmen into service with 25% backwages and continuity of service.

5. Heard, Mr.V.Jayaprakash Narayanan, the learned counsel appearing for the petitioners and Mr.K.Elango, the learned counsel appearing for the first respondent in all the writ petitions.

6. Admittedly, the petitioner management is the State Oil Seed Farm and it is a Government Farm of State of Tamilnadu. It produces crop seeds. In order to raise Industrial Dispute, whether the petitioner is coming under the industry or not to be seen. It is relevant to extract the provision under Section 2(j) of Industrial Disputes Act hereunder:



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*“Industry” means any business, trade, undertaking, manufacture, or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workman”.*

7. Thus, it is clear that in order to coming into the purview of industry, it shall indulge in any business, trade, undertaking, manufacture or calling of employers and includes any calling, service employment, handicraft or industrial occupation or avocation of workman. The petitioner is a crop raising farm producing quality breeder and foundation seeds of pulses, oil seeds and millet crops to distribute the quality seeds to the farmers for seed multiplication purpose. Therefore, it is not a commercial farm and it is not coming under the definition of 'industry'. The Industrial Disputes Act is not meant to cover or govern the agricultural activity. In the Amendment Act, 46 of 1982, the word “industry” is redefined. After the amendments, Section 2(j) will have Sub-sec. 2(j)(I) which is as follows:

*“any agricultural operation except where such agricultural operation is carried on an integrated manner with any other activity being any such activity as*



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*is referred to in the foregoing provisions of this clause, and such other activity is the predominant one.*

*Explanation.— For the purposes of this sub-clause, ‘agricultural operation’ does not include any activity carried on in a plantation as defined in Cl. (f) of S. 2 of the Plantations Labour Act, 1951 (69 of 1951).”*

From this, the intention of the Legislature is indicated that the agricultural activities are not governed by the Industrial Disputes Act. Even though it is said that the said Amendment Act, 46 of 1982 has not come into force, it throws some light to understand the definition of “industry.”

8. In this regard, it is relevant to rely upon the judgment of this Court in the case of ***State Farms Corporation of India Ltd Vs. Second Additional Court, Madras*** reported in ***1997(1) LLN 361***, wherein it is held as follows:

*11. Another case cited by the learned counsel for the petitioner is Arooran Sugars, Ltd. v. Industrial Tribunal [1970-II L.L.J. 249], wherein the learned Single Judge of this Court has held that if the agricultural activity cannot be dissociated from the industrial activity*



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*and the main activity is industrial activity then the entire establishment will come under the purview of S. 2(j) of the Industrial Disputes Act. The learned Judge has observed as follows:*

*“The nature of the interrelated activities in the present case clearly show that there is no scope of dissociating the agricultural activity in the farm from the main activity carried on in the factory. On the other hand, both are only different units of a single integrated business activity, which is an industry.”*

*12. From the indication given by the Supreme Court and the judgment of this Court, it is seen that if agricultural activity is independently carried on and the predominant activity is the same, then the activity cannot be termed as an “industrial activity.”*

Thus, it is clear that the activity of the petitioner cannot be termed as an 'industrial activity'.

9. It is also relevant to rely upon the judgment of the Hon'ble Punjab and Haryana High Court in the case of ***State of Punjab through the Director of Agriculture Punjab, Chandigarh and another Vs. Shri Daljit Singh and another*** reported in ***1986 SCC Online P&H 725***,



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wherein it is held as follows:

*4. On the first issue the Labour Court held that the Agriculture Department of the Government fell within the definition of “industry” and as such the reference under section 10(1)(c) of the Act would be entertained by it. On the second issue the Labour Court found that the termination of services of Dalip Singh was neither justified nor in order. In pursuance of these findings the Labour Court gave the impugned award, dated 11th of February, 1981, reinstating Daljit Singh with continuity of service and full back-wages. The petitioners have preferred the instant writ petition challenging the validity of the Labour Court's award on the ground that the Agriculture Department of the Punjab Government, of which Daljit Singh was an employee, not being an “industry” is not covered by the Act and consequently the Labour Court had no jurisdiction to entertain the reference.*

*5. The term “industry” has been defined in the Act as follows:—*

*“2(j). ‘industry’ means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.”*



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6. *There is no dispute that the Agriculture Department of the Punjab Government deals with the governmental activity. It has been held by a Full Bench of this Court in State of Punjab v. Sh. Kuldip Singh, 1983 Lab. I.C. 83 that the State or governmental activity is of the following four classifications:—*

*“(1) The sovereign or the legal functions of the State which are the primary and inalienable rights of a constitutional Government.*

*(2) Economic adventures clearly partaking of the nature of trade and business undertaken by it as part of its welfare activities.*

*(3) Organized activity not stamped with the total indicia of business yet bearing a resemblance to or being analogous to trade and business.*

*(4) The residuary organized governmental activity which may not come within the ambit of the aforesaid three categories.”*

7. *Dealing with these four categories it was held that although the second and third categories would be clearly within the spirit and letter of the definition of “industry” as given in section 2(j) of the Act but the first and the fourth categories are to be judicially excluded from the ambit of the definition of “industry”. Thus to be*



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*within the ambit of “industry” a governmental activity must atleast be analogous to trade and business and there must be an element of an economic venture in governmental activity before it can be brought within the four corners of an industry.*

*8. It is not controverted that the function of the Agriculture Department of the Punjab Government is to render help to the agriculturists in the pursuit of farming. The nature of work of this department is largely advisory. It is not even remotely suggested that this department delves in economic ventures of any kind. It seems to follow that the character of activity of this department is neither that of trade or business nor any economic venture. Hence, the Agriculture Department of the Punjab Government cannot possibly come within the ambit of an “industry” as defined in the Act. The question posed in this case at the very outset must, therefore, be answered in the negative.*

10. Thus, it is clear that the sovereign or legal functions of the State which are primary and inalienable rights of a State Government to be within the ambit of 'industry', a governmental activity must atleast be analogous to trade and business and there must be an element to economic venture in governmental activity before it can be brought



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within the four corners of an industry. The petitioner firm is to render help to the farmers to supply quality breeder and foundation seeds of pulses, oil seeds and millet crops. Therefore, the activity of the petitioner is neither that of trade or business nor any economic venture. Therefore, the predominant activity of the petitioner is agriculture in nature. Hence, it cannot come within the ambit of industry.

11. Admittedly, the workmen were not appointed through any employment exchange. They were engaged as daily wage worker on daily wage basis, that too, they were seasonal workers depending upon the agricultural crops. In this regard, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***M.P.State Agro Industries Development Corporation Ltd and another Vs. S.C.Pandey*** reported in (2006) 2 SCC 716, wherein it is held as follows:

*The question raised in this appeal is now covered by a decision of this Court in M.P. Housing Board & Anr. v. Manoj Srivastava [ Civil Appeal arising out of*



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*SLP (Civil) No. 27360/04 disposed of this date] wherein this Court clearly opined that: (1) when the conditions of service are governed by two statutes; one relating to selection and appointment and the other relating to the terms and conditions of service, an endeavour should be made to give effect to both of the statutes; (2) A daily wager does not hold a post as he is not appointed in terms of the provisions of the Act and Rules framed thereunder and in that view of the matter he does not derive any legal right; (3) Only because an employee had been working for more than 240 days that by itself would not confer any legal right upon him to be regularized in service; (4) If an appointment has been made contrary to the provisions of the statute the same would be void and the effect thereof would be that no legal right was derived by the employee by reason thereof.*

12. Thus, it is clear that the workmen do not have any legal right for reinstatement into service, since they were not appointed in terms of any provisions of the Act and Rules framed thereunder. They were not served any termination order and they were not terminated even by orally. They themselves stopped from coming to work since they were



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engaged as daily wage labourers, that too in the agricultural field.

Therefore, though they had been working for more than 240 days in a given year, it would not confer any legal right upon them to be regularised in their service.

13. Further, the learned counsel for the petitioner would submit that there was no post of Watchman in the agricultural farm and when there was no post available, the workmen cannot be reinstated into the post of Watchman. Further, the learned counsel for the workmen pointed out that as per the attendance register maintained by the petitioner, the workmen were engaged as Watchman and they were working for more than 300 days in a given year. Though they were engaged as Watchman, as rightly pointed out by the learned counsel for the petitioner, they were engaged as seasonal employees whenever required in order to protect some crops during harvesting time from the animals. Therefore, it does not mean that they were permanently engaged as Watchman for the agricultural farm. Hence, this Court finds perverse on the award passed by the Labour Court since the petitioner itself is not coming under the



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purview of industry and it is an agricultural farm. That apart, the nature of work in which the workmen were engaged is not perennial in nature.

14. In view of the above discussion, the impugned common award is liable to be quashed. Accordingly, the common award dated 05.11.2014 passed by the second respondent in ID.Nos.289 to 293 of 2005 is quashed and all the writ petitions are allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

06.10.2023

Internet: Yes  
Index: Yes/No  
Speaking/Non-speaking order  
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To

- 1.The Presiding Officer,  
I Additional Labour Court,  
Chennai-104
- 2.The Government Advocate  
High Court, Madras.



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**G.K.ILANTHIRAIYAN, J.**

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