



W.P.No.13772 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2023

CORAM:

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

W.P.No.13772 of 2010

G.Dhanabakkiyam @ Vellayee

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Salem

2.The Management,
Glazebrooke Estate 'C',
Keeraikadu Post,
Yercaud 636 601

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue Writ of Certiorarified Mandamus calling for the records from the respondent Labour Court, Salem relating to its award dated 16.04.2009 in ID.No.146 of 2003, quash the same and consequently direct the respondent management to reinstate the petitioner in service with effect from 30.10.2002 with full backwages, continuity of service, consequential and other attendant benefits.

For Petitioner : Mr.K.M.Ramesh,
Senior Counsel
for Mr.V.Sivaraman



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For Respondents

R1 : Court

For R2 : Ms.Nilani
for M/s.T.S.Gopalan & Co.

ORDER

This writ petition has been filed challenging the award dated 16.04.2009 passed in ID.No.146 of 2003 thereby rejected the request to reinstate the petitioner into service.

2. Heard, the learned counsel appearing on either side.

3. The case of the petitioner is that she had worked in the second respondent estate for 15 years. She was not issued salary slip and not given other legal rights. Therefore, she joined in the Neelamalai Plantation Workers Union and reported about the non issuance of salary slip and other benefits. Hence, the Inspector inspected the second respondent estate and all the workers were asked to sign in the white paper. Thereafter they were denied employment from 30.10.2002.



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4. However, on perusal of records, revealed that the petitioner was a casual labourer worked now and then whenever there was work. She never worked continuously for 15 years. In fact, the petitioner is having land and after completion of her cultivation work she used to go for daily wages as a Coolie in the neighbourhood plantations. If any plantation owner gives little more wages than the other plantation owners, she used to leave work in one plantation and fled to other plantation. Therefore, she was working as daily Coolie.

5. Mr.K.M.Ramesh, the learned Senior Counsel appearing for the petitioner submitted that even as per the management witness, it is category admitted that the workman had 11 months work and one month leave. Out of 11 months, coffee was harvested for 3 months and she would be engaged in other work for remaining months. Therefore, once the workman get into box and proved that she worked for more than 240 days per year, the burden of proof is shifted on the shoulder of the management to disprove the same.



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6. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India in the case of ***R.M.Yelatti Vs. The Assistant Executive Engineer*** reported in ***(2006) 1 SCC 106***, wherein it is held as follows:

*17. Analyzing the above decisions of this court, it is clear that the provisions of the **Evidence Act** in terms do not apply to the proceedings under **section 10** of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately*



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would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under [Article 226](#) of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case.

7. Thus it is clear that mere filing affidavits or self-serving statements made by the workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. Therefore, mere non-production of muster rolls per se without any plea of suppression by the workman



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will not be the ground for the tribunal to draw an adverse inference against the management. Therefore, the above judgment is squarely applicable to the case on hand. In the case on hand, the petitioner / workman failed to prove that she worked for 240 days per year. That apart, it is also seen from the evidence that the petitioner worked only 100 days in a year. It is not the evidence of the petitioner that she was not paid any salary for the day he worked. Whenever there was work, she was paid daily wages. Therefore, she had not worked continuously and permanently. Hence, the petitioner failed to prove that she was a permanent workman and worked more than 240 days prior to the date of refusal of the work. Therefore the Labour Court rightly dismissed the claim petition and this Court finds no infirmity or illegality in the order passed by the first respondent.

8. Accordingly, this writ petition is dismissed. There shall be no order as to costs.

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Internet: Yes
Index: Yes/No



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Speaking/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

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Labour Court, Salem
- 2.The Management,
Glazebrooke Estate 'C',
Keeraikadu Post,
Yercaud 636 601
3. The Government Advocate,
High Court, Madras.

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