



W.P.No.17440 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON: 22.08.2023

ORDER PRONOUNCED ON: 12.10.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.17440 of 2010

and

WMP.No.1 of 2010

The Tamil Nadu Pollution Control Board,
Rep by its District Environment Engineer,
1/276 Maiyanoor Main Rroad,
Salem- 4.

...Petitioner

Vs.

1.The Presiding Officer
Labour Court,
Salem.

2.R.Rathinam

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for records on the file of the 1st respondent's order in Award I.D.No. 48/2008 dated 31.8.2009 and quash the same.

For Petitioner : Mrs.Vijayakumari Natrajan
Standing Counsel

For Respondents : R1- Court
R2 – Mr. Nasrullah for
Mr.K.V.Shanmughanathan



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Writ Petition is filed challenging the award of the Labour Court passed in Award I.D.No. 48/2008 dated 31.08.2009.

2. The 2nd respondent raised the dispute challenging the order of termination dated 18.07.2007. According to the 2nd respondent, she was employed as part time sweeper in the petitioner's board in the year 1996. As she claimed regularisation of her services, the petitioner orally terminated her services on 10.07.2007 without any charge or domestic enquiry and without following the procedure contemplated in the Industrial Disputes Act.

3. The case of the petitioner is that, the respondent was not an employee of the board but she was employed by the owner of the building where the petitioner is functioning.

4. The Labour Court on an assessment of entire evidence on record both oral and documentary found that the termination of the respondent



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was illegal and in contravention of Section 25(F) of the I.D. Act. The Labour Court therefore set aside the termination of the 2nd respondent and directed the petitioner to reinstate the 2nd respondent with full backwages, continuity of service and all other attendant benefits.

5. Aggrieved by the award of the Labour Court, the petitioner board has preferred the above writ petition.

6. The learned counsel for the petitioner submitted that there is absolutely no employee-employer relationship between the petitioner and the respondent and that the Labour Court failed to note that the 2nd respondent was employed by the owner of the building in which the petitioner is functioning. The learned counsel submitted that the Labour Court failed to appreciate in proper prospective the evidence of R.W2, the owner of the building who was examined on the side of the petitioner. The learned counsel further submitted that the Labour Court erred in rejecting Ex.R3, letter given by the owner of the premises to the petitioner. The



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learned counsel therefore submitted that the Award of the Labour Court was un-sustainable and the same deserved to be set aside.

7. The learned counsel for the respondent on the other hand submitted that the 2nd respondent worked for more than 10 years under the petitioner and that she was paid by the petitioner for her services and only when she claimed permanency, the petitioner dismissed her from service illegally. The learned counsel further submitted that the petitioner's own document dated 16.04.2007 marked as Ex.R2 would prove that the 2nd respondent was employed for more than 10 years with the petitioner and that she was paid Rs.400/- per month as per the District Collector's order dated 11.04.2006.

8. I have heard both the learned counsel and have perused the materials placed on record.

9. As rightly contended by the learned counsel for the respondent the



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letter dated 16.04.2007 marked as Ex.R2 clinches the issue as far as the respondents employment is concerned. Ex.R2. is a letter addressed by the Joint Chief Environment Engineer, Tamil Nadu Pollution Control Board, Salem to the Member Secretary Tamil Nadu Pollution Control Board, Chennai. In the said letter, it is clearly stated that the 2nd respondent was working as a part time sweeper under the Tamil Nadu Pollution Control Board, Salem for 10 years and was paid Rs.400/- per month as per the District Collector's order dated 11.04.2006. The said letter was sent for appropriate orders on the representation of the 2nd respondent dated 14.03.2007. From Ex.R2 it is very clear that the contention of the petitioner that there was no employer employee relationship, cannot be countenanced.

10. The Labour Court referred to several other documents and the evidence of the witnesses for concluding that the petitioner had failed to establish that there was no employer-employee relationship between the petitioner and the respondent. I find no perversity or illegality in the



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findings of the Labour Court and therefore the same is confirmed.

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11. The learned counsel for the petitioner submitted that there is no vacancy in the sweeper category and moreover the said job has been outsourced by the petitioner. The learned counsel therefore submitted that the relief of reinstatement granted by the Labour Court cannot be complied with.

12. As I concur with the Labour Court's finding that the termination of the petitioner was illegal and in contravention of the provisions of Section 25 (f) of the Industrial Disputes Act, I am of the view that instead of directing the petitioner to reinstate the respondent, the relief can be modified into one of compensation. In this regard, useful reference can be made to the Judgment of the Hon'ble Supreme Court in the case of *Bharat Sanchar Nigam Limited vs. Bhurumal* reported in 2014 (7) SCC 177 is as follows:

“33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages,



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when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or malafide and/or by way of victimization, unfair labour practice etc. However, when it comes to the case of termination of a daily wage worker and where the termination is found illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious. "

13. In the light of the above discussions, a sum of Rs.2,00,000/- (Rupees Two Lakh) is directed to be paid as compensation in lieu of reinstatement. The petitioner board is directed to pay the said amount without interest to the 2nd respondent within a period of six (6) weeks from the date of receipt of a copy of this order.

In the result, this writ petition is partly allowed. There shall be no order as to costs. Connected WMP is closed.



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Index:Yes/No
Speaking Order: Yes/No
Neutral Citation:Yes/No
dsn

To

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Tamil Nadu Pollution Control Board,
No: 1/276 Maiyanoor Main Road,
Salem- 4.

2.The Presiding Officer
Labour Court,
Salem.

N.MALA.J.,

dsn



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PRE-DELIVERY ORDER IN

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12.10.2023