



W.P.No.19644 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2023

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.No.19644 of 2010

and

M.P.No.1 of 2010

The Commissioner,
Thiruvotriyur Municipality,
Thiruvotriyur.

Substituted as:

The Commissioner,
Corporation of Chennai, Park Town,
Chennai – 600 003.

[As per order of MMSJ
dated 15.04.2014 in M.P.No.1 of 2014
in W.P.No.19644 of 2010]

... Petitioner

VS.

1.The Presiding Officer,
3rd Additional Labour Court,
Chennai – 600 104.

2.G.Munusamy

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India,
to issue a Writ of Certiorari, calling for the records of the first respondent
Labour Court relating to Award dated 15.09.2009 in I.D.No.594 of 2002 and



W.P.No.19644 of 2010

quash the same.

WEB COPY

For Petitioner : Mr.S.Gopinathan

For R1 : Court

For R2 : Mr.K.M.Ramesh, Senior Counsel for
Mr.G.Vipra Narayanan

* * * * *

ORDER

This Writ Petition is filed to call for the records of the first respondent Labour Court relating to Award dated 15.09.2009 in I.D.No.594 of 2002 and quash the same.

2.The Thiruvotriyur Municipality will be referred to as the petitioner.
The second respondent will be referred to as the workman.

3.The workman joined the petitioner/Municipality as a daily wager on 10.12.1993 and continued to work till 31.01.1995. He worked for more than three years and whereas his services were terminated, but the services of 5 other persons who joined along with him were continued. The workman had put in more than 240 days between the period 10.12.1993 to 31.01.1995



W.P.No.19644 of 2010

and so he was entitled to prior notice before termination under Section 25

(G) and 25 (H) of the Industrial Dispute Act. In spite of the workman's repeated demand for reinstatement for the past 6 years, the petitioner did not reply to the same and therefore, the workman approached the Labour Court for reinstatement. The petitioner contested the claim petition stating that there was no violation of Section 25 G and 25 H of the Industrial Disputes Act, in as much as the workman had not put in 240 days of work. The petitioner denied the claim of the workman for reinstatement with continuity of service, backwages and other attendant benefits. The Labour Court on an appreciation of the entire evidence on record passed the award directing the Petitioner to reinstate the workman with continuity of service along with other benefits, but without backwages. Aggrieved by the award of the Labour Court, the Petitioner has filed the above writ petition.

4. The learned counsel for the petitioner submits that the burden was on the workman to establish that he had put in more than 240 days of work, but the Labour Court erroneously shifted the burden on the petitioner. The learned counsel further submitted that as the dispute was raised 7 years after the alleged termination on 31.01.1995, the Labour Court ought not to have



W.P.No.19644 of 2010

entertained the claim petition. The counsel therefore prayed to allow the writ petition.

5.The learned counsel for the respondent on the other hand submitted that the Labour Court on the basis of the evidence on record passed the award. The learned counsel further submitted that there is absolutely no illegality in the award passed by the Labour Court and therefore it did not call for any interference by this Court.

6.I have heard both the learned counsels and I have perused the materials on record.

7.It is not disputed that the workman was engaged as Cholera Mazdoor in the petitioner/Municipality on 10.12.1993 and that he continued to work till 31.01.1995. Whereas the workman claims to have worked for more than 240 days, the petitioner/Municipality disputes the same. The Labour Court on the basis of the materials on record found that the workman had worked for more than 240 days and therefore, the termination of the workman without notice was illegal.



W.P.No.19644 of 2010

WEB COPY

8. It is no doubt true that the burden to establish that the workman had put in more than 240 days of service in a calendar year is on the workman. In the present case, it is seen that the workman had filed an Interlocutory Application in I.A.No.11 of 2008 before the Labour Court calling upon the Petitioner/Municipality to produce the Mazdoor roll for the period from 1993 to 1995. The said I.A. was allowed by the Labour Court and in pursuance of the said order, the petitioner/Municipality produced Ex.M.W.2, which was for the period from 04.05.1994 to 31.04.1995, June 1994, 01.07.1994 to 31.07.1994, 01.01.1995 to 31.01.1995 and 01.02.1995 to 12.02.1995. As per the evidence of M.W.1, it is clear that the Mazdoor Roll Register consisted of 24 pages for the period from 1993 to 1995. While so, the petitioner Municipality had filed only 5 pages of Mazdoor Roll Register for a period of 5 months. The Labour Court therefore drew an adverse inference against the petitioner/Municipality for not producing the full 24 pages of Mazdoor Roll Register for the period from 1993 to 1995 and concluded that the workman had worked for more than 240 days. The Labour Court relied on the Judgment of the Hon'ble Supreme Court in the case of ***R.M. Yellathi Vs. The Assistant Executive Engineer*** reported in ***2006 (1) SCC 106***, for it's



W.P.No.19644 of 2010

conclusion that an adverse inference ought to be drawn against the petitioner

Municipality for not producing the Mazdoor Roll Register for the entire period. I find absolutely no infirmity or illegality in the finding of the Labour Court that the workman was entitled to reinstatement and other reliefs. The submission of the learned counsel for the petitioner that the dispute was raised belatedly and so the Labour Court ought not to have entertained the same cannot be countenanced for the reason that the petitioner has not proved that real prejudice was caused to him by the delay. In the absence of proof of prejudice because of the delay, I am of the view that the workman cannot be deprived of the relief on a technical plea unsupported by evidence. Even otherwise the Labour Court considering the period of delay has moulded the relief by declining backwages.

9. In view of the same, I find no merits in the writ petition and the same is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

29.11.2023

Index : Yes / No

Internet : Yes / No

Speaking Order/Non-speaking order
ah



W.P.No.19644 of 2010

WEB COPY To

The Presiding Officer,
3rd Additional Labour Court,
Chennai – 600 104.

N.MALA, J.

ah

W.P.No.19644 of 2010



WEB COPY



W.P.No.19644 of 2010

29.11.2023