



W.P.No.4767 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 03.02.2022

Orders delivered on 22.02.2023

CORAM :

THE HON'BLE Mrs.Justice **J.NISHA BANU**

W.P.No.4767 of 2004

and

W.P.M.P.No.5588 of of 2004

Fisheries College and Research Institute,
Tamil Nadu Vetrinary and Animal Science University,
Tuticorin-628 008.

.. Petitioner

Vs

1. R.Shanmugam

2. The Presiding Officer,
Labour Court,
Tirunelveli

..Respondents.

PRAYER: Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorari to call for the records relating to the Award passed by the Labour Court made in I.D.No.291 of 1992 (Madurai), I.D.No.592 of 1992 (Tirunelveli) dated 11.09.2003, the second respondent herein and quash the



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same as in-operative, illegal and unsustainable.

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For Petitioner : Mr.S.Kanniah
For Respondents : Mr.M.Murali Vinodh
For R.1
R.2 - Court

ORDER

This Writ Petition has been filed challenging the award passed by the Labour Court, wherein the Labour Court allowed the claim of the respondent and ordered reinstatement without backwages and other service benefits.

2. The case of the petitioner is as follows:

The petitioner Institute is a Research Oriented Institute and not an Industry established for making profits. During the course of research activities, casual labourers were engaged to do manual work to assist the scientist and teachers in their research. The service of the 1st respondent was utilised by the petitioner like the casual labourers and he was not given any permanent employment. Besides, the 1st respondent has not worked continuously as a full time worker. Further, during the course of temporary



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engagement, the 1st respondent has indulged in certain illegal activities and therefore, the petitioner has disengaged the service of the 1st respondent.

The 1st respondent raised Industrial Dispute and the same was initially taken on file in I.D.No.291/1992 before the Labour Court, Madurai and subsequently, transferred to Tirunelveli and renumbered as I.D.No.592/1992. The petitioner management opposed the claim of the respondent by adducing oral and documentary evidence. The Labour Court, without considering the same, has passed an award dated 16.1.1994 in favour of the respondent, by ordering reinstatement with backwages and continuity of service. Therefore, the petitioner filed W.P.No.16809/1995 before this Court, challenging the award of the Labour Court. The said writ petition was allowed on 24.06.2003 by remitting the matter back to the Labour Court for fresh consideration. Thereafter, the Labour Court, once again, passed an award dated 11.09.2003 allowing the claim of the respondent and ordered reinstatement without backwages. Aggrieved against the said award, this writ petition has been filed.

3. Heard the learned counsel for the petitioner and the learned counsel



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appearing for the 1st respondent.

4. Learned counsel for the petitioner would submit that the Labour Court has passed the impugned award without considering whether the petitioner Institute is an Industry amenable to the provisions contained in the Industrial Disputes Act. Learned counsel would further submit that the 1st respondent has not disputed the alleged misconduct committed by him. The 1st respondent has not produced any evidence to show that he was continuously employed by the petitioner from 2.5.1996 and worked for 244 days in a calendar year. He would further submit that as on date, the 1st respondent is aged 64 years and he cannot be reinstated in service and the Labour Court has also not granted any backwages in the impugned award. Hence, he would pray that the award passed by the labour Court has to be set aside.

5. On the contrary, the learned counsel for the 1st respondent would submit that no proper enquiry was conducted before passing the order of dismissal and the Labour Court found that proper enquiry was not conducted and has rightly passed an award in I.D.No.592/1992 dated



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16.11.1994, reinstating the 1st respondent with back wages and continuity of service. Challenging the said award, the petitioner /Management filed a writ petition in W.P.No.16809 of 1995 before this Court and this Court, by order dated 24.6.2003, remitted the case back to the Labour Court for fresh consideration. Again, the matter was heard on merits and disposed of by the Labour Court by ordering reinstatement but without back wages. Though, there was an order of interim stay in this writ petition at the time of admission, it was not brought to the notice of the first respondent and the same came to the knowledge of the 1st respondent only in February, 2021 and thereafter, he filed Vakalat in this writ petition. He would further state that the 1st respondent is entitled for reinstatement with backwages along with continuity of service as awarded by the Labour Court in I.D.No.592/1992 dated 16.11.1994.

6. This Court, considered the submissions made on either side and perused the materials available on record.

7. The contention of the learned counsel for the petitioner that the 1st respondent is not a permanent employee and he was engaged as casual



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labourer to do manual work to assist the scientist cannot be countenanced for the reason that the Labour Court, after a full-fledged trial, has categorically given a finding that the 1st respondent has been sponsored through employment exchange and after following proper procedure, was appointed on 02.05.1986 as Mazdoor and was continuously working so.

8. Further, insofar as the contention of the learned counsel for the petitioner that the petitioner Institute is a research oriented institute and not an Industry established for making profits is concerned, the said issue has been dealt with in detail in the decision reported in ***JT 1997 (4) SC 527 (Physical Research Laboratory v. K.G.Sharma)*** wherein the Hon'ble Apex Court has held in paragraph 7 as follows:

7. The question: What is an 'Industry under the Industrial Disputes Act? has been answered by this Court in Bangalore Water Supply case(supra) as under:

"I

140. 'Industry', as defined in Section 2(j) and explained in Banerji (supra) , has a wide import.

(a) Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and



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substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making, on a large scale prasad or food) , prima facie , there is an 'industry' in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

II

141. Although section 2(j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself.

(a) 'Undertaking' must suffer a contextual and associational shrinkage as explained in Banerji (supra) and in this judgment; so also, service calling and the like. This yields the inference that all organized activity possessing the triple



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element in I (supra) , although not trade or business, may still be 'industry' provided the nature of the activity, viz. the employer employee basis, bears resemblance to what we find in trade or business. This takes into the fold of 'industry' undertakings, callings and services, adventures 'analogous to the carrying on the trade or business'. All features, other than the methodology of carrying on the activity viz. in organizing the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

III

142. Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

(a) The consequences are (i) professions, (ii) clubs, (iii) educational institutions, (vi) cooperatives, (v) research institutes, (vi) charitable projects and (vii) other kindred adventures, if they fulfill the triple tests listed in I(supra),



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cannot be exempted from the scope of section 2(j).

9. In the present case, the petitioner Institution fulfills the aforesaid triple test. There is a systematic activity and it is organized by co-operation between employer and employee and although there is no trade or business, it may still be 'industry' as the nature of activity of the employer-employee is having the resemblance of trade or business. Thus, the petitioner Institute is an Industry amenable to the provisions contained in the Industrial Dispute Act.

10. It is also to be noted that only on considering the oral and documentary evidence, the Labour Court has come to the conclusion that without conducting proper enquiry, the 1st respondent was terminated from service. Earlier, this petitioner has filed a writ petition challenging the award passed by the Labour Court in the year 1995 and this Court, by order dated 24.6.2003, allowed the same and remitted the case back to the Labour Court for fresh consideration. Again, the matter was heard on merits and disposed of by the Labour Court by ordering reinstatement, but without



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back wages, by order dated 11.09.2003.

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11. Moreover, this writ petition is of the year 2004 and against the award of the Labour Court, interim order of stay was granted by this Court in this writ petition at the time of admission. It is the contention of the 1st respondent that he had no knowledge about the grant of interim order passed by this Court in the year 2004 and only in February, 2021, he came to know about the filing of the writ petition and thereafter, he filed the Vakalat. It is also seen from the records that since the 1st notice was not sent to the correct address, fresh notice was ordered and the 2nd batta was due as regards the 1st respondent/workman and the 1st respondent/workman was not served. Therefore, it is clear that notice was not served on the 1st respondent/workman informing about the interim order granted by this Court. It is also seen that as per the findings rendered by the Labour Court based on the evidence adduced by the witness that the 1st respondent has served for more than 240 days in a year. Further, the Labour Court has also given a finding that there was no proof as regards the misconduct of the 1st respondent as alleged by the petitioner Institution. From the available



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records, it is seen that as rightly held by Labour Court, no proper enquiry was conducted by the petitioner Management before passing the order of removal from service.

12. For the foregoing reasons, this Court is of the opinion that there is no infirmity or illegality in the award passed by the Labour Court. Therefore, the award passed by the Labour Court is confirmed. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22 .02.2023

Index :Yes/No
Speaking/Non-speaking order
vsi

To
The Presiding Officer,
Labour Court,
Tirunelveli



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J.NISHA BANU, J.

(vsi)

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