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W.P.No.26920 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.26920 of 2010

Assistant Executive Engineer (Agri.Engg.),
Warabhandhi, Kheel Bhavani Irrigation Division,
812, K.N.K. Road, Moolapattaraj,
Erode – 3. ... Petitioner

Vs

1.Gurunathan
2.The Presiding Officer,
Labour Court, Salem. ... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relating to the order of I.D.No.203/1997 dated 10.08.2009 of Presiding Officer, Labour Court, Salem and quash the same.

For Petitioner : Mr.R.Neethi Perumal

Government Advocate

For R1 : Served – No appearance

For R2 : Labour Court



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ORDER

This Writ Petition had been preferred challenging the order passed by the 2nd respondent directing reinstatement of the petitioner in services of the daily wage employee in the project in which he was employed or in any other project or scheme that will be newly done by the petitioner, however, without any backwages but with continuity of service and all attendant benefits.

2. Heard Mr.R.Neethi Perumal, learned Government Advocate appearing for the petitioner.

3. In spite of been served notice to the 1st respondent, he had neither entered appearance in person nor through a counsel before this Court.

4. Mr.R.Neethi Perumal, learned Government Advocate for the petitioner would submit that the petitioner was originally appointed as a daily wage labour (NMR) during the year 1992 at the Lower Bhavani



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Project as and when as there was an requirement of daily wage employees/NMR, the 1st respondent would be called upon to perform the work that is allotted to him on that day. He was specifically appointed to complete the Warabhandhi Project at Lower Bhavani and the said project was over and completed as early as on 30.11.1997. He would further submit that the 2nd respondent had not reported to duty from the year 1995. However, he had raised an Industrial Dispute as if he was thrown out of the employment illegally during the month of March 1995 without any enquiry and the Tribunal accepting his contention had directed reemployment as daily wage with continuity of service and other attendant benefits.

5. He would submit that for a daily wage there is no question of continuity of service and other attendant benefits. Whenever there was work, he would be employed and paid daily wages then and there. He would further submit that the project to which the 1st respondent was employed was continuing till 1997 and only after completion the said Project was closed. He would further submit that if there are some new project nearby NMRs working in the said project would also be deployed in the new



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Project of the same Unit. In the present case, the petitioner had discontinued his services in the year 1995 and thereafter, he did not make himself available to be employed as a daily wager NMR, only in the year 1997 he had raised an Industrial Dispute. He would also submit that he had not produced any documents whatsoever to substantiate that he had been repeatedly approaching the petitioner for employing himself. When that be so, the Tribunal ought not to have entertained the case of the petitioner and directed employment.

6. I have considered the rival submissions made by the learned counsels appearing for their respective parties and perused the materials available on record before this Court.

7. Even, according to the 1st respondent, in his claim petition he had admitted himself to be a daily wager. Even according to him, he had been out of service from the year 1995. Except for making a tall claim during his oral evidence or in the claim statement, the 1st respondent had not produced any documents whatsoever to substantiate his claim that he had



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been denied employment illegally. It is also pertinent to note that a daily wager could be employed as and when the work is required. He is not entitled to be dealt with as a regular employee to initiate the disciplinary proceedings for him to be taken out of service, if his services are also unsatisfactory, the petitioner may not engage him. In the present case, it is an admitted fact that he has been out of employment from March 1995 and atleast till he raised an industrial dispute, the 1st respondent had not made any claim of re-employment nor he has produced any documents to substantiate his claim for reemployment.

8. In such view of the matter, I am of the considered view that the Tribunal wholly erred in directing reinstatement of the petitioner that too with continuity of service and all attendant benefits. Therefore, I am of the view that the order passed by the 2nd respondent suffers from material infirmity and is wholly uncalled for.

9. In fine, this Writ Petition is allowed by setting aside the order impugned in this Writ Petition. However, there shall be no order as to costs.



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Consequently, connected miscellaneous petition is closed.

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To

The Presiding Officer,
Labour Court, Salem.

K.KUMARESH BABU,J.

GBA

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