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W.P.No.15023 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.15023 of 2016

And

W.M.P.No.13106 of 2016

Karunakaracherry Panchayat
Rep. by its President,
Karunakaracherry,
Poonamallee Taluk

... Petitioner

Vs.

1.The Presiding Officer
1st Additional Labour Court,
II Floor, City Civil Court Buildings,
High Court Compound,
Chennai – 600 104.

2.K.Dilli Babu

3.The Block Development Officer,
Poonamallee Panchayat Union,
Poonamallee,
Chennai – 600 056.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to the Award of the first respondent Labour Court dated 09.04.2014 passed in I.D.No.148 of 2010 which is filed and marked as Ex-A and to quash the same.



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For Petitioner : Mr.V.Govardhanan
For Respondents : Mr.S.Ravi for R2

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari calling for the records relating to the Award of the first respondent Labour Court dated 09.04.2014 passed in I.D.No.148 of 2010 which is filed and marked as Ex-A and to quash the same.

2.The facts of the case is that the petitioner is a small Panchayat consisting of six villages and the same is divided into two wards in Poonamallee Taluk, Thiruvallur District and each ward is represented by three members. The staff strength of Panchayat is one Assistant and one Makkal Nala Paniyalar in permanent basis. The Panchayat also engages five pump operators and two sweepers on hourly basis and they are temporary in nature. On 31.12.2006, a resolution was passed in the Panchayat Council to put up a borewell in Annammedu Panchayat. The second respondent volunteered himself for the work of pump – operator which was only for one or two hours a day.

3.During the month of August, 2008, the second respondent used to switch on the electrical motor and go for his work at Ambattur



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Industrial Estate and there was lot of wastage of drinking water and due to abnormal usage and overrunning of the electrical motor, the same got repaired and the petitioner disengaged the second respondent from 17.10.2008 for a period of 20 days and since he did not submit any reply or apologise for his misconduct the petitioner Management passed a resolution on 12.11.2008 to discontinue his services.

4.On 24.12.2008, the second respondent raised industrial dispute before the Conciliation Officer and after considering the objections of the petitioner Management, the Authority sent failure report to the Government and thereafter the dispute was referred to the first respondent and the same was taken by the first respondent as I.D.No.148 of 2010. Thereafter, the first respondent passed the impugned award directing the petitioner to reinstate the second respondent into service with 50% backwages, continuity of service and all other attendant benefits. Challenging the same, the petitioner has filed this writ petition.

5.The learned counsel appearing for the petitioner submitted that, the second respondent is not a permanent employee. He was



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engaged for one or two hours per day and was paid salary as per the relevant Government Order. However, due to the irregularity committed by the second respondent, the Panchayat was made to pay a sum of Rs.13,800/- as electricity charges for the month of August, 2008, he was temporarily disengaged from 17.10.2008 for a period of 20 days and since he did not submit any reply or apologise for his misconduct the petitioner Management passed a resolution on 12.11.2008 to discontinue his services. However, the Labour Court without considering the lapses on the part of the second respondent mechanically passed the award directing the petitioner to reinstate the second respondent into service with 50% backwages, continuity of service and all other attendant benefits, which is not sustainable one.

6.The learned counsel appearing for the petitioner further submitted that, the Hon'ble Apex Court as well as this Court have in a catena of judgments held that a person is not entitled for backwages for the period when he is not in employment and hence, the second respondent is not entitled for any backwages.

7.The learned counsel appearing for the second respondent submitted that the second respondent was employed as pump



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operator and the service of the second respondent was governed by relevant Government Order and the second respondent was receiving a minimum amount as monthly salary. He further submitted that the excess meter reading recorded by the electricity board cannot be put against the second respondent. Hence, the termination order perverse and the same was rightly set aside by the Labour Court and hence, the impugned award warrants no interference. Once the fact finding Court rendered opinion, the same cannot be interfered with by this Court under Article 226 of the Constitution of India.

8.Heard the arguments advanced on either side and perused the materials available on record.

9.The facts in the present case is not in dispute. Admittedly, the second respondent was employed as pump operator and the service of the second respondent was governed by relevant Government Order and the second respondent was receiving a minimum amount as monthly salary. The second respondent used to switch on the electrical motor and due to the abnormal usage and overrunning of the electrical motor, the Panchayat was made to pay a sum of Rs.13,800/- as electricity charges for the month of August, 2008. Hence, the



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petitioner disengaged the second respondent from 17.10.2008 for a period of 20 days and thereafter the petitioner Management passed a resolution on 12.11.2008 to discontinue his services, which in the considered opinion of this Court is too harsh. However, awarding backwages for the period when the second respondent was not in service is also perverse.

10. In view of the above, this Court modifies the Award of the first respondent dated 09.04.2014 passed in I.D.No.148 of 2010 as follows:

(i) The petitioner is directed to reinstate the second respondent in his original post with continuity of service, within a period of two weeks from the date of receipt of a copy of this order.

(ii) The second respondent is entitled to withdraw the amount of Rs.50,000/- deposited by the petitioner, pursuant to the order of this Court dated 22.04.2016 made in W.P.No.15023 of 2016 along with interest.

(iii) The second respondent is entitled for the gratuity amount for the period during which he worked in the Panchayat and other benefits.

(iv) The second respondent is not entitled for any backwages



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from the date of termination to till date.

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11.In fine, the writ petition is partly allowed. No costs.

Consequently, connected miscellaneous petition is closed.

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

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2.The Block Development Officer,
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M.DHANDAPANI,J.
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