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W.P.No.6236 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

W.P.No.6236 of 2018

and

W.M.P.No.7717 of 2018

The Management,
Mettur Soil Conservation Scheme,
Denkanikottai Road,
Kelamangalam – 635 113,
Dharmapuri District.

... Petitioner

Vs.

1.K.Venkataraman

2.The Presiding Officer,
Labour Court,
Salem.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records relating to the order dated 19.04.2017 passed in I.D.No.975 of 1998 on the file of the Labour Court, Salem and quash the same as being illegal, arbitrary and unconstitutional.

For Petitioner : Mr.M.S.Prem Kumar
Government Advocate

For Respondents : No appearance [R1]
Labour Court [R2]



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ORDER

This Writ Petition has been filed seeking for a Writ of Certiorari, to call for the records relating to the order dated 19.04.2017 passed in I.D.No.975 of 1998 on the file of the Labour Court, Salem and quash the same as being illegal, arbitrary and unconstitutional.

2. The case of the petitioner is that, the first respondent was originally engaged as Plot Watcher on daily wages in the Mettur Soil Conservation Scheme from 01.08.1991 to 22.04.1993 on casual basis as and when need arises. The post of Plot Watcher is not governed by any statutory rules and it is only a casual engagement on daily wages. The first respondent was not engaged continuously from 1991 to 1993 and there is break in his service. After 1993, he was not engaged in the said centre. Aggrieved by the non-engagement, the first respondent raised a dispute before the second respondent/Labour Court in I.D.No.975 of 1998 and the Labour Court passed an award for reinstatement with 25% backwages and continuity of service. Challenging the same, the above writ petition has been filed before this Court.



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3. The learned counsel for the petitioner submitted that, the Forest Department is not an industry as defined under Section 2(j) of the Industrial Disputes Act, 1947 (in short 'the ID Act') and it is only a Forest Division attached to the State Government Forest Department. As per G.O.(D).No.981, Labour and Employment Department, dated 04.10.1991, the first respondent cannot raise any industrial dispute under the ID Act. Further, it is for the first respondent to establish before the Labour Court that he was continuously employed for 240 days in a calendar year. Upon satisfaction, the Labour Court can order for reinstatement. However, in the present case, the first respondent was a casual labour engaged on daily wages whenever need arises and the documents produced by him before the Labour Court is not sufficient to hold that he was in continuous employment of 240 days in a calendar year. Thereby, the first respondent miserably failed to establish before the Labour Court that he was in continuous employment of 240 days in a calendar year. In the absence of any proof, the Labour Court ordered for reinstatement with 25% backwages and continuity of service, which is not sustainable. Accordingly, he prays for allowing the writ petition.



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4. Though the name of the first respondent was printed in the cause list, however, no one appeared on behalf of the first respondent. Considering the pendency of this writ petition, this Court is inclined to dispose of the writ petition based on the available records.

5. The petitioner management admitted that the first respondent was employed from 01.08.1991 to 22.04.1993 on casual basis as and when need arises. Before the Labour Court, the first respondent/workman examined himself as P.W.1 and marked Ex.P.1 to Ex.P.6. A perusal of Ex.P.1, certificate dated 07.08.1990, reveals that the Forest Ranger, Mettur Soil Conservation Scheme, Denkanikottai issued that certificate in favour of the first respondent as if he is employed as Plot Watcher in Denkanikottai Range of Mettur Soil Conservation Scheme, Dharmapuri Division from 01.08.1981. Though the petitioner management claimed that the Forest Ranger is not entitled to issue such certificate in favour of the first respondent, however, the fact remains that the Forest Ranger is the incharge of Mettur Soil Conservation Scheme, in which, the first respondent was employed as Plot Watcher from the year 1981. Hence, he



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is the competent person to issue such certificate with regard to the employment of first respondent. Further, Ex.P.3 is the termination order passed by the Forest Department as against the first respondent. When the petitioner management claimed that the first respondent is not an employee of the petitioner management and his employment is on daily need basis as and when required, this Court is unable to understand what is the necessity for passing termination order as against a daily wage employee, since the petitioner management claimed that he is not a permanent employee. The termination order can be passed only against the permanent employee and not daily wage employee. Thereby, Ex.P.3 also goes against the contention of the petitioner management.

6. Further, Ex.P.6 is the attendance register maintained by the petitioner management, in which, the first respondent name is found, however, the remaining portion of the attendance register are not marked by the petitioner management, even though the petitioner management is in possession of all those documents. It is the duty of the petitioner management to establish the case before the Labour Court by marking the entire attendance register, however, a portion of the attendance register



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was marked at the instance of the first respondent, which itself shows that the first respondent was in continuous employment in the petitioner management. The petitioner management examined R.W.1 and marked Ex.R.1. Except that document, no other document is filed to dis-prove the employment of the first respondent. Therefore, the Labour Court passed an award for reinstatement with 25% backwages and continuity of service, which is a well considered order and the same cannot be interfered with.

7. Therefore, this Court finds no infirmity or illegality in the award passed by the Labour Court and this writ petition is devoid of merits and is liable to be dismissed. Accordingly, this writ petition is dismissed by confirming the award passed by the second respondent/Labour Court in I.D.No.975 of 1998, dated 19.04.2017. No costs. Consequently, the connected miscellaneous petition is closed.

14.09.2023

Index : Yes / No
Speaking order / Non-speaking order
Netrual Citation Case : Yes / No
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To

The Presiding Officer,
Labour Court,
Salem.



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M.DHANDAPANI, J.

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