



W.A.No.1101 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

Writ Appeal No.1101 of 2022

The Commissioner,
Budaloor Panchayat Union,
Budaloor,
Thanjavur District

.. Appellant

Vs.

1. Swaminathan
2. Veeramani
3. The Presiding officer,
Labour Court,
Cuddalore.

4. Nadiammal

.. Respondents

**(R4 substituted as proposed respondent in the place of
deceased vide order dated 23.09.2010 of this Court
in WPMP.No.543 of 2010 in WP.No.26032 of 2004.)**

Writ Appeal filed under Clause 15 of the Letters Patent against the
order dated 07.12.2021 in WP.No.26032 of 2004 passed by the Single
Judge of this Court.

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For appellant : Mr.C.Jayaprakash
For respondents : Mr.V.Ajoy Khose

JUDGMENT

(The Judgment of the Court was delivered by S.VAIDYANATHAN, J)

Today, the Block Development Officer and the Deputy Block Development Officer of Thanjavur District are present before this Court.

2. The present Writ Appeal has been preferred by the Management of Budaloor Panchayat Union, Thanjavur, challenging the order dated 07.12.2021 passed by the learned Single Judge confirming the award dated 12.03.2003 passed by the Labour Court, Cuddalore in I.D.No.51 of 2000, wherein it has been held that the non-employment of the private respondents/employees was bad and that, when there is non-compliance of the provisions of Section 25F of the Industrial Disputes Act, 1947, the employees would be entitled to reinstatement with full back wages and continuity of service and other attendant benefits. The Labour Court has also given yet another reason for justifying the case of the workmen that three new persons have been given employment after disengaging the private respondents/three employees in their place. The Labour Court, in the



Industrial Dispute raised by the workmen questioning the non-employment, has categorically held that Swaminathan joined the service on 23.04.1983; Veeramani joined the service on 26.09.1972 and Rajendran joined the service on 01.11.1982 and they had been continuously working without any break till the afternoon of 10th July 1986.

3. Before the Labour Court, both the parties had produced documents and let in evidence. The Labour Court, after analysing the evidence let in by the parties, came to the conclusion that all the employees concerned in this Appeal had rendered not less than 240 days of service in a calendar year prior to the date of disengagement and that the employer has neither given any intimation nor compensation to the employees before divesting them from the service. So, we make it very clear that the Management witness has categorically admitted that after disengaging these workmen from service on 19.11.1986, Duraikannu, Palani Manikkam and Subramaniam have been employed as Mazdur. Therefore, the contention of the Management that there is no work to these employees was disbelieved by the Labour Court and the Labour Court found that there was no justification on the part of the employer in denying employment to these workmen.



4. Aggrieved by the award of the Labour Court, a Writ Petition was filed in WP.No.26032 of 2004 and the learned Single Judge disbelieved the contention of the Management that the employees concerned have been engaged only on seasonal basis. It was further held that as the employees have completed continuous service of 240 days as contemplated under Section 25B of the Act, non-compliance of Section 25F vitiates the order of termination and non-employment was held to be not justified. Challenging the order of the learned Single Judge, affirming the order of the Labour Court, the present Appeal has been filed.

5. In the present Appeal, the Management has contended that it is not an Industry based on the amended definition. At the threshold, we would like to reject the said contention as the definition of Section 2(j) of the Act, which was sought to be amended in 1982 has not come in to force and the old definition alone is in force. This Court in the case of *The Management of Highways vs. T.Saravanan in Writ Appeal Nos.116 to 122 of 2023, dated 10.01.2023* (in which, one of us was a party) has categorically discussed the legal position as on date and held that the appellant was an



Industry, more so, in the light of the decision in the case of ***Bangalore Water Supply and Sewerage Board Vs. A.Rajappa***, reported in ***1978 (2) SCC 213*** .

6. It is seen that, during the pendency of the Writ Petition, one of the employees viz., Mr.Rajendran died and the fourth respondent has been brought on record pursuant to the order of this Court dated 23.09.2010 in WPMP.No.543 of 2010 in WP.No.26032 of 2004.

7. Across the Bar, Mr.V.Ajoy Khose, learned counsel appearing for the respondents 1, 2 and 4/employees produced working sheets showing the amount of compensation that the employees are entitled to. It reveals that the deceased Rajendran would be entitled to Rs.3,48,642/-; Veeramani would be entitled to Rs.6,92,313/- and Swaminathan would be entitled to a sum of Rs.11,50,841/- as compensation.

8. The amount of compensation quoted by the learned counsel for the respondents/employees has not been disputed by the Management.



However, the counsel appearing for the Management submitted that the last drawn pay of these employees was Rs.420/- per month and that based on the said amount, even assuming that if the employees had rendered 40 years of service, the compensation cannot be not more than Rs.2,00,000/- per individual. He further submitted that as these employees have not produced the date of birth certificate while entering into service, he is not able to ascertain the date of retirement of these employees.

9. The Apex Court, in number of service cases, has held that when there is a violation of 25F of the Act, the employer will have to reinstate the employees with all benefits due to them. Exceptions have been carved out by the Apex Court that in all cases of violation of Section 25F, there should not be an automatic order of reinstatement with back wages and all benefits.

10. In the light of the observations of the Apex Court, more so in the case on hand, all the employees, who had joined service as early as in 1972, 1980 and 1983, respectively, ought to have attained the age of superannuation, out of whom, two employees had retired and one other



employee died even before after attaining the age of superannuation. Taking note of the exceptional circumstances, instead of driving the employees to litigate for computing the amount of compensation under Section 33C(2) of the Act and thereafter, for recovery under Section 33C(1) of the Act, and to shorten the life of the litigation, we are of the view that awarding of compensation of Rs.3,00,000/- to the Legal Heirs of the deceased K.Rajan; Rs.4,50,000/- to A.Veeramani and Rs.6,00,000/- to N.V.Swaminathan would meet the ends of justice and thus, we modify the award. We would like to make it very clear that additional amount of Rs.50,000/- is granted to each of the employees as full and final settlement all terminal benefits including gratuity. As the award has been modified by this Court, we expect the employer to comply with the order of this Court, within a period of three months from the date of the order. In case of non-compliance, it is open to the employees or their legal representatives to make a complaint under Section 29 of the Act for prosecuting them under Section 32 of the Act.

11. The amount already lying in deposit before the Labour Court in I.D.No.51 of 2000, shall be released to the employees forthwith preferably



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within a period of 15 days from the date of production of a copy of this order. The amount of compensation awarded by this Court is inclusive of the amount already lying in deposit in the Labour Court, excluding accrued interest. No costs.

(S.V.N.J.) (R.K.M.J.)
08.02.2023

Speaking Order: Yes / No
pvs

To
The Presiding officer,
Labour Court,
Cuddalore.



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and
R.KALAIMATHI, J

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