



W.P.No.5629 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.5629 of 2019

B.B.Joghee

... Petitioner

Vs.

The Management,
Hatari Tea Industries,
Ithalar, Nilgiris - 643 004.

... Respondent

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in connection with the order passed by the Learned Additional Labour Court, Coimbatore in C.P.No.134 of 2009 dated 05.06.2018 and quash the same and consequently, direct the respondent to disburse the arrears of salary of Rs.1,02,000/- with interest to the petitioner as prayed for in his Computation Petition No.134 of 2009.



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For Petitioner : Mr.V.Sivakumar

For Respondent : No Appearance

ORDER

This Writ Petition has been filed to call for the records in connection with the order passed by the Learned Additional Labour Judge, Coimbatore in C.P.No.134 of 2009 dated 05.06.2018 and quash the same and consequently, direct the respondent to disburse the arrears of salary of Rs.1,02,000/- with interest to the petitioner as prayed for in his Computation Petition No.134 of 2009.

2. The case of the petitioner is that he joined duty with the respondent on 21.09.1992 and he is a permanent employee. On 30.04.2006, he was discharged from service and his last drawn salary was Rs.2,500/- per month. The respondent / management have to pay a sum of Rs.200/- towards annual increment adding to his monthly salary as per the appointment order dated 20.09.1992. However, the respondent had disbursed only Rs.100/- and the remaining Rs.100/- p.m. rest at the hands of the respondent. Hence, he filed a Computation Petition No.134 of 2009, claiming a sum of Rs.1,02,000/- towards arrears of salary. The



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respondent denied the very employment and employee - employer relationship and took up the plea that he was allotted only consultant work, to look after the accounts and to submit the statements before the Authorities and the alleged appointment order was a fabricated one. During the enquiry, the petitioner was examined as WW1 and Exs.W1 to W24 were marked on the petitioner's side. MW1 was examined and Ex.M1 was marked on the respondent's side. After hearing the matter in full, the Learned Presiding Officer, Additional Labour Court, Coimbatore was pleased to dismiss the Computation Petition on 05.06.2018. Against which, the present Writ Petition has been filed.

3. The learned counsel appearing for the petitioner would submit that the order passed by the Learned Additional Labour Judge, Coimbatore, is against law and principle of natural justice. Therefore, it has to be set aside in limini. He would further submit that the Learned Additional Labour Judge has come to a decision that Ex.W-1 is not true and genuine one and thereby held that there was no pre-existing right as contemplated under Section 22(c)(2) of the Industrial Disputes Act, 1947. The said finding is factually not correct on the ground that the



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Ex.M-1 was marked through the petitioner while he was cross examined.

The Ex.W-1 is the typed one and Ex.M1 is a hand written one. The content of both the documents are one and the same. The Ex.M-1 document was under the custody of the Management and the Management alone has produced the same before the Trial Court. Therefore, the appointment order viz. Ex.W-1 and Ex-M-1 has to be taken as a proved document. In such circumstances, the findings of the Learned Additional Labour Judge is illegal, unlawful and and the same is against the proved fact.

4. The learned counsel for the petitioner would further submit that the Learned Additional Labour Judge has come to decision that the continuous service of the petitioner for a period of 14 years is not proved. Such findings is against law and fact. The Management has failed to produce certain vital documents such as Attendance Register, Wage Disbursement Register etc. in spite of call for the documents by the petitioner. The adverse interference has to be drawn only in favour of the petitioner and the Learned Additional Labour Judge took the adverse interference against the petitioner and the same is against law and settled



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legal position of law of presumption.

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5. The respondent has been served with notice, but none appeared for the respondent.

6. I have heard the learned counsel for the petitioner and perused the materials on record.

7. According to the petitioner, in the appointment order issued on 20.09.1992, the respondent had agreed to pay annual increment of Rs.200/- per year along with the salary and other allowance, but instead they paid only a sum of Rs.100/- per year as increment for the entire service of the petitioner. The respondent has denied the same before the Court below by stating that the petitioner had never worked under them either as a temporary worker or as a permanent worker and they never issued any appointment order on 20.09.1992 as alleged by the petitioner and the petitioner has misused the blank letter head containing the signature of the respondent which was given for the purpose of submitting accounts before the concerned office. The respondent has



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further alleged that, only at the age of 55, the petitioner approached them to look after account works and he was given seasonal employment only on humanitarian grounds. It was also alleged by the respondent that it is totally false that the petitioner was paid monthly salary and that a some of Rs.1,02,000/- is due to him towards arrears of wages and no amount has to be paid by the respondent to the petitioner legally.

8. On perusal of the typed set of papers filed by the petitioner, it is true that the petitioner was appointed as a Clerk under the respondent on 21.09.1992 and his monthly salary was fixed at Rs.1100/- along with other allowance and annual increment of Rs.200/- per year. However, the records produced by the petitioner does not show that whether the respondent has to pay the arrears of Rs.1,02,000/- to the petitioner. The documents produced by the petitioner are mostly in handwritten and there is no clear record to show that he had been paid only a sum of Rs.100/- as annual increment in his entire service. Further, why the appointment order produced by him for his proof of employment was not explained which creates doubt. The delay of 17 years is also not explained. The factory roll book produced also does not show light on



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the salary alleged was paid.

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9. It is further seen from the records that the petitioner had joined the service in the year 1992 and was discharged in 2006. He had worked under the respondent for almost 14 years, and during the time, he had not made any claim regarding the annual increment and only in 2009, he has chosen to file a petition claiming the arrears of salary. Moreover, he has not examined any employees or co-workers before the Trial Court to prove that he is entitled for the above arrears. The documents filed by the petitioner only shows his employment under the respondent and there is no further detail regarding the annual increment or arrears of salary as alleged by the petitioner. Therefore, this Court is of the view that the Trial Court was right in dismissing the petition filed by the petitioner for payment of arrears of salary.

10. Accordingly, this Writ Petition is dismissed. No costs.

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Index : yes/no

Internet : yes/no

To

The Additional Labour Court, Coimbatore

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