



W.P.No.6578 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

W.P.No.6578 of 2019

A.Ham Kumar

... Petitioner

Vs.

The Management of
STANADYNE Amalgamations Pvt. Ltd.,
96, Araravoyal Village,
Thiruvallur Taluk,
Thiruvallur District - 602 025.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the Award dated 16.11.2018 made in I.D.No.90/2015 passed by the II Additional Labour Court, Chennai, and quash the same and consequently, direct the respondent to reinstate the petitioner with continuity of service, backwages and with all other attendant benefits.

For Petitioner : Mr.S.Senthilnathan

For Respondent : Mr.G.Ravikumar



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ORDER

Challenging the orders passed by the Presiding Officer, II Additional Labour Court, Chennai in I.D.No.90/2015, the present writ petition is filed.

2.The writ petitioner was engaged as a Trainee on 28.10.2011 to undergo job training and other related work. The training period was for twelve months. On completion of the training period, he was posted as a Technical Assistant - Probationer on 08.10.2013. He was paid basic wages of Rs.4,500/- per month with other allowances like house rent allowance, flexi allowance etc. On completion of probation, the Management terminated the services of the petitioner with effect from 07.10.2014 and served a letter dated 06.10.2014 to the writ petitioner. Thereafter, the petitioner raised an Industrial Dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the I.D. Act") in I.D.No.90/2015 before the Presiding Officer, II Additional Labour Court, Chennai. The Presiding Officer, II Additional Labour



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Court, Chennai, vide her orders dated 16.11.2018, dismissed the petition filed by the present writ petitioner. Aggrieved by the said orders of the Labour Court, the present writ petition is filed.

3. Mr.S.Senthilnathan, learned counsel appearing for the writ petitioner contended that the Labour Court had dismissed the claim of the petitioner without taking into account the fact that the petitioner had worked continuously for a period of 240 days and that the Management, without complying with the provisions envisaged under Section 25F of the Industrial Disputes Act, had terminated the services of the petitioner. He also relied on the decision of the Hon'ble Supreme Court in "**State Bank of India Vs N.Sundaramoney**" reported in "**(1976) 1 SCC 822**" and contended that if the workman swims into the harbour of Section 25F, he cannot be retrenched without payment of compensation at the time of retrenchment as prescribed therein read with Section 25B(2) and that the order of appointment, which bears in its bosom the "good bye" to the employee after a few days, calls for construction in the light of Section 2(OO) and Section 25-F of the Industrial Disputes Act. He also



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relied on the decision of the Single Judge of this Court in W.P.No.9925/2007 and contended that when a casual employee had worked continuously for 240 days his services cannot be dispensed with as is done in the present case.

4. Per contra, Mr.G.Ravikumar, learned counsel appearing for the respondent contended that as per the terms and conditions of the contract of employment between the petitioner and the respondent, there is no guarantee of confirmation of service as an employee on successful completion of the probation period or any extension thereof. He would also contend that since the probationers would not come under the purview of Section 2(s) of the I.D. Act, he cannot stake any claim by raising dispute before the Labour Court under the Industrial Disputes Act.

Section 2(s) of the Act is extracted hereunder :

"workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or



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reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person--

5. A cursory look of the definition of Section 2(s) clearly would go to show that a probationer would not come within the purview of workman under Section 2(s) of the Act. In the instant case, the writ petitioner was initially appointed as a Trainee to undergo job training and the relevant portions of the Training order is extracted hereunder :

"With reference to your application seeking opportunity of training as a Trainee in our organisation and your subsequent interview, we are pleased to take you as a TRAINEE on the following terms and conditions:

- 1. You will be engaged as a Trainee to undergo on the job training and the related work.*
- 2. Your training period shall initially be for a period of TWELVE months from 28.10.2011. This period of training*



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may be extended upon your request and at the discretion of the Company for any further period or periods, to enable you to learn the work, on such conditions as may be specified.

.....

7. While there is no guarantee of regular employment to be offered to you on completion of the training period or any extension thereof, the Management might consider your case for regular employment for any vacancy on such terms and conditions as may be agreed upon. It should be noted that employment in this Company cannot be claimed as a matter of right.

.....

In token of agreement, acceptance and having understood the conditions of your training, please sign and return the copy of this letter."

Subsequently, he was posted as Technical Assistant - Probation on 08.10.2013 with the following conditions :

"With reference to your application mentioned above seeking opportunity for rendering services in our organisation, we are pleased to take you as a Technical Assistant - Probation with effect from 08.10.2013 on the following terms and conditions:



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1. *You will be engaged as a Technical Assistant - Probation to render your services to our organisation.*
2. *Your probationary period shall initially be for a period of ONE year from 08.10.2013. This period of probation may be extended upon your request and at the discretion of the Company for any further period or periods, on such conditions as may be specified.*

.....

In token of agreement, acceptance and having understood the conditions of your probationary services, please sign and return the copy of this letter."

6. On completion of the probation period the petitioner was served with a letter dated 06.10.2014 terminating his services, which reads as follows :

"This is to confirm that consequent to the expiry of the period of probation on 07.10.2014 your employment with us will cease on that day. However, you may stay in touch with us as often as possible, so that as and when opportunity arises, we will consider you for a suitable post.

You should appreciate that while you have invested your time and knowledge, we have also invested



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You may contact our Accounts department regarding your settlement of accounts on any working day during working hours."

From the above said letter it is evident that upon expiry of the period of probation the employment of the petitioner with the respondent was severed and the notice mandated under the Act has also been issued to the petitioner in lieu of the payment of wages. The contention of the learned counsel for the writ petitioner is that since the petitioner had worked continuously for a period of 240 days his services cannot be terminated without following the mandatory provisions of Section 25F of the Act.

7. As already observed the petitioner is not a workman as per the definition of Section 2(s) of the Act. A careful perusal of the letter of appointment of the petitioner as a Technical Assistant - Probation, reveals that the petitioner has been put in probation for a period of 12



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months, unless and until his services are extended by the respondent. The terms of employment also clearly stipulates that the service of the probation would be extended at the discretion of the Management. In such circumstances the present petitioner cannot be brought within the ambit of Section 2(s) of the Act. Moreover, the contract between the petitioner and the respondent stood terminated and it was not extended by the employer and therefore, the service of the petitioner had come to a close due to efflux of time. In the circumstances, the petitioner cannot stake any claim for getting regular employment as a matter of right. The Labour Court after considering all these aspects had dismissed the petition filed by the present writ petitioner and by no stretch of imagination, the same can be termed as perverse.

8. In the result, this Writ Petition is dismissed. No costs.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order

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R. HEMALATHA, J.

mtl

To

The Management of
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