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W.P.Nos.24359 to 24372 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.24359 to 24372 of 2016

1.The Superintendent,
Railway Mail Service,
RMS - 'M' Division,
Chennai - 600 008.

2.The Sub - Record Officer,
RMS - 'M' Division,
Gandhi Nagar,
Vellore - 632 006.

... Petitioners in W.P.24359/2016

Vs.

1.R.Vidhya

2.The Presiding Officer,
Central Government Industrial Tribunal -
Cum - Labour Court,
Chennai.

W.P.24359/2016

... Respondents in

Prayer in W.P.No.24431 of 2019:

Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the second respondent relating to Common Award dated 28.01.2016 made in I.D.No.17 of 2014 and quash the same as illegal.



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W.P.Nos.24359 to 24372 of 2016

For Petitioners : Mr.AR.L.Sundaresan
Additional Solicitor General
Assisted by Mr.C.Samivel
SPCGC

For Respondents : Mr.V.Ajoy Khose for R1
R2 – Tribunal

COMMON ORDER

Since the issue involved in these writ petitions are one and the same, they are heard together and disposed of by way of a common order.

2.The case of the petitioners is that the respective first respondent raised industrial dispute before the second respondent tribunal on the ground whether the action of the Management of RMS – M Division, Chennai regarding termination of their service without following the provisions of Section 25 (F) of the Industrial Disputes Act is justifiable or not and if not, to what relief they are entitled for and the second respondent passed award directing the petitioners to re-engage the respective first respondent or pay compensation at Rs.2Lakhs to each of them at their option within a time frame. Aggrieved by the same, the petitioners have filed these writ petitions.



W.P.Nos.24359 to 24372 of 2016

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3.The learned Additional Solicitor General appearing for the petitioners submitted that normally outsiders are engaged in RMS – M Division, Chennai and Vellore to manage the shortfall in vacancies for sorting work, cleaning etc., in the interest of public whenever the volume of mail is on higher side. The respective first respondent claim that they are employed throughout the year with change in time and the work is permanent and perennial in nature and the main work is sorting of mails category wise. The second petitioner started employing temporary sorting assistants like the respective first respondent to carry out the work rather than filling up the permanent vacancies and they were dis-engaged from work. Thereby, they raised industrial dispute before the second respondent.

4.The learned Additional Solicitor General appearing for the petitioners further submitted that the claim of the respective first respondent is *per se* illegal and in-correct. Whenever, the regular employees not attend duty, the respective first respondent were engaged and they were engaged only for few days. Further, the respective first respondent were not dis-engaged from duty but they are voluntarily not attending duty. Unless a temporary employee



W.P.Nos.24359 to 24372 of 2016

render service for 240 days continuously in a calender year, reinstatement is impermissible, however, the respective first respondent are only outsider sorting assistants and not temporary sorting assistants. Hence, the impugned award is outside the scope of Industrial Dispute and is not sustainable one.

5.The learned counsel appearing for the respective first respondent submitted that the respective first respondent were engaged in the petitioners Management on par with the regular employees though the petitioners claim that they were engaged whenever a regular employee not attended duty. The respective first respondent were engaged continuously for more than 240 days in a calender year. The dispute was initially raised before the Assistant Labour Commissioner (Central), Chennai who on failure of conciliation sent failure report to the Central Government and upon satisfaction, the Central Government referred the dispute to the second respondent. Thereafter, the second respondent elaborately considered the issue and passed award in favour of the respective first respondent which needs no interference.

6.The learned counsel appearing for the respective first



W.P.Nos.24359 to 24372 of 2016

respondent further submitted that the respective first respondent are ready to forgo the backwages during the non employment period if the Management come forward to provide work as outsider sorting assistants till the age of 60 years.

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

8.The respective first respondent were employed on shift basis with the petitioners Management as outsider sorting assistants and they worked along with the permanent sorting assistants and on instructions they were dis-engaged. Thereby, they raised dispute before the Assistant Labour Commissioner (Central), Chennai and on failure of conciliation, failure report was sent to the Central Government and the Central Government referred the dispute to the second respondent.

9.The second respondent tribunal considered the issue on the ground whether the action of the Management of RMS – M Division, Chennai regarding termination of the service of the respective first respondent without following the provisions of Section 25 (F) of the



W.P.Nos.24359 to 24372 of 2016

Industrial Disputes Act is justifiable or not and if not, to what relief they are entitled for and passed award directing the petitioners to re-engage the respective first respondent or pay compensation at Rs.2Lakhs to each of them at their option.

10.The petitioners did not dispute with regard to the employment of the respective first respondent in RMS – M Division, Chennai and Vellore, however, they contend that the respective first respondent were engaged as outsider sorting assistants, whenever, regular employee went on leave and they were not continuously employed for 240 days in a calender year. Further the petitioners contend that the respective first respondent were not dis-engaged from duty but they are voluntarily not attending duty and they raised industrial dispute. When such being the plea raised by the petitioners Management, there is no legal impediment for the petitioners to engage the respective first respondent as outsider sorting assistants. Further the respective first respondent have come forward to forgo their backwages.

11.In view of the above, the petitioners Management are directed to engage the respective first respondents as outsider



W.P.Nos.24359 to 24372 of 2016

sorting assistants continuously till they attain the age of 60 years without backwages and 17b wages.

12. These writ petitions are dismissed with the above observations. This Court hopes that the petitioners' Management will engage the respective first respondent minimum for about 18 to 20 days per month and will provide necessary entry pass to them. No costs. Consequently, the connected miscellaneous petitions are closed.

21.08.2023

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

To

1. The Presiding Officer,
Central Government Industrial Tribunal –
Cum – Labour Court,
Chennai.



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M.DHANDAPANI,J.
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24372 of 2016**

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