



W.P.No.9051 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2023

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

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R. Manikandan

.. Petitioner

Versus

1. The Wildlife Warden
Conservator Office
Mudumalai Wild Life Sancturary
and National Park,
Tamil Nadu Forest Department,
Udhagamandalam, The Nilgiris.

2. The Forest Range Officer
Mudumalai Wild Life Sancturary and
National Park, Mudumalai Range
Kargudi Post, The Nilgiris.

.. Respondents

Prayer: This Writ petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus calling for the records



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pertaining to the Award dated 20.08.2018 passed by the Additional Labour Court, Coimbatore in I.D.No.6/2011 quash the same in so far as denying and depriving the petitioner re-instatement, with continuity of service, back wages and other attendant benefits and the findings in this regard and consequently direct the respondent to reinstate the petitioner with continuity of service, back wages and all other attendant benefits and to regularize petitioner's service in the post of Anti-Poaching Watcher as done in the case of other schedule hill tribes like the petitioner.

For Petitioner	: Mrs. V. Porkodi for M/s R.Krishnaswamy
For Respondents	: Mrs. Akila Rajendran Government Advocate

ORDER

This writ petition is filed to issue a writ of Certiorarified Mandamus calling for the records pertaining to the Award dated 20.08.2018 passed by the Additional Labour Court, Coimbatore in I.D.No.6/2011 quash the same in so far as denying and depriving the



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petitioner re-instatement, with continuity of service, back wages and other attendant benefits and the findings in this regard and consequently direct the respondent to reinstate the petition with continuity of service, back wages and all other attendant benefits and to regularize petitioner's service in the post of Anti-Poaching Watcher as done in the case of other schedule hill tribes like the petitioner.

2. The case of the petitioner is that he was an employee in the second respondent organization as Anti Poaching Watcher. He worked continuously without any break-in-service on the assurance made by the second respondent that his services will be regularized and permanent status will be given to him. Whiles it was to the shock and surprise to the petitioner that the second respondent has terminated his services on 15.06.2007 for which the petitioner made a representation to the first respondent on 08.08.2007 and also issued a legal notice on 25.09.2007. The second respondent sent a reply on 29.11.2007 wherein certain allegation are made such as the petitioner was absented himself frequently and committed insubordination. However, no enquiry was conducted and terminated by the respondents before terminating the



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services of the petitioner, which is illegal. Therefore the petitioner raised an industrial dispute in I.D.No.06 of 2011 to re-instate him into service with continuity of service with full back-wages and other attendant benefits and the same was dismissed on 20.08.2018, However directed directing the respondents to pay a sum of Rs.50,000/- as compensation to the petitioner. Challenging the same the petitioner has filed this writ petition.

3. The learned counsel for the petitioner submitted that the petitioner has continuously worked in the respondent organization for more than three years and he was qualified to confirm permanent status and his request to regularize his services was also not considered by the Management. He also submitted that the Labour Court erred in dismissing the petition and directed to pay compensation at Rs. 50,000/-. He further submitted that the petitioner was not a contract employee as alleged and he was a direct employee and the labour Court in this aspect was also held that the petitioner is a workman within the meaning of Section 2(s) of the I.D. Act. He further submitted that the High Court of Kerala had passed an order that for irregular appointments Section 25F



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will not apply and the same was set aside in the Judgment passed by the

Hon'ble Supreme Court in the case of K.V. Anil Mithra and another vs

Sree Sankaracharya University of Sanskrit and another in C.A.No.

9067 of 2014 and the relevant portion is extracted hereunder:

36. At the same time, the finding which has been recorded by the learned Single Judge and confirmed by the Division Bench of the High Court in the impugned Judgment that if the appointment has not been properly made after going through the process of selection as provided under the statutory rules/Ordinance as the case may be, if such irregular appointments are being terminated, Section 25F will not apply to a case of termination of such appointed employees. The view expressed by the High Court in the impugned Judgment, in our considered view, is unsustainable in law and is not in conformity with the scheme of the Act, 1947 and deserves to be set aside.

4. The learned Government Pleader appearing for the respondents would submit that the petitioner does not come under the purview of the Industrial workman and as such Industrial Dispute against the Forest Department is not maintainable. She further submitted that no employment was offered to the petitioner by any specific order and he is



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only a contractor who cannot claim any right over his employment. He further submitted that the petitioner has entered into an agreement only with the immediate contractors who had hired the petitioner and no direct employer-employer vinculum juris exists between the petitioner and the second respondent.

5. Before the Tribunal on the side of the petitioner one witness was examined and Ex.P.1 to P.16 were marked. On the side of the Respondent one witness was examined and four exhibits were marked.

6. On going through the averments of the petitioner as well as counter statement filed by the respondents it is seen that the petitioner was employed as Anti-Poaching Watcher on 07.06.2004 with a salary of Rs.2,100/- per month and he was terminated on 15.06.2007. On perusal of records it is seen that there is no proof or any material to show that the petitioner has offered employment by the second respondent. Further more there is no I.D.Card or any other material which would establish that the petitioner has provided employment and he has worked in the organization.

7. Before adverting further it would be relevant to extract



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Section 25F in the Industrial Disputes Act, 1947

25F. Conditions precedent to retrenchment of workmen. No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazettee.

8. To arrive at a conclusions two aspects needs to be analysed.

Firstly whether the appointment of the petitioner is as per the existing rules and secondly whether Section 25-F will apply for termination of the employee or not.

9. With regard to point No. 1, the petitioner has not issued with any appointment order and he was an temporary worker and the wages was also paid then and there. Furthermore there is no material or evidence such as I.D.Card, pay slip etc., to prove that the petitioner had worked



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in the second respondent organization. Hence it is concluded that the petitioner does not come under the provisions of the Industrial Dispute Act, 1947.

10. With regard to point No.2 whether Section 25-F needs to be +applied for termination of the employee or not. As the petitioner does not come under the provisions of the Industrial Dispute Act, 1947, application of Section 25-F does not arise.

11. For the foregoing reasons this petition is dismissed. No order as to costs. However, the respondents are directed to pay a compensation of Rs.50,000/- as awarded by the Tribunal with 6% interest from the date of petition till the date of payment within a period of three months from the date of receipt of a copy of this order.

14.06.2023

Speaking order : Yes/No
Neutral citation : Yes/No
Index : Yes/No
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To

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Mudumalai Wild Life Sancturary
and National Park, Tamil Nadu Forest Department,
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V.BHAVANI SUBBAROYAN, J.

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