



W.P. Nos.20267/2023, Batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
14.09.2023	22.09.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS. 20267, 20283, 20281, 20278, 20273, 20420, 20476, 20479, 20483, 20484, 20491, 21149, 21152, 21155, 21157, 21159, 22072, 22078, 22080, 22074, 22084, 22819, 22825, 22821, 22826, 24620, 24637, 24645, 24642, 24634, 25635, 25636, 25640, 25639 & 26111 OF 2023

AND

W.M.P. NOS.19628, 19626, 19621, 19613, 19604, 19794, 19864, 19866, 19868, 19869, 19876, 19877, 19878, 19879, 19888, 19889, 20546, 20547, 20548, 20550, 20551, 20552, 20553, 20554, 20557, 20558, 21460, 21462, 21471, 21472, 21473, 21476, 21466, 21467, 21481, 21482, 22283, 22281, 22291, 22292, 22284, 22285, 22293, 22294, 24056, 24057, 24078, 24079, 24088, 24090, 24084, 24085, 24072 & 24074 OF 2023

W.P. NO. 20267 OF 2023

The Management
Salem Co-operative Sugar Mill Ltd.
Managing Director
Mohanoor 637 015, Namakkal Dist.

.. Petitioner

- Vs -

G.Sivakumar

.. Respondent



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WEB COPY W.P. No.20267 of 2023 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records relating to the impugned award dated 26.10.2022 made in I.D. No.2 of 2015 on the file of the Hon'ble Labour Court, Salem and quash the same.

For Petitioners : Mr. R.Bala Ramesh in all WPs

For Respondents : Mr. V.Udayakumar for R-1 in
WP Nos. 20267, 20283, 20476,
20483, 20491, 21159/2023
Mr. S.Sivakumar for R-1 in WP
Nos.20281, 20278, 20273,
20479, 20420, 21149, 21152,
21157, 22072, 22078, 22080,
22074, 22084, 22819, 22825,
22826, 24620, 24637, 24645,
25635, 25636, 25640 &
25639/2023
No Appearance in WP
Nos.30484 & 22821/2023
No Ready in Notice in WP
Nos.21115, 24642 & 24634/23

COMMON ORDER

Assailing the award passed by the Labour Court directing reinstatement of the workmen along with backwages and continuity of service, the present writ petitions have been filed by the Management.



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2. For brevity, the petitioner will be referred to as Management and the respondents would be referred to as workmen.

3. The gist of the case of the Management is that it is a sugar mill which is a seasonal unit, which functions according to the availability of sugarcane, which is dependent upon monsoon and cultivation and also supply from the various agriculturists. It is the further case of the Management that it employs three types of employees, viz., permanent employees, who work right through the year, seasonal workmen, who work only during the crushing season and laid off during non-crushing season and paid retaining allowance during such period and a small number of casual workmen on Nominal Muster Roll, who are engaged only during the crushing season on need basis without any tenure of employment.

4. It is the further case of the Management that the services of the casual workers is dispensed with once the sugarcane crushing activities are completed and this has been regular practice being followed in all seasonal establishment, including the petitioner herein. It is the further case of the



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Management that initially the workmen were employed on daily wage basis in the sugar mill from the year 2007 only during crushing season and as and when required and that the said workmen were not appointed through any employment exchange and are not possessed of the requisite educational qualification to be regularised as permanent employee. Further, the workmen have also not worked continuously for more than 240 days in a period of 12 calendar months.

5. It is the further case of the Management that the workmen filed a claim petition before the Joint Director of Industry Safety and Health, authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status) Act, 1981 seeking regularisation on the ground that they have worked in the Sugar mill for more than 480 days in 24 consecutive months, and the authority had passed orders directing the Management to regularise the workmen. Against the said order, the Management preferred W.P. No.7754/2015, which was dismissed on 28.02.2023 against which writ appeal has been filed and is to be numbered.



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6. It is the further case of the Management that the Salem Cooperative Sugar Mill National Workers Union filed claim petition before the Deputy Chief Inspector of Factories, the authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status) Act, 1981, seeking regularisation of 37 workers on the ground that they have worked for more than 480 days in 24 calendar months, which petition was ordered in favour of the workmen on 24.6.2009 with a direction to the Management to regularise the said 37 workers. Against the said order, the Management preferred W.P. No.14971/09, which was dismissed by this Court on 31.10.2011. Thereafter, the seniority list of the daily wagers as on 1.10.2012 was published and objections were called for with regard to 100 daily wagers and the workmen, who are the respondents in the present petitions, their names find place in the said list. Though the workmen concerned in the present writ petitions were called upon to report for duty by publishing their names in the notice board, however, they did not report for duty nor made any objections to the seniority list, which list was finalised on 21.03.2013 and based on the persons, who had reported for duty, 71 casual labourers were regularised.



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7. It is the further case of the Management that the workmen, after a long lapse of about three years raised industrial dispute before the Labour Court seeking reinstatement, continuity of service along with backwages, which is wholly unsustainable, as there was no employer-employee relationship between the Management and the workmen. It is the further case of the Management that the seniority list was published after scrutinizing the objections made and the workmen herein, not having made any objections and also reported for duty, cannot raise any industrial dispute, and the award passed without appreciating the aforesaid facts, the petitioner has come before this Court by filing the present petitions.

8. Learned counsel appearing for the Management submits that the Cooperative Societies Act is a special enactment and appeal remedy is available u/s 153 of the Act, raising an industrial dispute is not sustainable. It is the further submission of the learned counsel that when the oral dismissal order dated 11.12.2013 had been accepted by the workmen, the award directing reinstatement is wholly erroneous.



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9. It is the further submission of the learned counsel that as per the ratio laid down by the Apex Court in ***State of Karnataka – Vs – Umadevi (2006 (4) SCC 1)***, a casual labour is not entitled for backwages and in the present case, reinstatement also cannot be ordered as the seniority list published by the Management has been suppressed by the workmen when seeking for reinstatement.

10. It is the further submission of the learned counsel that the Labour Court committed an error in construing that regularisation is based on the order of this Court in W.P. No.14791/09, but in fact, the Management had drafted the seniority list and had called upon the casual labourers for objection and, therefore, no objection having been raised by the workmen herein, they are not entitled to seek for reinstatement. Therefore, the award passed without appreciating all the aforesaid facts, the award requires to be interfered with.

11. Per contra, learned counsel appearing for the respective workmen submitted that the workmen had worked for more than 240 days in 12



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calendar months and 480 days in 24 calendar months, which fact has been appreciated by the Joint Director of Industry Safety and Health, the authority under the Conferment of Permanent Status Act which authority has directed regularisation of the services of the workmen.

12. It is the further submission of the learned senior counsel that the oral termination alleged to have been made by the Management is nothing but a tool to deny the workmen of the right of regularisation, which has been granted to them and the stand of the Management that the workmen have not reported for duty, which resulted in the termination of the workmen is nothing but an attempt to showcase that it was the workmen who had not turned up for work.

13. It is the further submission of the learned counsel that certain of the employees, whose names were found in the seniority list prepared pursuant to the order passed by this Court, they were later in point of time regularised in service which shows that regularisation is granted to the



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employees on pick and choose method by the Management at its whims and fancies.

14. It is the further submission of the learned counsel that the Labour Court had threadbare analysed the oral evidence of the witnesses coupled with the documentary evidence and had come to the right conclusion that the non-grant of regularisation to the workmen, inspite of the fact that they were directed to be regularised, the Labour Court had passed the award, which cannot be said to be erroneous or perverse and, therefore, no interference is warranted with the same.

15. This Court gave its anxious consideration to the submissions advanced by the learned counsel on either side and perused the materials available on record.

16. There is no quarrel about the fact that the workmen, who are the respondents in the present petitions are casual labourers, who were employed by the Management for the crushing activities in the sugar mill. It is



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also borne out by record that the petition filed by the workmen before the authority for conferment of permanent status had resulted in an affirmative order in favour of the workmen directing the Management to regularise the services of the workmen and the writ petition filed against the said direction has since been dismissed. Though it is claimed that an appeal has been filed, however, as on date, there is no interim order and resultantly the benefit as on date is with the workmen who are armoured with an order passed by this Court.

17. It is even the admitted case of the Management that the petition filed by the Union even way back in the year 2009 claiming permanent status for the workmen, who were employed as casual labour, resulted in an order for regularisation being passed by the authority for conferment of permanent status and the writ petition challenging the said order has also been dismissed and the said order has attained finality. It is even the admitted case of the Management that based on the said order, the casual labourers were identified and a seniority list was prepared and published on which objections were called for in which the workmen herein have not raised any objection.



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But the fact remains that the workmen concerned in this writ petitions, their names find place in the seniority list.

18. Be that as it may. In the dispute raised before the Labour Court, the Management had examined M.W.1, who in cross examination has deposed that there was an order in favour of the workmen passed by the Authority for Conferment of Permanent Status. In fact, it is the deposition of the M.W.1 that based on the order passed by the Authority for Conferment of Permanent Status, the workmen were regularised vide the order dated 1.6.2017. The Labour Court, based on the detailed evidence of M.W.1 had gone on to hold that many persons, even excluding the workmen herein, were inducted into employment and regularised in service without any orders from the Labour Court as well as this Court and, therefore, the Labour Court had negated the stand of the Management that the workmen herein were not employed in accordance with law and, therefore, they would not be entitled to invoke the provisions of the Industrial Disputes Act is wholly flawed.



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19. A careful perusal of the materials available on record reveal that while the workmen were alleged to have been regularised in service way back in the year 2017 and that they have not reported for duty, which resulted in the termination of the said workmen, as alleged by the Management, however, the said contention is not substantiated by any materials whatsoever. Further, it is also not evident from the materials that the termination of the workman was preceded by notice and also provided with compensation. Though it is the claim of the Management that the workmen did not report for duty on their own accord, however, to substantiate the same, no material whatsoever has been placed. Therefore, the Labour Court has come to the right conclusion that the termination of the workmen were not done in accordance with law and, necessarily the said termination is liable to be interfered with.

20. When the Management, all along in their effort to curtail the benefit of regularisation to the workmen herein, which has been negated by the statutory authorities, thereby granting permanent status to the workmen and also ordering regularisation of their services and also this Court had



accepted the said finding and had dismissed the case of the Management, the present attempt of the Management is nothing but an effort to scuttle the benefit granted to the workmen by the statutory authority as confirmed by this Court and the act of alleged non-reporting for duty leading to the termination of the workmen is nothing but a story concocted by the Management to prevent the workmen from being regularised.

21. Further, the termination of the workmen is wholly unsustainable as none of the provisions of the Labour Laws have been followed while terminating the service of the workmen. Only to safeguard the workmen from unfair labour practice, including acts of termination or dismissal, the Labour Laws provide for the mechanism to do away with the services of the workmen. However, even according to the Management, the termination of the workmen was made orally and no proper reason for the said termination had been attributed. However, what is writ large on the record is the fact that in Ex.M-19, the attendance register pertaining to November, 2013, against the names of the workmen herein, there is a clear marking that the said workmen shall not be taken for work. The vindictive mind of the Management is



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evident from the said marking, which the Management is not able to explain and coupled with the order of termination, it is clear that all is not well with the termination of the workmen. The Labour Court has elaborately dealt with the issue and had granted the benefit of reinstatement in favour of the workmen, which is based on sound and justifiable reasoning and the said finding does not require any interference at the hands of this Court. Therefore, the workmen herein are entitled to regularisation as ordered by the Labour Court.

22. Now the next issue which requires determination is with regard to the direction of the Labour Court ordering reinstatement of the workmen with continuity of service and backwages.

23. The order of the Labour Court granting reinstatement to the workmen herein from the date of their termination is just and proper and no interference is warranted with the same. However, at the same time, it should not be lost sight of that the petitioner industry is a seasonal industry, which is operable during the period when sugarcane is cultivated and



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available. The whole functioning of the petitioner industry is based on cultivation and monsoon. Therefore, it cannot be ruled out that the petitioner industry is a seasonal industry and its crushing operations would only be available subject to the availability of raw materials, viz., sugarcane.

24. Keeping in mind the nature of the industry of the petitioner and it is dependent upon variable factors, which are beyond the control of the petitioner industry, this Court is of the considered view that while the workmen herein are entitled for reinstatement and regularisation of their services with continuity of service from the date of their termination, however, to meet the ends of justice to either side keeping in mind that it causes no injury to either side and at the same time it works benefit to both the parties, importing the concept of '*No Work – No Pay*', this Court holds that the workmen would not be entitled to backwages as ordered by the Labour Court.

25. In the result, the writ petitions are disposed and the award passed by the Labour Court stands modified and the petitioner/Management is



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directed to reinstate the workmen herein in service and provide them with continuity of service from the date of their termination. However, the workmen would not be entitled for receiving any backwages. Consequently, connected miscellaneous petitions are closed.

22.09.2023

Index : Yes / No

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To

The Presiding Officer
Labour Court
Salem.



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M.DHANDAPANI, J.

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**PRE-DELIVERY ORDER IN
W.P. NOS.20267 OF 2023,
ETC. BATCH**

**Pronounced on
22.09.2023**



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