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W.P.No.16897 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.16897 of 2017

And

**W.M.P.Nos.18363 of 2017 and 15887,
15895, 15898 and 15907 of 2021**

The Managing Director,
Pondicherry Industrial Promotion Development
& Investment Corporation Ltd.,
No.60, Romain Rolland Street,
Puducherry.

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Puducherry.

2.T.Gopu

3.B.Arul Jothy

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to the Award dated 04.01.2017 made in I.D.No.37 of 2013 on the file of the first respondent and quash the same.



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For Petitioner : Ms.Akshaya
for M/s.D.Ravichandar

For Respondents : R1 – Labour Court
Mr.Sai Sriyan Tayi for R2 and R3
for M/s.Giridhar and Sai

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari calling for the records relating to the Award dated 04.01.2017 made in I.D.No.37 of 2013 on the file of the first respondent and to quash the same.

2.The case of the petitioner is that the Government of India had provided funds to the Government of Puducherry for implementation of SEZ. In turn the Government of Puducherry entrusted the said funds with the Nodal Agency – the petitioner Corporation for distribution/ payment to other bodies, including Land Acquisition Cell for carrying out the works assigned to them. The Land Acquisition Cell had drawn officers and employees from the Revenue Department on deputation basis and no power or authority was conferred on the Land Acquisition Cell to appoint or engage any other person by any other method including casual and daily rated basis.



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3.The further case of the petitioner is that inorder to meet the exigencies arisen in the land acquisition proceedings, the Land Acquisition Cell on its own engaged the respondents 2 and 3 on casual and daily rated basis. The Land Acquisition Cell acquired the lands for setting up SEZ on 31.03.2012 and automatically it got wound up and not in existence from the said date. The officers and employees drawn on deputation basis were repatriated to their parent department and the engagement of the respondents 2 and 3 also came to end on 31.03.2012.

4.The further case of the petitioner is that the petitioner as a Nodal Agency for SEZ had not engaged the respondents 2 and 3 and hence, the petitioner was not the employer of respondents 2 and 3. However, the respondents 2 and 3 raised industrial dispute before the first respondent under Section 33 of the Industrial Disputes Act praying to reinstate them with backwages, unpaid wages from August 2012 and to direct the petitioner to regularize them as though they had joined as daily rated casual labour under the petitioner on 01.06.2005 for the emolument as per the revision of pay maintained by the Government of Pondicherry. The first respondent passed award



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dated 04.01.2017 ordering that the respondents 2 and 3 are entitled for reinstatement with continuity of service and 30% backwages till their reinstatement. Challenging the same, the petitioner has filed this writ petition.

5.The learned counsel appearing for the petitioner submitted that the petitioner as a Nodal Agency for SEZ had not engaged respondents 2 and 3 and hence, the petitioner was not the employer of respondents 2 and 3. The Land Acquisition Cell on its own engaged respondents 2 and 3 on casual and daily rated basis. The Land Acquisition Cell acquired the lands for setting up SEZ on 31.03.2012 and automatically it got wound up and not in existence from the said date and the engagement of the respondents 2 and 3 also came to end on 31.03.2012. Thereafter, the respondents 2 and 3 were engaged as CLRs in the petitioner from 13.08.2012 only on humanitarian ground and after 30.09.2012, they did not turn up for work. The Respondents 2 and 3 have not marked any document to substantiate that they have worked under the petitioner for more than 240 days continuously in a calender year.

6.The learned counsel appearing for the petitioner further



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submitted that as per Clause 3, 6 and 12 of the Puducherry Casual Labourers (Engagement and Regularisation) Scheme, 2009, the Scheme is applicable to all casual labourers, except those charged to specific works or schemes, working in departments of the Government of Puducherry and their attached subordinate offices, subject to their eligibility as per the provisions of the scheme; engagement of casual labourers may be done only for work which is of casual, seasonal or intermittent in nature or for work which is not of a full time nature or for which regular posts cannot be created and wherever absorption is provided as a method of recruitment in the recruitment rules, the vacancies existing in the relevant post as on the date of notification of the scheme shall be filled up by absorption of eligible full time casual labourers from the list of concerned department. In the present case, the respondents 2 and 3 are not full time casual labourers as per the scheme and they are not entitled for regularisation.

7.The learned counsel appearing for the respondents 2 and 3 submitted that the respondents 2 and 3 are employees of the petitioner. They were engaged by the Revenue Department and were sent on deputation basis for SEZ project. Once the project is over, it is the duty of the petitioner to send back the workers, however, in the



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present case, the same was not done. Thereby, the respondents 2 and 3/ workmen raised industrial dispute before the first respondent.

8.The learned counsel appearing for the respondents 2 and 3 further submitted that the respondents 2 and 3 received the salary without any dispute from 01.06.2005 to 01.07.2012 and in the month of August, 2012 the Senior Manager of the petitioner demanded a sum of Rs.1,50,000/- as bribe for regularizing the respondents and since the respondents 2 and 3 refused to give the demanded bribe amount, the petitioner stopped the salary from the month of August, 2012. The learned counsel further submitted that the respondents 2 and 3 were terminated from service without any notice.

9.The learned counsel appearing for the respondents 2 and 3 further submitted that the respondents 2 and 3 were in employment from 01.06.2005 to 01.07.2012, continuously for a period of seven years and hence they are entitled for reinstatement. Several persons who were engaged as casual labourers were regularised in service, however, the service of the respondents 2 and 3 were not regularised and hence, this Court may grant liberty to the respondents 2 and 3 to work out the remedy for regularisation in service.



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

11. Though the petitioner claim that once the SEZ project was over on 31.03.2012 the engagement of the respondents 2 and 3 also came to end, the petitioner has not taken any steps to repatriate them to the parent department i.e., revenue department and has engaged respondents 2 and 3 as casual labourers. Further the petitioner Management did not produce any closure scheme. In the absence of any closure scheme, since the respondents 2 and 3 have worked for more than 240 days in a calender year continuously, they are entitled for reinstatement. Hence, this Court is not inclined to interfere with the impugned award.

12. The writ petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

14.08.2023

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

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M.DHANDAPANI,J.
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To

1.The Presiding Officer,
Labour Court,
Puducherry.

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