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W.A. No.2840 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN
and
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.A. No.2840 of 2022

S. Dharmaraj

Appellant

v

1 The Telecom District Engineer
Virudhunagar 626 001

2 The Presiding Officer
Industrial Tribunal
Chennai

Respondents

Writ Appeal filed under Clause 15 of the Letters Patent challenging the
order dated 29.09.2022 passed in W.P. No.26477 of 2005.

For appellant

Mr. Sai Shrujan
for M/s. Giridhar & Sai

For R1

Mr. R.D. Ashok Kumar
for Mr. K.V. Shanmuganathan

R2

Labour Court

JUDGMENT

(made by S. VAIDYANATHAN, J.)

This writ appeal impugns the order dated 29.09.2022 passed by a Single

Bench in W.P. No.26477 of 2005.

<https://www.mhc.tn.gov.in/judis>



2 For the sake of convenience, the parties are referred to as per their rank in the writ appeal.

3 The facts leading to the institution of this writ appeal are as under:

3.1 The appellant was employed in the Department of Telecommunications, who is represented by the first respondent, as a casual labourer from 10.08.1985 to 24.12.1990. According to the appellant, when he was expecting regularisation of his services against a Group-D post, he was orally terminated by the first respondent on 24.12.1990 sans any reason, challenging which, he raised an industrial dispute being I.D. No.216 of 1994, before the second respondent Labour Court seeking reinstatement with all consequential benefits, backwages and continuity of service.

3.2 The second respondent Labour Court, on the ground of lack of jurisdiction, *i.e.*, the industrial dispute pertaining to Posts and Telegraphs Department cannot lie, dismissed I.D. No.216 of 1994.

3.2 The writ petition being W.P. No.13382 of 1997 preferred thereagainst by the appellant was allowed *vide* order dated 01.04.2004 remanding the matter to the second respondent Labour Court, in the light of the judgment of the Supreme Court in **General Manager, Telecom v Sreenivasa Rao S. and others [1988 1 LLJ 57]** and on remittal, the Labour Court, in I.D. No.216 of 1994, by award dated 13.10.2004, dismissed the



industrial dispute primarily on the following reasonings:

- i. Ex.W.4 series and Ex.W.5 series marked on the side of the appellant do not bear muster roll number or work order number and hence, they cannot be reckoned for computing the period of service rendered by the appellant and therefore, the stand of the appellant that he had worked for more than 290 days in 1990 cannot be accepted.
- ii. there is no infraction of Sections 25-F and 25-N of the Industrial Disputes Act, inasmuch as, the appellant had not proved to its satisfaction with required evidence that he had complied with the statutory requirement of continuous service of 240 days in the year 1990 during which he was terminated.

3.3 Challenging the said award of the second respondent Labour Court, the appellant filed the writ petition being W.P. No.26477 of 2005. The Single Bench, *vide* order dated 29.09.2022, confirmed the award of the second respondent Labour Court and further held that the appellant was 56 years old on the date of the order passed in the writ petition, *i.e.* in September, 2022 and that he would have been gainfully employed. Holding so, the Single Bench dismissed the writ petition, which has given rise to this writ appeal.



on record.

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5 The main contention put forth by the learned counsel for the appellant before this Court is that the second respondent Labour Court ought not to have relied on Ex.M.2, handbook authorising destruction of old records, to accept the stand of the first respondent that the contingent bills evidencing payment of wages to the appellant can be destroyed, since, even as per Ex.M.2, contingent bills have to be preserved for a period of three years and in the instant case, the appellant had raised the industrial dispute within three years from the date of termination and pending the industrial dispute, the first respondent ought not to have destroyed the contingent bills. The further contention of the learned counsel for the appellant is that the nature of job of the appellant was always perennial in nature and the breaks given by the first respondent was only artificial in order that the appellant is deprived of continuous service.

6 According to the learned counsel for the first respondent, there is a prohibition for appointment of casual labour in the Department after 30.03.1985 in the light of the circular dated 30.08.1985 issued by the Director General of Posts and Telegraphs, which mandates that fresh recruitment and employment of casual labour for any type of work, be stopped forthwith in the Telecom District and that the casual labourers who are already working, shall



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be utilised for the work of casual nature, all installation work of temporary nature, cable laying work, line construction, *etc.*

7 As per the judgment of the Supreme Court in **Manager, Reserve Bank of India v S. Mani and Others [(2005) 5 SCC 100]**, the initial burden is on the appellant to prove that he had completed 240 days of service in a calendar year and he cannot shift the burden on the employer. In this case, though it has been contended by the learned counsel for the appellant that the first respondent should have produced the records, be it noted, no application was filed by the appellant, before the Labour Court, calling for the records, and only at the writ petition stage, was the plea with regard to non-production of documents taken and this has even fairly been admitted by the learned counsel for the appellant before us, which has, in fact, been recorded by this Court in the order dated 16.10.2023. Further, concededly, the industrial dispute was raised well within three years of termination. When the matter is subjudice, it is the duty of the first respondent to retain the records till the dispute attains finality.

8 Viewed from that angle, the first respondent cannot be heard to say that the contingent bills were destroyed on the strength of Ex.M.2, handbook. Further, since a finding of fact has been rendered by the second respondent Labour Court, this Court cannot re-appreciate the evidence and



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come to a different conclusion. However, though the factum of the employment of the appellant from 10.08.1985 to 24.12.1990 has been admitted, he is not entitled to the relief of reinstatement, and with a view to give a quietus to the matter so that the life of the litigation is shortened, we modify the order of the Single Bench and the award of the Labour Court to the effect that the appellant shall be paid a compensation of Rs.1 lakh within a period of three months from the date of receipt of a copy of this judgment.

This writ appeal stands disposed of in the above terms. Costs made easy.

(S.V.N., J.) (K.R.S., J.)
31.10.2023

cad



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