



W.A.Nos.116 to 122 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.01.2023

Coram:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

Writ Appeal Nos.116 to 122 of 2023
and C.M.P.Nos.1233 to 1251 of 2023

The Management of Highways,
Research Station,
Guindy, Madras-25.

... Appellant in W.A.No.116 of 2023

-VS-

1. T.Saravanan

2. The Presiding Officer,
Principal Labour Court,
Chennai.

... Respondents in W.A.No.116 of 2023

Prayer: Writ Appeal No.116 of 2023 filed under Clause 15 of the Letters Patent against the order dated 09.04.2014 passed by the learned Single Judge in W.P.No.19213 of 2003 on the file of this Court.

For appellant : Mr.Ramanlal,
Addl. Advocate General,
Assisted by Mrs.V.Yamunadevi, Spl.G.P.
Mr.L.S.M.Hasan Fizal, AGP

For R1 : Ms.J.Soundari Chandrasekhar



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COMMON JUDGMENT

(Common Judgment of the Court was delivered by **S.Vaidyanathan,J**)

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The issue involved in these Appeals is one and the same and therefore, these appeals are disposed of by a Common Judgment. For the sake of brevity, the gist of the issue is being taken from W.A.No.116 of 2023. The parties are referred to as 'Management' and 'Workmen' for the purpose of convenience.

2. Management has preferred these appeals against the order of the learned Single Judge, in and by which reinstatement was granted to Workmen with continuity of service and other attendant benefits, but without back-wages. While modifying the Award of the Labour Court, the Management was directed to complete the exercise of employment within a period of eight weeks from the date of receipt of a copy of the order of the learned Single Judge. It is seen that Workmen have not filed any appeal against the order of the learned Single Judge.

3. Management has not disputed the employment of Workmen under them, as they admitted during cross-examination that the employees were in



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service between 1980 and 1997 and also admitted the availability of Muster Roll with them in proof of the same. For the best reasons known to the Management, M.W.1 has not produced the Muster Roll before the Labour Court. Similarly, even though M.W.1 has admitted that there were cheque books available, which was the basis for payment of daily wages to these employees, counterfoils in respect of those cheque books also have not been produced before the Labour Court.

4. The Labour Court, after analyzing the evidence on record, held that when the documents are with the Management, they cannot keep those documents just close to the chest and they should produce the same before the Tribunal / Labour Court for proper adjudication. When similar issue arose, this Court, in the case reported in MANU/TN/6723/2021 (The General Manager, Indian Bank vs. The Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court and others), while referring to the judgment of the Apex Court and this Court, held as under:

“4.....the decision of the Two Judges' Bench of Supreme Court, cited by the Bank in the case of Range Forest Officer Versus S.T.Hadimani reported in (2002) 3 SCC 25, holding that initial burden of proof is with the Workman to establish that he / she had completed



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required period of service, was rendered at that relevant point of time and subsequently, the Three Judges' Bench of Apex Court in the case of R.M.Yellatti vs Assistant Executive Engineer reported in (2006) 1 SCC 106 shifted burden on the employer to prove that the Workman had not worked for 240 days continuously. The relevant portion of the said judgment is extracted hereunder:

“13.... In the present case, the defence of the management was that although Ex.W1 refers to the period 22.11.1988 to 20.6.1994, the workman had not worked as a daily wager on all days during that period. If so, the management was duty bound to produce before the labour court the nominal muster rolls for the relevant period, particularly when it was summoned to do so. We are not placing this judgment on the shifting of the burden. We are not placing this case on drawing of adverse inference. In the present case, we are of the view that the workman had stepped in the witness box and his case that he had worked for 240 days in a given year was supported by the certificate (Ex.W1). In the circumstances, the division bench of the High Court had erred in interfering with the concurrent findings of fact.”

9. The next contention of the Bank was that even if it is taken that the Employee worked as a Casual Worker, no document has been produced by the Employee to prove that she had completed 240 days in a period of 12 Calendar month. When the documents are with the Bank, it is the duty on the part of the Bank to produce the same before the Court, as, admittedly, no employee would be provided with the Attendance Register every month so as to enable them to maintain records.

10. In the present case on hand, the Employee discharged the entire burden by filing a petition, calling for documents and number of days worked with the Bank. When an order to produce those documents had been ordered, the Bank cannot keep all the documents close to their chest and contend that still the burden is on the workmen. The Karnataka High Court in the case of Siruguppa Sugars and Chemicals Limited, Gauribidanur vs. The Commissioner of Labour, Government of Karnataka and Others, reported in 2002 (3) LLN 465, held that even though the burden of proof is on the workmen, it is the management, who has the muster roll of the Workmen to produce the same that the Workmen are casual workers. To add further, Hon'ble Punjab and Haryana High Court in Madhusudan's case, reported in 2003 (102) FJR 310 held that Bank is



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bound to produce the records, failing which the reference should be answered in favour of the Workman, by observing as follows:

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“A party seeking equitable relief from the courts, has a bounden duty to disclose all material facts and documents which may have a bearing on the decision of the case. The party, be it the petitioner or the respondent, is not allowed to omit certain documents, which if disclosed, would perhaps lead to an unfavourable order being passed against that party. If by not disclosing such a document any favourable order is taken from the court, the same is liable to be rescinded / vacated on the correct facts being brought to the notice of the court.”

11. This Court, in *The Madras Race Club vs. M.Victor*, reported in (2013) 8 MLJ 609, was pleased to hold as under:

“42...There is no difficulty in accepting the fact that a party to a dispute is entitled to raise all kinds of defence available under law. But they cannot be allowed to keep all cards close to their chest and non suit the workers from the civil court, only with a view eventually to non suit them even from the Labour Court.”

12. Admittedly, the Bank did not produce any document in support of their contention and withheld the evidence in their possession, which forced the Authority to rightly draw adverse inference against the Bank and granted relief to the Workman. The Industrial Tribunal categorically held that even after filing the petition to produce the documents, the Bank burked certain documents, stating that they are not available with them. In the absence of any documents to be produced by them, the contention of the Employee has to be accepted. Taking note of the long period of services, the Tribunal has held that it would not be proper to disturb the services of the Employee, thereby depriving her legitimate status.”

5. The Workmen have discharged their initial burden stating that they have been engaged and paid wages on daily basis and their names have been found in the Muster Roll, which has also been admitted by the Management



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Witness before the Labour Court. That being the case, the burden is shifted on the Management to disprove the statement.

6. The only contention in these appeals filed by the Management is that the appellant/Management is not an "industry" in terms of Section 2(j) of the Industrial Disputes Act. For the sake of convenience, the existing Section 2(j) and the proposed amendment therein that was sought to be introduced as early as in 1982, are extracted below:

As it stands as on date:

"Section 2: Definitions- In this Act, unless there is anything repugnant in the subject or context,--

.....

(j) "industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen"

Section 2(j) as it stood for proposed amendment in the year 1982 that has not come into force for the last 40 years:

"(j) "industry" means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or



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distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not,--

(i) any capital has been invested for the purpose of carrying on such activity; or

(ii) such activity is carried on with a motive to make any gain or profit, and includes--

(a) any activity of the Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948);

(b) any activity relating to the promotion of sales or business or both carried on by an establishment, but does not include--

(1) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.

*Explanation.--**For the purposes of this sub-clause, "agricultural operation" does not include any activity carried on in a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951); or*

(2) hospitals or dispensaries; or

(3) educational, scientific, research or training institutions; or

(4) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or

(5) khadi or village industries; or

(6) any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the



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departments of the Central Government dealing with defence research, atomic energy and space; or

(7) any domestic service; or

(8) any activity, being a profession practised by an individual or body or individuals, if the number of persons employed by the individual or body of individuals in relation to such profession is less than ten; or

(9) any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individuals in relation to such activity is less than ten."

7. The learned Additional Advocate General relied upon the amended provisions to contend that the appellant/Management is not an 'industry'. We want to emphasize here that that there were several provisions introduced and brought into effect in 1982 and some of the provisions including Section 2(j) of the Industrial Disputes Act, which has now been referred to by the learned Additional Advocate General have not been brought into force for nearly 40 years. Learned Additional Advocate General, in support of his submissions, relied upon the following two decisions of the Supreme Court:

i) ***Sub-Divisional Inspector of Post vs. Theyyam Joseph***, reported in



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(1996) 8 SCC 489; (Two Judge Bench)

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to contend that the Management is not an industry. The Apex Court (a Three Judge Bench) in the case reported in 1997 (8) SCC 767 (**General Manager, Telecom Vs. A.Srinivasa Rao**) took note of the judgment of a Seven Judge Bench of the Apex Court in the case of *Bangalore Water Supply and Sewerage Board Vs. A.Rajappa*, reported in 1978 (2) SCC 213 categorically held that in the light of the dominant nature test specified by the Supreme Court in *Bangalore Water Supply and Sewerage Board Vs. A.Rajappa* (supra), Telecom Department was an industry, by observing that it is not permissible for any Bench of lesser strength to take a view contrary to that of the Larger Bench, which is a judicial discipline / propriety required to be followed.

8. That apart, the Management has not raised a plea as to whether the appellant/Management is an 'industry' or not, either before the lower forum or before the learned Single Judge. Even though it has been contended by



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the learned Additional Advocate General for the Management that it is a legal plea, which could be raised at any stage, we are not inclined to accept it. It is a factual plea, which has got to be proved by means of evidence on the reason that it comes within the exceptional category of Section 2(j) defined as on date and not based on the amended provisions, which has not come into force.

9. In the above context, the dominant nature test for deciding whether the establishment is an "industry" or not, is summarised in paragraph 143 of the judgment of Honourable Mr.Justice V.R.Krishna Iyer in Bangalore Water Supply case (supra), which is extracted hereunder:

"143. *The dominant nature test:*

(a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not 'workmen' as in the University of Delhi case (University of Delhi Vs. Ram Nath - AIR 1963 SC 1873 = 1963 (2) LLJ 335) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corpn. of Nagpur (Corpn. of the City of Nagpur Vs. Employees, - AIR 1960 SC 675 = 1960 (1) LLJ 523) will be the true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not



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benefit by the status.

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(b) Notwithstanding the previous clauses, sovereign functions strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies.

(c) Even in departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within Section 2(j).

(d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby."

10. Therefore, we are of the view that the order of the learned Single Judge does not require interference. The back-wages upto the date of the judgment, has been deprived of by the learned Single Judge without any reason and the same has also not been questioned by the Workmen.

11. We make it clear that the Award of the Labour Court, as modified by the learned Single Judge, has got to be implemented within three months from the date of this judgment. If the same has not been implemented, it is open for the Workmen to make a complaint under Section 29 of the Industrial Disputes Act, 1947 for prosecuting the officials in terms of Section 32 of the I.D.Act, 1947. There is no need to make the Management



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as a party and Section 32 of the Industrial Disputes Act makes it clear that the complaint filed by the Management officials under Section 32 can be prosecuted. In the case of complaint, the principles laid down by the Supreme Court in the light of the judgment reported in 1997 (1) LLJ 994 (Raj Kumar Gupta Vs. Lt. Governor, Delhi and others) has got to be followed and the issue has got to be brought to a logical end by appropriate criminal Court and the Criminal Court shall proceed with the matter on a day-to-day basis without adjourning the matter beyond 15 working days at any point of time.

12. Furthermore, in terms of the decision of the Supreme Court reported in 1981 (1) LLJ 1 (Life Insurance Corporation of India Vs. D.J.Bahadur), the Award will be enforced till such time it is modified by the subsequent Award or by means of settlement and hence, there can be no delay in initiating prosecution.

13. In the present case on hand, the Award has been modified into one of reinstatement with continuity of service and all other attendant benefits, but without back-wages and the original Award has been replaced



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by the order of this Court. Hence, the Management is bound to implement the same.

14. In the result, these *Writ Appeals are dismissed*, with a direction to the Management to implement the order of the learned Single Judge within three months from today. For dragging the employee from one Court to another endlessly with tiresome litigation, the Apex Court has imposed costs of Rs.5,00,000/- in the case of *The Secretary to Government and another vs. P.G.Venugopal [Special Leave to Appeal (C) No.15917 of 2022) decided on 19.09.2022*. Though this is also a fit case to impose costs, we refrain from doing so with a hope that the State will act as a model employer. No costs. Consequently, the Miscellaneous Petitions are closed.

(S.V.N., J) (M.S.Q., J)
10.01.2023

Index: Yes/no

Speaking Order: Yes/no

Neutral Citation: Yes/no

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Note: Issue order copy on 03.02.2023

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and
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