



W.P.(MD)No.9213 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:02.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.9213 of 2018

Petchiammal

... Petitioner

Vs.

1.The Management,
Government Agriculture College and Research Centre,
Kovilpatti,
Thoothukudi District.

2.The Presiding Officer,
Labour Court,
Tirunelveli.

... Respondents

Prayer:Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent relating to the award passed in I.D.No.76 of 2016 dated 08.09.2017, quash the same and consequently, directing the first respondent Management to reinstate the petitioner into service with continuity of service, backwages and all other attendant benefits.



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For Petitioner : Ms.J.Roshini
for Mr.D.Srinivasaragavan
For Respondent : Mr.A.Thirumurthy for R1
R2-Court

ORDER

This Writ Petition has been filed to call for the records relating to the award passed in I.D.No.76 of 2016 dated 08.09.2017, by the second respondent, quash the same and direct the first respondent Management to reinstate the petitioner into service with continuity of service, backwages and all other attendant benefits.

2. The case of the petitioner is that the petitioner was working as Mazdoor on daily wage basis in the first respondent Management from November 2000 and the petitioner's last drawn wage was Rs.250/- per day. The first respondent Management was under the control of one D.Jawahar, Sridharan, Manager and A.Mariappan, Supervisor. The petitioner has completed 240 days of service. As the petitioner was not amenable to the said Mariappan, Supervisor, he used to give heavy work to the petitioner and he made the petitioner to wait for employment. He

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misbehaved with the petitioner and gave sexual harassment to her. Hence, she lodged a complaint with the Management and there was no response to the complaint. Therefore, she gave a complaint to the concerned Police Station. Instead of appearing before the Police for enquiry, the said Mariappan has influenced the Management for denying employment to her. The complaint lodged with the Revenue Divisional Officer, Kovilpatti, did not yield any result. In the meanwhile, the first respondent has denied employment to the petitioner from 08.12.2014. Since the conciliation proceedings also failed, the petitioner has raised the Industrial Dispute in I.D.No.76 of 2016. However, the Labour Court, without verifying the records and without analyzing the materials, has dismissed the Industrial Dispute. Hence, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner would submit that three issues were framed before the Labour Court, viz.,

(i) whether the petitioner is a permanent employee under the Industrial Disputes Act?



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(ii) whether the first respondent Management is an Industry or not? and

(iii) whether the petitioner is entitled to get the claim made by her?.

All the issues were held against the petitioner. However, in respect of the second issue, already this Court in a catena of judgments has held that the Research Institute is coming under the purview of the Industry in terms of Section 2(j) of the Industrial Disputes Act and in support of her contention, she relied upon the order of this Court made in W.P(MD).No.9323 of 2014 on 02.09.2022. With regard to the first issue, though the records were available to show that the petitioner was in continuous employment for a period of one year, the Supervisor, who unjustly denied the employment to the petitioner for which she made a complaint before the Law Enforcing Agency, has wantonly not produced the records to show that the petitioner was in continuous employment for a period of one year. Due to the malpractice committed by the Supervisor, the petitioner cannot establish the real factum before the Labour Court



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and the Labour Court has denied reinstatement to the petitioner. Hence, she prays for passing appropriate orders.

4. Per contra, the learned counsel appearing for the first respondent would submit that though the learned counsel appearing for the petitioner has relied upon the decision of this Court in W.P(MD).No.9323 of 2014 in support of her contention to prove that the first respondent is coming under the purview of Section 2(j) of the Industrial Disputes Act, as against the said order passed by this Court, the concerned respondent has filed the writ appeal before this Court. In respect of first issue, the first respondent has marked two documents namely R.W.2 and R.W.4 which clearly show that the petitioner was not in continuous employment for a period of one year (i.e.,) 240 days. Hence, the petitioner is not entitled to get the benefit availed under Section 25F of the Industrial Disputes Act. Therefore, the denial of employment to the petitioner is perfectly in order and it need not be interfered with by this Court. Hence, he prays for dismissal of the present writ petition.



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5. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the first respondent.

6. The facts in the present case are not in dispute. Admittedly, the petitioner was employed as Mazdoor in the first respondent Management on daily wage basis. However the first respondent Management has denied employment to her from 08.12.2014. Therefore, she has raised an industrial dispute in I.D.No.76 of 2016 before the second respondent and the second respondent has rejected the claim of the petitioner. Challenging the same, the present Writ Petition has been filed.

7. Considering the facts and circumstances of the case, the following issues are framed:

(i) whether the first respondent Management is coming under the definition of Section 2(j) of the Industrial Disputes Act? and

(ii) whether the petitioner is in continuous employment for a period of one year?.



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8. With regard to the first issue, Section 2(j) of the Industrial Disputes Act makes it clear that “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”. The first respondent Management is a Research Institute and in the Research Institute, there must be manufacturing process. Hence, the first respondent Management will come under the purview of Industry. When an identical issue came up for consideration before this Court in W.P(MD).No.9323 of 2014, this Court held as follows:-

8.....The relevant portion of the order in WP(MD)No.10691 of 2007, dated 19.07.2011 [The Management, Agricultural College and Research Institute, Tuticorin District Vs. The Inspector of Labour, Tuticorin and others] reads as follows:-

"9.The learned counsel for the petitioner also placed reliance on the judgment of this court, in the case of Management-Agricultural Research Station, Tamil Nadu Agricultural University, Velayuthapuram, Kovilpatti. vs. Commissioner of Labour (Authority under Section 51 of the Tamil Nadu Shops and



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Establishments Act 1947), Labour Welfare Board Buildings, D.M.S, Compound, Madras and another, in W.P.No.7193 of 1988, dated 19.12.1997, wherein this Court held that the Tamil Nadu Shops and Establishment Act, 1941 were not applicable to the petitioner's University.

10.On merit, the learned counsel for the petitioner challenged the award, by contending, that it was not open to the learned Labour Court, to order permanent status to the respondent Nos.2 to 19, as the respondents were not regularly appointed, therefore, could not be regularized or conferred permanent status.

11.In support of this contention, the learned counsel for the petitioner, placed reliance on the judgment of the Hon'ble Supreme Court in the case of State of U.P. vs. Neerajawasthi and others [(2006)1 SCC 667]

12.On consideration I find no force in the contention raised by the learned counsel for the petitioner.

13.The judgment of the Hon'ble Supreme Court, in the case of Ruth Soren vs. Managing Committee, East I.S.S.D.A and others [2001-I-L-L-J,



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187] (*supra*), cannot advance the case of the petitioner, as in this judgment, it has been held, that the learned Labour Court, has jurisdiction to adjudicate the dispute, as the University is an industry and therefore, amenable to the jurisdiction of the Labour Court.

14.The contention of the learned counsel for the petitioner that the Tamil Nadu Shops and Establishments Act, is not applicable to the respondents 2 to 19, therefore, the order passed by the learned Labour Court, is bad in law, also cannot be sustained, as definition of 'industrial establishment' under the Establishment Act, is mere comprehensive than the definition under the Tamil Nadu Shops and Establishment Act, 1947.

15.The definition of 'Industrial Establishment' under the Act, would cover the petitioner's University, once it is held to be an industry.

16.The first contention of the learned counsel for the petitioner, therefore, cannot be accepted.

17.The second contention of the learned counsel for the petitioner also deserves to be noticed to be rejected for the reason that in the case of State of U.P. vs. Neera Awasthi and others reported in



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(2006)1 SCC 667, the question for determination was whether the person appointed by back door matter could be regularized.

18.The Hon'ble Supreme Court, by placing reliance in A.Umarani Vs. Registrar, Coop. Societies [(2004)7 SCC 112: 2004 SCC (L&S) 918], held that the employees are not entitled to regularization of service.

19.This judgment will not be applicable to the facts of the present case, as the respondents 2 to 19 are seeking enforcement of statutory right, under statute i.e., Establishment Act, referred to above.

20.In view of the specific Act, applicable to the State of Tamil Nadu, the judgment of the Hon'ble Supreme Court referred by the petitioner, will have no application."

*10. In support of the claim that Educational Institutions are covered by the Industrial Disputes Act, the order in **W.P.No. 3359 of 2009, dated 28.02.2011 [Tamil Nadu Agricultural University, Yercaud]** is relied on. It is observed as follows:-*

"11.The term 'Industry' is defined under Section 2(j) of the Industrial Disputes Act, 1947. A larger Bench of the Supreme Court had an occasion to consider the definition



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'Industry' found under Section 2(3) of the Industrial Disputes act in the case of [Bangalore Water Supply and Sewerage Board Vs. A.Rajappa and others] reported in 1978 (1) LLJ 349. In that case the Supreme Court has held that even Educational Institutions are covered by the Industrial Disputes Act. Hence, the second contention raised by the Management cannot be countenanced by this Court and it was rightly rejected by both the authorities ie., the first and second respondents.

12.The third submission is regarding the length of service put in by the third and fourth respondents. During the proceedings before the second respondent, the workman summoned for the records relating to the provident fund. It was resisted by the petitioner and all the records were not submitted. This was even as per their own admission made in paragraph 6 of the affidavit. Once the records concerned were not produced, it is always open to the authority to draw adverse inference and presume that the particulars given by the workmen is correct. Hence, there is no illegality in accepting their evidence."

15. With regard to applicability of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, though the learned counsel appearing for the



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petitioner relied on the aforesaid Judgments in support of his case, it is found that the Judgment reported in 1998 (1) LLN 717 [Agricultural Research Station, Tamil Nadu Agricultural University, Velayuthapuram, Kovilpatti Vs. Commissioner of Labour, Madras and another] was distinguished in the subsequent order of this Court in W.P(MD)No.10691 of 2007, dated 19.07.2011 [The Management, Agricultural College and Research Institute, Tuticorin District Vs. The Inspector of Labour, Tuticorin and others]. In an identical case, it was held that the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, applies to the Tamil Nadu Agricultural University.

9. In view of the above order, it is made clear that the Agricultural University and the Research Institute is coming under the definition of Industry. Hence, the issue No.1 is answered in favour of the petitioner.

10. The next issue is as to whether the petitioner is in continuous employment for a period of one year?.



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11. A perusal of R.W.2 and R.W.4, which are marked at the instance of the petitioner by the first respondent Management and the entire records of the employment of the petitioner, reveals that the petitioner is not in continuous employment for a period of one year. Hence, the petitioner is not entitled to get the benefit availed under Section 25F of the Industrial Disputes Act, since Section 25F of the Industrial Disputes Act makes it clear that “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 the workman has been given one month's 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”. Since the petitioner has not established that she is in continuous employment for a period of not less than one year, the procedure contemplated in Section 25F of the Act need not be followed. Hence, the second issue is answered as against the petitioner.



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12. Though the issue No.1 is answered in favour of the petitioner, with regard to the second issue framed, since the records revealed that the petitioner has not worked for a period of 240 days continuously, she is not entitled for reinstatement. Hence, this Court can come to the conclusion that the order passed by the Labour Court is perfectly in order and no interference is warranted by this Court.

13. Accordingly, this Writ Petition is dismissed. No costs.

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NCC:Yes/No
Index:Yes/No
Internet:Yes/No



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