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W.A.Nos.452 and 453 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 23.04.2024
DELIVERED ON: 14.06.2024

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.A.Nos.452 and 453 of 2020
and CMP.Nos.7010, 7014 and 7009 of 2020

R.Siva

... Appellants in both W.As.

Vs.

1.The District Collector,
Villupuram District,
Villupuram.

2.The Assistant Director of Village Panchayat,
Villupuram District, Villupuram.

3.The Block Development Officer,
Gingee Panchayat Union,
Gingee Taluk, Villupuram District.

4.The President,
Devanampetti Village Panchayat,
Gingee Taluk,
Villupuram District.

... Respondents 1 to 4 in W.A.452/2020

5.The Presiding Officer,
Labour Court, Cuddalore.

6.The Village Panchayat Administration,



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Rep by its President,
Devanampetti Village Panchayat,
Gingee Taluk,
Villupuram District

.. Respondents 1 & 3 in W.A.No.453/2020

7.Manikandan

.. Respondent No.5 in W.A.No.452/2020
Respondent No.3 in W.A.No.453/2020

Prayer: Writ Appeals filed under Clause 15 of the Letters Patent against the order dated 27.08.2019 made in W.P.No.24230 of 2010 and W.P.No.8262 of 2011 respectively.

For Appellant : Mr.G.Ethirajulu
in both WAs.

For Respondents : Mr.P.Balathandayutham,
Special Government Pleader
for R1 & R2 in W.A.No.452/2020
for R2 in W.A.No.453 / 2020

Mr.N.Suresh for R5 in W.A.No.452/2020
for R3 in W.A.No.453/2020

COMMON JUDGMENT

D.KRISHNAKUMAR, J.

These intra court appeals are filed challenging the common order of the Writ Court dated 27.08.2019 made in W.P.Nos.24230 of 2010 and 8262 of 2011.

2. Facts leading to the filing of these writ appeals, briefly narrated, are



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as follows:

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2.1. The appellant was initially appointed as Part Time Clerk in the fourth respondent Panchayat, vide order dated 08.10.2003. The Government has passed G.O.Ms.No.175, LA(CS) Department dated 05.12.2006, regularizing the appointments made as Panchayat Assistants and Part Time Clerks, in pursuant to which the third respondent vide proceedings dated 09.02.2010, absorbed the appellant/writ petitioner at a Time Scale of Pay of Rs.625-10-725-20-925 and retained as Panchayat Assistant in the fourth respondent Panchayat. According to the petitioner, he is governed by the service rules as applicable to regular servants and his name is included in the next promotion list in Sl.No.821 as Junior Assistant. While that being so, to his shock and surprise, the fourth respondent dismissed the appellant/writ petitioner from service, vide order dated 18.10.2010. The petitioner also sent a representation dated 19.10.2010 to the respondents 1 to 3 and the same is pending.

2.2. The fifth respondent was appointed as part time employee on 27.12.1999. The fourth respondent dismissed the fifth respondent from



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service on August 2003 and aggrieved by the same, he filed I.D.No.59/2010 before the Labour Court, Cuddalore and obtained an order dated 06.09.2010 to reinstate the fifth respondent in service as Panchayat Assistant and hence, the impugned order dated 18.10.2010 was passed by the fourth respondent dismissing the appellant from service, in order to accommodate the fifth respondent.

2.3. According to the appellant, the fourth respondent has arbitrarily passed the impugned order without giving any opportunity and in utter violation of the principles of natural justice and therefore, he has filed W.P.No.24230 of 2010, challenging the order of the fourth respondent and filed W.P.No.8262 of 2011, challenging the award of the Labour Court, Cuddalore dated 06.09.2010 made in I.D.No.59 of 2010. The writ petitions came to be dismissed, vide common order dated 27.08.2019, against which the instant writ appeals are filed.

3. Mr.G.Ethirajulu, learned counsel appearing for the appellant would contend that the Labour Court ought not to have passed an award reinstating the fifth respondent in service, without taking note of the fact that the



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industrial dispute came to be raised after 10 years from the dismissal of the fifth respondent and the fifth respondent has absconded for 10 years in order to get over the criminal proceedings and settled at Singapore for 10 years and thereafter, he invoked the jurisdiction of the Labour Court and got an award and the Writ Court has failed to consider these aspects in proper perspective and therefore, prays for dismissal of these writ appeals.

4. Mr.P.Balathandayutham, learned Special Government Pleader appearing for the respondents would contend that initially the fifth respondent was appointed as Part Time Clerk in the fourth respondent Panchayat and he was dismissed from service and he raised an Industrial Dispute in I.D.No.59 of 2010 before the Labour Court, Cuddalore, wherein reinstatement was ordered by the Labour Court on 06.09.2010 and there is only one post of Village Assistant in the fourth respondent Panchayat and the fifth respondent is working as Village Assistant right from his reinstatement till date and the petitioner has no locus standi to challenge the reinstatement of the fifth respondent in the fourth respondent Panchayat and therefore, prayed for dismissal of the writ appeals.



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5. Mr.N.Suresh, learned counsel appearing for the fifth respondent would contend that since the fifth respondent was dismissed from service without any prior notice, enquiry or charge memo, he raised an industrial dispute which ended in favour of the fifth respondent and the fourth respondent Panchayat has not challenged the said award of the Labour Court. The learned counsel would further contend that the fourth respondent has complied with the award of the Labour Court and the fifth respondent is working from 21.10.2010 as per the award of the Labour Court and therefore, prayed for dismissal of the writ appeals.

6. This Court has considered the rival submissions and also perused the materials available on record.

7. The fact remains that the fifth respondent was appointed as early as on 27.12.1999 as Part Time employee in the fourth respondent Panchayat and he was dismissed from service on 24.08.2001 for his alleged involvement in misappropriation of funds of the Pachayat. Since he refused to receive the order of dismissal, the VAO concerned affixed the order copy in the door and thereafter, the fifth respondent left to Singapore during 2003



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to avoid criminal prosecution. In the vacancy caused by the dismissal of the fifth respondent, the appellant / writ petitioner was appointed by the fourth respondent Panchayat on 08.10.2003. Subsequently, as per G.O.Ms.No.175, Rural Development and Panchayat Department dated 05.12.2006, all the Panchayat Assistants and Part Time Clerks, who are working in consolidated pay are brought under Time Scale of Pay with effect from 01.09.2006 and by virtue of the aforesaid Government Order, the appellant/writ petitioner was brought under Time Scale of Pay with effect from 01.09.2006, vide order dated 09.02.2007.

8. It is also not in dispute that the fifth respondent, challenging the order of dismissal passed against him on 24.08.2001, has raised an industrial dispute in I.D.No.59/2010 before the Labour Court, Cuddalore. The Labour Court has passed an award dated 06.09.2010, directing reinsertment of the fifth respondent as Part Time Clerk in the fourth respondent Panchayat. In compliance of the order of the Labour Court, the appellant/writ petitioner was dismissed from service, vide order dated 18.10.2010, in order to accommodate the fifth respondent into service. Challenging the order of dismissal as well as the award of the Labour Court, the appellant has filed



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W.P.No.24230 of 2010 and W.P.No.8262 of 2011 before this Court.

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9. The case under consideration pertains to the dismissal of the appellant, who was initially employed as a Part-Time Clerk in the fourth respondent Panchayat. The situation arose following the issuance of G.O.Ms.No.175, LA(CS) Department dated 05.12.2006, which led to the regularization of appointments, including that of the appellant, who was then absorbed and reclassified as a Panchayat Assistant. However, the appellant's tenure was terminated by the fourth respondent to accommodate the fifth respondent, who had previously been dismissed from service.

10. The appellant vehemently argues that his dismissal was arbitrary and without following due process of law. He asserts that no opportunity was afforded to him to present his case or defend himself against the allegations leading to his termination. Furthermore, the appellant contends that the Labour Court's decision to reinstate the fifth respondent, citing concerns over the prolonged delay in raising the industrial dispute and the fifth respondent's absence from service.



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11. In contrast, the respondents counter these arguments by asserting that the reinstatement of the fifth respondent was justified. They point out procedural deficiencies in his initial dismissal, including the lack of formal notifications, enquiries, or disciplinary proceedings. Additionally, they argue that the fifth respondent's entitlement to the position of Village Assistant, which he currently occupies, further validates the Labour Court's award.

12. Upon meticulous examination of the facts and legal precedents, it becomes evident that the dismissal of the fifth respondent was based on procedural lapses. The absence of proper notifications, enquiries, or disciplinary proceedings casts doubt on the legitimacy of his termination. Conversely, the Labour Court's decision to reinstate the fifth respondent was based on lack of substantive evidence supporting his dismissal and the absence of a legal challenge to the reinstatement award by the respondent-panchayat, who was arrayed as respondent before the tribunal.

13. The learned Special Government Pleader for the respondents 3 and 4 fairly conceded before this Court that the fourth respondent Panchayat



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will accommodate the appellant/writ petitioner in the future vacancy.

Though the petitioner has made a valiant attempt by contending that before passing the impugned order of dismissal, no opportunity has been afforded to the petitioner / appellant to defend his case, the fact that petitioner holds only a part time post and as such, he cannot have any absolute or vested right to claim appointment unless his services were regularized. Considering the fact that the fifth respondent has been reinstated by the fourth respondent Panchayat only in compliance of the award passed by the Labour Court and he is continuing as Panchayat Assistant right from his reinstatement on 23.10.2010 till date, the order of the dismissal passed by the fourth respondent Panchayat dated 23.10.2010 cannot be found fault with. The Writ Court has also rightly considered these aspects in proper perspective and this Court finds no reason to interfere with the order of the Writ Court.

14. However, considering the service rendered by the appellant, the respondents authorities shall accommodate the appellant / writ petitioner in future vacancies in the fourth respondent Panchayat.



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15. These Writ Appeals are disposed of with the above directions.

Consequently, connected miscellaneous petitions are closed. No costs.

(D.K.K.J.) (K.B. J.)
14.06.2024

Jvm
Internet: Yes/No
Index : Yes/No

D.KRISHNAKUMAR, J.
and
K.KUMARESH BABU, J.
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Common Judgment in



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