

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Reserved on: 25.10.2024

Pronounced on: 07.11.2024

Coram:

THE HON'BLE Dr. JUSTICE A.D. MARIA CLETEW.P.No. 37241 of 2003
and W.P.No. 11184 of 2004**In W.P.No. 37241 of 2003:**Pandit Jawaharlal Nehru College
of Agriculture rep. by Dean, Karaikal.

.... Petitioner

Vs.

1. The Labour Court, Karaikal
2. V.Pandian (Deceased)
3. M.Dharparanyam
- *4. P.Manimegalai, w/o. V.Pandian
- *5. P. Kannan, s/o. V.Pandian
- *6. P.Kanimozhi, D/o. V.Pandian

....Respondents

(* R4 to R6 impleaded vide WMP No. 1475 of 2019 dt. 12.2.2019)

In W.P.No. 11184 of 2004:1.V. Pandian (Deceased)
No.11, Ambedkar Nagar,
Nedungadu Post,
Karaikal – 609 603**Substituted by LRs**

- *2. P.Manimegalai, w/o. V.Pandian
- *3. Kannan, s/o. V.Pandian
- *4. P.Kanimozhi, D/o. V.Pandian

(* P1 substituted by LRs P2 to P4 vide order in WMP 1481 of 2019 dt. 4.2.2019)

5. M.Dharparanyam,



No.22, Railady Street,
Devamapuram
Karunkkankudy (post)
Thirunallur – 609 607

.... Petitioners

Vs.

1.The Presiding Officer,
The Labour Court
Karaikal.

2. Pandit Jawaharlal Nehru College
of Agriculture, rep. by its Dean,
Serumavilangai, Nedungadu
Karaikal.

.... Respondents

Prayer in W.P.No. 37241 of 2003:

Writ petition filed under Article 226 of Constitution of India, to issue a writ of certiorari or any other writ or orders to call for the records relating to the award dated 31.10.2002 in I.D.2/99 on the file of the Labour Court, Karaikal and to pass such further or other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Prayer in W.P.No.11184 of 2004:

Writ petition filed under Article 226 of Constitution of India, to issue a writ in the nature of certiorari after calling for the records relating to the Common Award dt. 31.10.2002 passed by the 1st respondent Labour Court, Karaikal in I.D.No.2 of 1999 and to quash the same in so far as it has denied the normal relief of back wages and continuity of service and other benefits and accordingly substitute the same and pass such other orders or directions as may be deemed fit and proper and award costs.

Appearance in W.P.No.37241 of 2003 :



For Petitioner : Mr. Syed Mustafa,
Special Government Pleader, Puducherry

For R3, R4 to R6 : Mr.V.Govardhanan,
for M/s.Row and Reddy.

Appearance in W.P.No.11184 of 2003 :

For Petitioner : Mr.V.Govardhanan,
for M/s.Row and Reddy.

For R3, R4 to R6 : Mr.Syed Mustafa,
Special Government Pleader, Puducherry

COMMON ORDER

Heard both sides.

2. Both writ petitions challenge the same award of the Labour Court, Karaikal made in I.D.No.2/1999 dt. 31.10.2002. Parties are referred to as Management and Workmen from now on. By the impugned award, the Labour Court directed the reinstatement of the workmen as new entrants and denied other reliefs sought by them. While the Management is aggrieved about that portion of the award granting reinstatement to the workmen, the workmen were equally aggrieved about the denial of continuity of service, back wages and other attendant benefits.



3. The writ petition W.P. 37241 of 2003 was admitted on 19.12.2003 and an interim stay was granted in WMP 45186 of 2003. Subsequently, in the order dated 24.6.2004, it was stated that since the workmen were directed to be reinstated as fresh entrants, the question of any direction for payment under Section 17B did not arise. But liberty was given to the workmen to take out appropriate applications for vacating the stay.

4. Subsequently the workmen took out a Miscellaneous Petition in WMP No.1098 of 2004 for vacating the interim order. On 25.1.2008, this court passed the following order: -

“Since there is a stay of the award of the Labour Court, the petitioners in the miscellaneous petition are entitled to get the last drawn wages. Therefore, the petitioner Management is directed to calculate the last drawn wages payable to the petitioner from 12.12.2003 and the arrears of 17(B) wages payable from December, 2003 to January 2008, which shall be paid to the petitioners within a period of four weeks from the date of receipt of a copy of this order and the writ petitioner Management is directed to continuously pay the last drawn wages to the petitioners on or before 10th every succeeding month from February, 2008.”

5. The counsel for the workmen submitted an additional typed set, with Document 11 listing the payments made to the workman, V. Pandian, as per the



order. In the following pages, from Page 26 to Page 41, payment receipts for both workmen are included.

6. However, the workman V. Pandian unfortunately passed away on 24.7.2017. His legal heirs being his wife, son and daughter have filed WMP No.1475 of 2019 in W.P. 37241 of 2003 and got themselves impleaded vide order dt. 12.2.2019 .

7. Aggrieved by the same award, the two workmen filed W.P.No. 11184 of 2004 challenging the very same award. The said writ petition was admitted on 23.4.2004 and directed to be clubbed along with the previous writ petition filed by the management challenging the same award. Since after the filing of the W.P. the workman V.Pandian died, his LRs were brought on record vide order in WMP No. 1481 of 2019 dt. 4.2.2019 in the W.P.No. 11184 of 2004.

8. The case of the workmen was that they were working in the Management's College from 1991 to the end of 1995. The College being an agricultural college owned several farms within the premises of the agriculture research institute at Surakkudi Village in Tirunallur commune. The workmen were terminated on disciplinary grounds. They raised an industrial dispute under



Section 2A regarding their non-employment before the Common Labour Officer, Karaikal. On a failure report being sent by the said Conciliation Officer on 23.4.1997, the Government of Pondicherry by their order in G.O.Rt.No. 21/99/Lab Labour Department dt. 29.9.1999 referred the dispute for adjudication by the Labour Court at Karaikal.

9. The Labour Court, on receipt of the order of reference issued notice to parties and took up the disputes as I.D.No.2/1999. The two workmen filed a Joint Claim Statement dated 6.7.1999. It was stated by them that they were victimized due to their legitimate trade union activities. In their claim statement, they claimed that no show cause notice was given to them before termination and no inquiry was conducted holding them guilty of any misconduct. Therefore, they demanded reinstatement with back wages together with service continuity.

10. On behalf of the Management, a counter statement dated 19.7.1999 was filed before the Labour Court. It was stated that the two workmen were not regular staff of the agriculture college headed by the Dean, they were only daily rated seasonal agricultural labourers and not casual labourers. They were called as muster rolls and will be engaged as and when work is required. The wages paid to them were Rs.27/- per day and in each month, they will not be employed beyond



20 days. The allegation that the workmen were paid Rs.450/- for every 15 days was denied.

11. It was also stated by the Management that the two workmen were guilty of indiscipline and misbehaviour besides being irresponsible to the nature of duty expected from their superiors. The establishment of the trade union by the name Karaikal Pajancoa Thozhilalargal Sangam has nothing to do with the termination of the two workmen. It was also stated that two workmen collected thorny bushes and placed them at points which would cause hardship and inconvenience to the superiors who used to supervise the work done by them. The allegation that they were forced to submit to the dictates of the superior was denied. The further allegation that one Mohan, Assistant Professor of Agronomy at the Eastern farm had threatened them to admit their guilt was also denied.

12. The Management further submitted that the thorny bushes were placed on 6.12.1995 on which day five labourers were assigned to work at the Eastern farm. When Asst. Professor Mohan saw the placement of thorny bushes at the Eastern farm which obstructed his inspection, he made a complaint to the Dean. As the workmen did not admit their guilt, a Committee was constituted under Dr.M.Natanam, Professor and Head of the Department of Agronomy. Pending the



Report by the Committee the workmen were allowed to work. The Committee submitted a Report holding them guilty of the charges. The inquiry was conducted impartially and unbiased. The guidelines for conducting an inquiry were followed.

13. Before the Labour Court, the two workmen examined themselves as PW1 and PW2. On the side of the Management, there was no oral evidence. However, they filed 17 documents which were marked as Ex.R1 to Ex.R17. It is seen from the records that the labour court did not frame any preliminary issue to decide whether the inquiry conducted by the Management was following the principles of natural justice and the rules and regulations applicable to the workmen. On the other hand, it allowed both workmen to depose about their service condition and nature of inquiry as well as the Management was allowed to file their documents.

14. In the impugned award the labour court found that the two workmen were given notice by the Management on the ground that the thorny bushes were placed on the road and that an inquiry was held by the Professor at the instance of the complaint by the Assistant Professor Mohan marked as Ex.R12. He also gave a report on 26.12.1995. It also recorded a finding that the worker Dharparanyam had admitted the allegation by his letter dt. 7.12.1995 (Ex.R8). He also gave another



letter before the Committee on 6.12.1995 (Ex.R16). The three workers who were in employment on 6.12.1995 along with the two workmen also gave a letter that it was the two workmen who put the thorny bushes on the road and their letters were also marked as Ex.R9, Ex.R10 and Ex.R11. However, none of these witnesses were examined in the inquiry and copies of the complaint were never given to the two workmen and also, and they were also not permitted to cross-examine them. No show-cause notice was given to them before imposing the penalty.

15. It was also recorded that the Inquiry Officer did not examine those witnesses and marked documents through them. In the normal course, the inquiry officer should have sent his report to the Principal of the Agriculture College and he alone could have passed any final order. On the contrary, Professor Natanam who had conducted the inquiry himself passed the final order. The labour court also found that since no opportunity was given to the workmen by not conducting any proper inquiry and not getting any proper explanation, the non-employment caused was illegal and hence the termination order was set aside.

16. The labour court, on the question of relief granted reinstatement as fresh employment and denied the back wages and other attendant benefits. The Management contended that the two workmen were not “workmen” within the



meaning of section 2(s) of the I.D.Act and hence the reference was not maintainable. They were seasonable agricultural labourers and could not come within the purview of the provisions of the Industrial Disputes Act. There was also no necessity to conduct any full-fledged inquiry and the labour court could not have held that there were no witnesses examined in the inquiry. It was also contended that there was no termination of employment and their employment depended on the requirement of work. If the labour court was of the opinion that the inquiry was vitiated, it should have remitted the matter to the authorities to conduct the inquiry properly.

17. Per contra, the workmen contended that the Management did not prove the charges alleged against the workmen and did not also seek permission before the labour court in case the inquiry was held to be vitiated. The labour court also failed to see that the complainants were not examined before the labour court to establish the charges. The labour court having found that these two workmen were employed for more than five years, it should have granted a normal relief of reinstatement with back wages and continuity of service.

18. The counsel for the workmen submitted an additional typed set in which he filed a seniority list published by the Management dated 10.8.2001 after the



non-employment of the two workmen by which persons who were similarly placed were shown in the list and subsequently some of them were absorbed as Agricultural Mazdoor. The Petitioners and the legal heirs of the deceased petitioner also sent representation protesting against the publication of the list without their names. The worker Mohan M who was appointed as Agricultural Labourer was given a monthly wage of Rs.57,386/- and the Pay Bill was also produced in the typed set. Therefore he contended that in the normal course if the labour court had reinstated with continuity of service, their names ought to have been included in the seniority list and by now they would have got regularization.

19. The learned counsel for the workmen to meet the argument of the Management that the agricultural workers are not covered by the provisions of the I.D.Act relied upon the judgment of the Supreme Court in **Harinagar Cane Farm Vs. State of Bihar** reported in **AIR 1964 SC 903** in which such an argument was rejected and it was observed as under:-

“we propose to deal with the narrow question as to whether agricultural operations carried on by the two appellants constitute an industry under s. 2 (j) or not. appellate here is no doubt that for carrying , on the agricultural operations, the appellants have invested a large amount of capital, and it is not disputed that the appellants have invested capital for carrying on their agricultural operations for the purpose of making profits. It is also common ground that the workmen employed by the appellants in their respective operations contribute to the production of agricultural



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commodities which bring in profit to the appellants. Therefore, even the narrow traditional requirements of the concept of trade or business are, in that sense, satisfied by the agricultural operations of the appellants.

What is more important in the present appeals is that the appellants are limited companies which have been formed, inter alia, for the express purpose of carrying on agricultural trade or business. We have noticed how the agricultural operations carried on by the appellants are within their objects, and so, there is no difficulty whatever in holding that the said operations are organised by the appellants and carried on by them as a trade or business would be carried on by any trader or businessman. When a company is formed for the purpose of carrying on an agricultural operation, it is carrying on trade or business and a plea raised by it that this organised trade or business does not fall within s. 2 (j) simply and solely for the reason that it is an agricultural operation, cannot be sustained.”

20. The finding of the labour court that there was no proper inquiry cannot be interfered with. In such circumstances, unless the Management seeks an opportunity to conduct a fresh inquiry, the question of allowing them does not arise. The other submission that if the inquiry was not proper, then the matter should be remanded to the Management also does not stand to reason. In this connection, a reference may be made to the judgment of the Supreme Court in **Workmen of Messrs Firestone Tyre & Rubber Company Vs. Management & Others** reported in 1973 (1) SCC 813 in which the scope of Section 11A was dealt with. It was observed as under:



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“Various decisions of this court have emphasised that there is an obligation on the part of an employer to hold a proper enquiry before dismissing or discharging a workman. And it has also been stated that the enquiry should conform to certain well defined principles and that it should not be an empty formality. if the management, being fully aware of this position in law, does not conduct an enquiry or conducts a defective enquiry, the order passed by it is illegal and it cannot take advantage of such illegality or wrong committed by it and seek a further opportunity before the Tribunal of adducing evidence for the first time. Generally, the Standing Orders also provided for the conduct of an enquiry before imposing a punishment., The Standing Orders have, been held to be statutory terms of conditions of service. If an employer does not conform to the provisions of the Standing Orders he commits an illegality and an order passed, which is illegal, has only to. be straightway set aside by the Tribunal. Decisions of this Court, while recognising that an opportunity has to be given to an employer to adduce evidence before the Tribunal for the first time, have not given the importance to the effect of a breach of a statutory obligation committed by an employer in not conducting a proper and valid enquiry as per the Standing Orders. This anomaly has now been removed by the legislature”

21. Further if the inquiry conducted by the employer is found to be defective, there is scope for the labour court to record fresh evidence, in case the employer seeks an opportunity. If no opportunity is sought before the labour court in their pleadings, the labour court does not need to give any such opportunity. This position of law has been well clarified by the Supreme Court vide its decision in **Karnataka SRTC Vs. Lakshmiddevamma** reported in **2001 (5) SCC 433** and it

was observed as under:-



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“When a domestic inquiry has been held by the management and the management relies on it, the management may request the Tribunal to try the validity of the domestic inquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal if the finding on the preliminary issue is against the management. In such a case if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to adduce additional evidence and also give a similar opportunity to the employee to lead evidence contra. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been availed of before the proceedings were closed, the employer can make no grievance that the Tribunal did not provide for such an opportunity.”

Hence this court is not inclined to interfere with the finding of fact recorded by the labour court in the impugned award about the inquiry not being conducted as per the principles of natural justice.

22. Once the inquiry was held to be vitiated, then unless fresh evidence is let in, no part of the inquiry held to be vitiated by the labour court can be relied upon as held by the Supreme Court in **Neeta Kaplish vs Presiding Officer Labour Court** reported in **1999 (1) SCC 517** and the following passage can be usefully reproduced: -

“Learned counsel for the appellant contended that in spite of the direction by the Labour Court to the respondent-management to lead evidence, it was open to the Management to rely upon the domestic enquiry proceedings already held by the Enquiry Officer, including



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the evidence recorded by him, and it was under no obligation to lead further evidence, particularly as the Management was of the view that the charges, on the basis of the evidence already led before the Enquiry Officer, stood proved. It was also contended that under [Section 11-A](#), the Labour Court had to rely on the "materials on record" and since that enquiry proceedings constituted "material on record", the same could not be ignored. The argument is fallacious.

The record pertaining to the domestic enquiry Would not constitute "fresh evidence" as those proceedings have already been found by the Labour Court to be defective. Such record would also not constitute "material on record", as contended by the counsel for the respondent, within the meaning of [Section 11-A](#) as the enquiry proceedings, on being found to be bad, have to be ignored altogether. The proceedings of the domestic enquiry could be, and, were, in fact, relied upon by the Management for the limited purpose of showing at the preliminary stage that the action taken against the appellant was just and proper and that full opportunity of hearing was given to her in consonance with the principles of natural justice. This contention has not been accepted by the Labour Court and the enquiry has been held to be bad. In view of the nature of objections raised by the appellant, the record of enquiry held by the Management ceased to be "material on record" within the meaning of [Section 11-A](#) of the Act and the only course open to the Management was to justify its action by leading fresh evidence as required by the Labour Court. If such evidence has not been led, the Management has to suffer the consequences."

23. Given the above, the failure of the Management to provide satisfactory evidence will result in the labour court holding that the charges were not proved and therefore the workmen are eligible to get appropriate relief. The only question that arises for consideration is whether the labour court was proper after holding



that the charges were not satisfactorily proved directing the workmen as fresh entrants. Whatever their status, the question of continuity of service if granted would have enabled them to get future benefits such as regularization etc. When the charges against the workmen were not proven, then what should be the relief was also addressed by the Supreme Court vide its decision in **Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.)** reported in **2013 (10) SCC 324** and it was held as under: -

“The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under [Article 226](#) or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer’s obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.”

24. It is seen from the records that the two workmen were continuously employed from 1991 to 1995. Whether they are given work for the entire month is immaterial. Even as per the statement of the Management they are paid daily



wages and are employed for 20 days in a month. If that is accepted, then any workman employed in the so-called seasonal employment would have worked for 240 days which is eligible to get protection under Section 2(oo) r/w Section 25-F of the I.D.Act. As contended by the learned counsel for workmen, had they been in employment they would have also got their names in the final seniority list and as was given to workman Mohan they would have got regular employment. Therefore, instead of granting the relief of reinstatement with full back wages and continuity of service, the labour court has erred in employing them as fresh employees thereby losing their service benefits. Hence to that extent, the impugned Award requires modification.

25. Therefore, the impugned award of the Respondent Labour Court in I.D.No.2/1999 dt. 31.10.2002, in so far as it ordering reinstatement to the two workmen is upheld. However, the direction that they will be employed as fresh entrants is set aside and the workmen are entitled to get the benefit of service continuity and back wages. This will be subject to the deduction of amounts paid under Section 17-B of the I.D. Act from the total back wages payable. In so far as the workman V.Pandian is concerned since he died on 24.7.2017, his legal heirs will be eligible to get back wages from 1996 till the date of his death. As regards the benefit of reinstatement which may not be available to him, the benefit of



reinstatement is to be paid as compensation which is quantified at Rs.1 lakh which shall be paid to the legal heirs. Accordingly, W.P.No. 37241 of 2003 will stand dismissed. W.P.No.11184 of 2004 will stand allowed to the extent indicated above. However, parties will bear their costs. The Management of Pandit Jawaharlal Nehru College of Agriculture is hereby directed to comply with the above direction within Eight weeks from the date of receipt of this order.

07. 11 .2024

dpq

Index : Yes /No

Speaking Order : Yes/No

To:

1.The Presiding Officer
Labour Court
Karaikal (with records)

2.The Dean,
Pandit Jawaharlal Nehru College
of Agriculture,
Serumavilangai, Nedungadu,
Karaikal.



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DR.A.D.MARIA CLETE, J.

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Pre-delivery order in
W.P.No. 37241 of 2003
and
W.P.No. 11184 of 2004

07.11.2024