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W.P.Nos.11477, 11478, 11479, 36248 & 36898 of 2004 & batch etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE **D.BHARATHA CHAKRAVARTHY**

W.P.Nos.11477, 11478, 11479, 36248 & 36898 of 2004 & 530, 531, 532,
10357, 10358 & 10359 of 2006 and
W.M.P.Nos.30810 to 30815 of 2004 & 43592 of 2004, 611, 612 613, 614 of
2006

W.P.No.11477 of 2004

Udagamandalam Municipality,
Represented by its Commissioner,
Udagamandalam, The Nilgiris.

... Petitioner

Vs

1. The Presiding Officer,
Labour Court, Coimbatore.

2. B.Thammanan

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorarified Mandamus, calling for the records of the Labour Court, Coimbatore relating to order dated 28.11.2003 in IA.No.652 of 2002 in ID.No.527 of 1999 on its file, quash the same and consequently direct the Labour Court, Coimbatore to consider and pass orders in I.A.No.652 of 2002 in I.D.No.527 of 1999 on merits and in accordance with law.

For Petitioner : Mr.A.S.Vijayaragavan

For R1 : Labour Court

For R2 : Mr.R.Sivakumar



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COMMON ORDER

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All these writ petitions are connected and are taken up by this common order for disposal. These writ petitions relate to the services of three workmen namely B.Thammanan, T. Narashiman and S.Manjan, in the management, namely, Udhagamandalam Municipality. The three persons above are referred to as workmen. Udhagamandalam Municipality is referred to as the management in this order without reference to their status, whether they are petitioners or the respondents in the various writ petitions.

2. Originally, the workmen being aggrieved by their non-employment in the year 1997 raised the dispute and upon the conciliation being failed, filed claim petitions in I.D.No.527, 528 and 567 of 1999 on the file of the Labour Court, Coimbatore. The management was set ex-parte and an award was passed on 26.04.2000, directing the management to reinstate the workmen into service with continuity of service and back wages. The management filed three Interlocutory Applications, (i.e) I. A No. 652 of 2002 in I.D No. 527 of 1999, I.A.No.653 of 2002 in I.D.No.528 of 1999 and I.A.No.654 of 2002 in I.D.No. 567 of 1999 to condone the delay of 272 days in filing as well as 240



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days in representing the said interlocutory applications. By three separate orders dated 28.11.2003, those interlocutory applications were dismissed. Aggrieved by the same, the Management has filed the writ petition Nos. 11477 of 2004, 11478 of 2004, and 11479 of 2004 respectively.

3. While that being so, since the ex-parte award was not complied with, to compute the benefits under the said award, the workmen had filed C.P.Nos.335, 336 and 337 of 2003 which were allowed on 14.11.2003 by an exercise of power under section 33C(2) by the Labour Court. In spite thereof, since the amounts were not been paid, seeking a certificate of recovery and to recover the amount under section 33(c)(1) of the Industrial Disputes Act, the workmen concerned have filed the writ petition Nos. 530, 531 and 532 of 2006. Again, when the juniors of the workmen were regularised in service by the Government G.O.Ms.No. 21, (Municipal Administration and Water Supply Department) dated 23.02.2006, merely because the said benefit was not extended to the workmen as the case was pending in industrial dispute and before this Court, the workmen again filed the writ petition Nos.10357, 10358, 10359 of 2006. In the above Computation Petitions, the management had also filed the interlocutory application to set aside the order passed in the



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computation petitions in I. A No. 697 of 2003 and 698 of 2003, which also came to be dismissed and aggrieved by the same, the management has filed W.P.No.36248 of 2004 and 36898 of 2004. Thus, all the above eleven writ petitions are taken up together for disposal by this order.

4. Heard Mrs.A.S. Vijayaraghavan, the learned counsel appearing on behalf of the management and Mr.R.Sivakumar, the learned counsel appearing on behalf of the workmen.

5. The learned counsel for the management would submit that firstly, in this case, the workmen are all employed as casual labourers and as non-muster roll employees. Only if and when the work is available, their services can be availed. Given the policy decision which is taken to hand over the public conveniences to private parties, their services were not required. Thereafter also, the management tried its level best to accommodate them as road Gangmen, but for want of work they could not be accommodated and hence they were disengaged. They did not have any right to claim continuous employment and therefore, the dispute raised by them is thoroughly unsustainable.



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6. When notices were received from the Labour Court in the claim petitions, the particular clerk who was handling the matter, without properly bringing it to the notice of the Commissioner, gave erroneous information. On account of the same, originally, the disputes were not defended properly, but within a short time after receipt of notice from the computation petitions, the interlocutory applications were filed to condone the delay of 272 days in filing and another 240 days in representing.

7. Thus, it can be seen that the delay is only 512 days. Normally, the approach of the Court would be to afford an opportunity for the party to the litigation. Therefore, the Labour Court ought to have condoned the delay and given an opportunity to the management to contest the case on merits. If an opportunity is given to contest the case on merits, then automatically, the consequential orders that are passed in the C.Ps. and the challenge all becomes superfluous. Therefore, when the management has been contesting the matter, an opportunity should be given by allowing the Writ Petition Nos.11477 to 11479 of 2004. Once the said writ petitions are allowed, further decisions in the other writ petitions may not be material. When the workmen were not in



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service, the Government was not in a position to regularise them by way of subsequent G.O. and their names were not included for regularisation. The management is very well justified in not employing them, and therefore, this Court should interfere in the matter and give an opportunity to the Municipality.

8. Per Contra, Mr.R.Sivakumar, the learned counsel appearing on behalf of the workmen would submit that it is true that the approach of the Court is liberal while condoning the delay in setting aside the ex-parte orders. Even huge delays can be condoned provided, sufficient reason is adduced. In this case, not only sufficient reasons were not adduced, but on the contrary, false reasons were mentioned. When false reasons are mentioned, even if the delay is very short, Courts will not condone the delay. The Labour Court has given its detailed findings as to how the reasons which are mentioned in the affidavit filed in support of the interlocutory applications are false. The workmen have been crying hoarse to get reinstated. Notices were served in the claim petition. The management did not care to respond to the same and file any counter and contest the matter. Thereafter, the award was published in the Gazette. The workmen enclosed the award and sent notices to the management. They did



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not show any positive response. The second communication was also sent on behalf of the workmen. Even thereafter, no positive response was shown by the management. Only thereafter, the computation petitions were filed, even in the computation petitions, in two of the computation petitions, the management remained ex-parte and thereafter filed applications to set aside the order passed in the computation petitions. Therefore, it can be seen that the management is completely at fault and the order passed by the Labour Court in the interlocutory application rejecting the prayer of the management to set aside the ex-parte Award cannot be found fault with. Therefore, even according to him, the other computation petitions as well as the relief prayed under the Government Order are only consequential, would automatically follow once this Court upholds the ex-parte award which is passed in I.D.No. 527, 528 and 567 of 1999. The workmen have got about four more years of service and will be entitled for regular service.

9. I have considered the rival submissions made by learned counsel for both sides and perused the material records of the case.

10. In this case, the management has suffered an ex-parte award on



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26.04.2000. In the affidavit filed in support of the interlocutory application, it is the specific case of the management that they have not received any summons in the Industrial Dispute. The same has been categorically mentioned in Paragraph No. 2 and only on that ground, they sought to set aside the ex-parte award. It is essential to extract the said averment which reads as under:-

“2. I state that the above Industrial Dispute was filed by the petitioner for reinstatement and back wages in the said Industrial Disputes we have not received any summons.”

11. With reference to the said averment, after considering the counter filed by the workmen, the Labour Court found that firstly, summons were served in the Industrial Dispute. Secondly, the copy of the award was also served on the Management on 04.05.2000. Thereafter, the workmen had made further representation on 17.06.2000. The Labour Court also considered the acknowledgement card in receipt of both communications. The Labour Court found that the averments made in the affidavit filed in support of the applications are false. The specific finding in this regard is made in Paragraph No. 6. Therefore, as rightly contended by the learned counsel for the



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workmen even though, Courts normally take a liberal approach in the matter of condonation of delay to set aside the ex-parte award, as one more opportunity has to be given to the management to contest the matter on merits, the same will not be granted if the reasons which are mentioned in the affidavit is false. Therefore, I don't find any error whatsoever in the order of the Labour Court in dismissing the Interlocutory Applications.

12. Be that as it may, the case of the Management on merits is narrated in Paragraph No. 4C of the affidavit filed in support of this writ petition. The said paragraph No. 4C is extracted hereunder:-

“4(c). It is respectfully submitted that the second respondent herein were only non muster roll employees who worked originally road gang mazdoor till 1991 and was later working as entry the collector in the public latrines maintained by the petitioner. Later as the municipality following policy decision of the Government decided to handover the maintenance of public latrines to private persons through public auction, his services could not be availed continuously. The second respondent is not an employee borne on the cadre or employed in any one of posts sanctioned under the relevant Municipal Service Rules. Again, after handing over the public latrines to private persons in 1997 April, the second respondent was working as N.M.R. Road gang mazdoor. However, the municipality could not avail his services after 21.10.1997. In such circumstances, the prayer sought for in the I.D. itself is not



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maintainable and the second respondent has no vested right to any post or job in the petitioner Municipality available under the relevant service rules. The Labour Court, failed to note the same while dealing with the I.A. as the said facts are very much essential to be considered. Even as per the allegations in the petition in I.D.No. 527/99, he was engaged in N.M.R.Road gang Mazdoor between December 1997 to January 1998, while so he cannot be heard to say that non employment is from 22.10.1997.

13. Thus, it can be seen that it is admitted by the management that the workmen have been engaged as non-muster roll employees from 1991 and in the year 1997 when the public conveniences were given away to private parties, they could not be continued in their promoted engagement as fee collector. It is another thing that the workmen claim that they have been engaged since 1985. Be that as it may, when it is admitted in the above-mentioned Paragraph No.4C that even after handing over the public conveniences to the private parties, these workmen were again re-employed as Road Gangman up to 21.10.1997, there is absolutely no averment that when they sought to disengage them on the ground of non-availability of work, any seniority among the Gangmen was followed. It is the specific case of the workmen that the juniors who have been working in the other places continued, and only because the workmen happened to be working in the



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particular public conveniences that are handed over to the private parties, they were disengaged. Thus, it can be seen that, firstly, the management is supposed to follow the principle of seniority in case of disengagement on account of non-availability of work. Secondly, the compensation as mentioned under Section 25F of the Industrial Disputes Act ought to have been granted, and the procedure laid therein ought to have been followed. Therefore, even considering the case on merits, there is absolutely nothing for this Court to remand the matter back to the Labour Court.

14. In this case, the workmen started their litigation in the year 1999 upon being disengaged in the year 1997. Therefore, it would be extremely unjust to remand the matter even taking a liberal approach at this juncture in the year 2024. Therefore, on the sheer efflux of time, on consideration of the merits of the case of the management and the very reasons and soundness of the order passed by the Labour Court, I am not inclined to interfere with the order passed in I.A.Nos.652, 653 and 654 of 2002 and accordingly, finding no merits, the writ petition filed by the management in W.P.No.11477 of 2004, 11478 of 2004 and 11479 of 2004 shall stand dismissed.



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15. Once the attack regarding the main order in the industrial dispute is rejected, thereafter, the challenge to the order passed in the computation petitions will not remain, as the Labour Court has no other option than to compute the benefits based on the Award. In that view of the matter, the writ petitions filed by the management in W.P.No. 36248 of 2004 and 36898 of 2004 also shall stand negatived. But in view of the prayer regarding regularisation and the ultimate relief which is being considered by this Court, the actual computations will survive only in part.

16. As far as the writ petitions filed by the workmen, concerning the implementation of the orders passed in the computation petition, I am of the view that, in this case, given the sheer efflux of time and concerning the relief that is to be considered in respect of regularization, the same has to be comprehensively considered. It can be seen that vide G.O.Ms.No.21 (Municipal Administration and Water Supply Department) dated 23.02.2006, the similarly situated workmen who have all been engaged on a non-muster roll basis and have put in 10 years of service as of 01.10.1996 were eligible for the benefits.



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17. As a matter of fact, these petitioners were in service as of 01.10.1996, however were not included in the Government Order because when the Government Order came to be passed, they were non-employed, and the matter is pending in Courts. Even on the date of the Government order (i.e.) on 23.02.2006, already the award of the Labour Court was very much in force. Therefore, the workmen would be entitled to regularization which is granted in respect of the juniors who were also on non-muster roll and working in the Ooty Municipality.

18. The names of the juniors, who are all granted regularisation, namely, Ravi, Ramesh, M.Kumar, Sekar, Sikkan, Raman Nanjudan, etc., are mentioned in paragraph 2 of the additional affidavit, which is not controverted by the Management. Similarly, it has also been mentioned that though persons belonging to the next batches of the workmen, namely one Swaminathan, Mohan, Kittan and L.Krishnan etc., who are all engaged as Road Gang Mazdoor, subsequently were also been regularised by the said G.O. dated 23.02.2006. In view thereof, this Court finds that since the workmen were in service as of 01.10.1996, as per the Government Order and only because the



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writ petition filed by the management before this Court against the award of the Labour Court was pending, they were not included in the Government Order for regularization. Accordingly, these three workmen in the case would also be entitled to regularization in terms of G.O.Ms.No.21 (Municipal Administration and Water Supply Department) dated 23.02.2006 from the date of regularisation of their immediate juniors.

19. Given the aforesaid findings, the writ petitions filed by the workmen in W.P.Nos.10357, 10358 and 10359 of 2006 shall stand partly allowed. Now, coming to the question of the other reliefs, firstly regarding back wages, since in this case the workmen are not at all fault, normally the entire back wages should follow, but at the same time, this Court considers the fact that the workmen were in service from 1985 to 1997 for 12 years and the litigation period is more than that, (i.e.) 1997 to till today. Therefore, the relief has to be granted balancing the interests of the management also. Since the workmen are also ordered to be regularised in service from the date of their juniors, I am of the view that instead of granting the entire back wages, the workmen can be reinstated with 40% of back wages, which would serve the interest of justice in overall facts and circumstances of the case.



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WEB COPY 20. In view thereof, the writ petitions are ordered on the following terms:-

(i) W.P.Nos.11477 of 2004, 11478 of 2004, 11479 of 2004, 36248 of 2004 and 36898 of 2004 shall stand dismissed.

(ii) W.P.Nos. 530, 531 and 532 of 2006 shall also stand disposed of since the consequential benefits that were originally granted by the Labour Court have now been modified, and therefore, the computation originally made cannot stand now.

(iii) W.P.Nos.10357, 10358 and 10359 of 2006 shall stand partly allowed on the following terms:-

(a) The workmen will be reinstated into service as per the award of the Labour Court in I.D.No. 527, 528 and 567 of 1999 with all continuity of service. As far as the back wages is concerned, the workmen will be entitled to 40% of the back wages.

(b) After reinstatement, the workmen's services will also be regularised from the date of regularization



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of the immediate juniors of the workmen in terms of G.O.Ms.No.21 (Municipal Administration and Water Supply Department) dated 23.02.2006.

(c) The management shall also send a formal proposal for the regularisation of these three workmen to the government to treat the services of these workmen as regular from the date of regularisation of the juniors of the workmen, and accordingly, their services be regularised.

(d) The workmen shall be reinstated into service within a period of eight (8) weeks from the date of receipt of a copy of this order.

(e) From the date of reinstatement, the workmen will be entitled to 40% back wages with continuity of service and all the scale of pay benefits.

(f) If the management, namely, Ooty Municipality does not reinstate the services within eight weeks as mentioned above, then the workmen will be entitled to full back wages from the date of this order.

(g) The entire arrears of 40% back wages shall be



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computed and paid to the workmen within twelve (12) weeks from the date of receipt of a copy of this order.

(iv) No costs. Consequently, the connected miscellaneous petition is closed.

20.11.2024

Neutral Citation: Yes
nsl

D.BHARATHA CHAKRAVARTHY, J.

nsl

To
1. The Commissioner,
Udagamandalam Municipality,
Udagamandalam, The Nilgiris.

2. The Presiding Officer,
Labour Court, Coimbatore.

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36898 of 2004 & 530, 531, 532, 10357,
10358 & 10359 of 2006**



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