



W.P.Nos.43836 and 43837 of 2006

THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 29.11.2024

CORAM :

The Hon'ble MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.43836 and 43837 of 2006

1.M.Kumar
2.V.S.Parthasarathy
3.A.Somasundaram
4.G.Devaraj
5.N.G.Munusamy
6.N.Chandrasekaran
7.D.Selvam
8.Janarthanam
9.A.Srinivasan

.. Petitioners in W.P.No.43836 of 2006

1.G.Mohan
2.P.Narashiman
3.K.Vadivelan
4.P.Neelasankaran

.. Petitioners in W.P.No.43837 of 2006

-VS-

1. The Presiding Officer,
I Additional Labour Court,
High Court Campus,
Chennai-600 104.

2. The Management of Simpson
& Company,
Chennai-600 002.

.. Respondents in both the writ petitions



W.P.Nos.43836 and 43837 of 2006

Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for production of the records relating to the Award dated 11.11.1999 made in I.D.Nos.653 and 513 of 1989 passed by the first respondent and quash the same.

For Petitioners in both : Mr.K.M.Ramesh
the writ petitions Senior Counsel
Assisted by
Mr.V.Subramani

For Respondents : R.1 – Court
Mr.S.Jayaraman
For R.2

* * * * *

COMMON ORDER

These writ petitions have been filed challenging the award of the I Additional Labour Court, Chennai, made in I.D.Nos.653 and 513 of 1989 dated 11.11.1999. By the said award, the claim made by the workmen that they have been illegally retrenched from the second respondent Management was ultimately rejected.

2. The brief facts leading to the filing of the writ petitions are that 13 petitioners (9 petitioners in W.P.No.43836 of 2006 and 4 petitioners in



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W.P.No.43837 of 2006) were also among the 101 workmen, who originally raised a dispute stating that they have worked in the second respondent Management for a period more than 240 days in the year 1985. But, however, they were retrenched from service without payment of compensation by following the procedure as laid down under the Industrial Disputes Act, 1947 and as such, their retrenchment has to be held as illegal and they must be reinstated into service with backwages.

3. In the Industrial Dispute, originally an interim order was passed in I.A.Nos.184, 185 and 186 of 1990 in I.D.Nos.513, 587 and 653 of 1989 and thereafter, the same was confirmed by a final award dated 31.03.1993 made in these Industrial Disputes holding that the workmen had not put in 240 days so as to claim the benefit under Section 25F of the Industrial Disputes Act, 1947. Earlier, the workmen challenged the said award vide W.P.No.2665 of 1994 and by an order dated 15.10.1997, this Court found that with reference to several of the workmen, if the intervening Saturdays and Sundays are added to the number of working days, they might satisfy the requirement of 240 days. This Court found that by the evidence of M.W.3, it was clear that the Saturdays and Sundays, which were treated as



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holidays, were never considered while calculating the 240 days and therefore, remanded the matter back to the Labour Court for fresh disposal.

Paragraph 22 of the judgment of this Court is extracted hereunder for ready reference:

"22. Net result, the impugned awards of the first respondent are set aside and the matter is permitted to first respondent herein for fresh disposal. I make it clear that the Labour Court is directed to consider the claim of the Petitioners with reference to the Saturdays, Sundays and paid holidays as per the three decisions viz.,

(i) The workmen of American Express International Banking Corporation and The Management of American Express International Banking Corporation (1985 (2) L.L.J. 539);

(ii) H.D.Singh and Reserve Bank of India and Others (1986 (1) L.L.J. 127); and

(iii) Order of Raju,J. in W.P.No.14742 of 1988 dated 9.8.1991.

more particularly with reference to the preceding year prior to their respective date of termination. I also make it clear that, if the Petitioners able to satisfy after inclusion of those holidays that they worked for more than 240 days. It is open to the Labour Court to award such relief in terms of the provisions of the Industrial Disputes Act. It is needless to mention that in spite of including those days if any of the workmen is not in a position satisfy the minimum required days, viz., 240 days, their claims have to be rejected. With these direction, the matter is remitted to the first respondent for fresh disposal. The remittal order is confined to decide the limited question mentioned above. It is open to both parties to have oral and documentary evidence to the above aspect only. Labour Court is directed to dispose of the same within a period of three months from the receipt of order copy."

4. Thereafter, the entire issue was taken up by the Labour Court and



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once again, by an award dated 11.11.1999, the claim of the workmen stood dismissed, aggrieved by which, 13 of the workmen have filed the present writ petitions.

5. Mr.K.M.Ramesh, learned senior counsel, would submit that even though this Court remanded the matter with an express direction to calculate the Saturdays and Sundays, the Labour Court has gone again on the question whether those Saturdays and Sundays can be included, and as a matter of fact, had once again gone into the question that only on certain Saturdays and Sundays, the workmen were actually employed and therefore, non-suited the workmen. As per the dictum of this Court in the earlier round of litigation, the entire 96 days being Saturdays and Sundays in the year has to be added to the number of days put in by the workmen and if such exercise is undertaken, the workmen have completed 240 days and therefore, the award has to be interfered by this Court.

6. Per contra, Mr.Jayaraman, learned counsel appearing on behalf of the second respondent Management, would submit that though the Labour Court has gone on merits with reference to the number of Saturdays and



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Sundays the industry was closed and only for some of the Saturdays when the workmen were employed and had given its findings, ultimately it had also complied with the direction of this Court. The Labour Court considered Ex.M.317 and had taken into account the number of days put in by the workmen. Even if adding all the Saturdays and Sundays and also the holidays, none of the workmen except for one could cross the requirement of 240 days and in respect of one workman in whose favour the Labour Court has found that the Management has settled the issue. These 13 petitioners, who are before this Court, do not cross the mandatory requirement of 240 days, even by adding the 96 days and the 9 mandatory holidays.

7. In reply thereof, Mr.K.M.Ramesh, learned senior counsel, would submit that no such exercise was undertaken in detail by the Labour Court and if only the said Ex.M.317 and the other evidence are summoned by this Court, the fact whether the Labour Court has actually verified or not can be found out by this Court.

8. Upon such a request, this Court called for the records and it could be seen that since the workmen did not immediately file the writ petition as



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against the award, an information has been gathered as if no appeal has been filed as against the award, but, however, only after filing of the writ petitions in the year 2006, in the year 2009, by publishing duly in the gazette, the records of Labour Court in this Industrial Dispute have been destroyed. But even then, the learned senior counsel appearing on behalf of the respondent/workmen was fair enough to produce the copies of the relevant exhibits as also the evidence. It can be seen that there were 9 holidays, which were notified as per Section 3 of the Tamil Nadu Industrial Establishments (National and Festival Holidays) Act, 1958. Therefore, as per the mandate in the earlier writ petition, 9 days have to be added. This apart, as contended by the learned senior counsel, 96 days, being Saturdays and Sundays, have to be added. Upon perusal of Ex.M.317, maximum number of days that have been put in by these petitioners are only 106 days and 108 respectively. Therefore, even by adding another 105 days, still none of the 13 petitioners before this court cross the threshold limit of 240 days.

9. Accordingly, even by undertaking the exercise in detail, this Court finds that the finding of the Labour Court in paragraph 24 that Ex.M.317 shows that even after including the Saturdays and Sundays and other paid



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holidays, none of the petitioners have completed 240 days, except
Sl.No.147, during the period of 12 months prior to 10.12.1985 is correct and
accordingly, this Court cannot come to the aid of the petitioners.

Finding no merits, the writ petitions stand dismissed. No costs.

29.11.2024

Index : No
NC : No
Speaking

sra

To

The Presiding Officer,
I Additional Labour Court,
High Court Campus,
Chennai-600 104.



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D.Bharatha Chakravarthy, J.

(sra)

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