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W.P.No.21212 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.21212 of 2010
and M.P.No.1 of 2010

Salem Corporation,
Rep. by its Commissioner,
Salem.

.. Petitioner

Versus

1. M.M.Palanisamy

2. The Presiding Officer,
Labour Court,
Salem.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari calling for the entire records, leading to the issue of proceedings bearing Award, dated 12.08.2009 made in I.D.No.6 of 2008 on the file of the 2nd respondent herein and quash the same.

For Petitioner : Mrs.N.Devi,
Asst. by Mr.V.Parthiban,

For Respondents : Mr.S.V.Navin Babu,
for Mr.K.V.Shanmuganathan

: R2 - Court



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ORDER

This Writ Petition is filed challenging the order of the Labour Court made in I.D.No.6 of 2008, dated 12.08.2009. By the said award, the workman was directed to be reinstated into service with continuity of service and to include him in the consolidated list as per G.O.Ms.No.125, dated 27.05.1999 and G.O.Ms.No.21, dated 23.02.2006 without back-wages. Aggrieved by the same, this Writ Petition is filed.

2. The brief factual background in this Writ Petition arises is that the workman, in this case, namely, *M.M.Palanisamy*, raised a dispute. It is his case that he was working in the petitioner Corporation from 13.09.1993 as a Daily Wager. While so, on 24.04.1998, he was orally terminated from the service. His last drawing sum was Rs.1,080/- per month and his daily wage was at Rs.36/- per day. He was working continuously from 13.09.1993 till the date of his non-employment. No Domestic Enquiry was conducted. The provisions of Sections 25F, 25G and 25N of the Industrial Disputes Act, 1947 were not followed. Therefore, his termination was illegal. Therefore, when he raised a dispute, the Labour Officer concerned had made a



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statutory advice to the petitioner directing them to reinstate the workman vide the order, dated 24.03.1999.

3. The petitioner did not give any effect to the said advice. Therefore, the respondent workman approached this Court by way of a Writ Petition in W.P.No.22339 of 2007 and the said Writ Petition was disposed of vide the order, dated 02.07.2007, directing the petitioner to consider the representation of the respondent workman and pass orders thereon. The petitioner rejected the request of the workman again by the order, dated 29.07.2007 and thereafter, the present dispute was raised and the conciliation not being successful, the Claim Petition was filed which was taken on file in I.D.No.6 of 2008.

4. The Claim Petition was resisted by the petitioner management. It is the case of the management that all the workmen, who are engaged on non-muster roll basis and who are on service as on 01.01.1996, were ordered to be taken on consolidated basis by the Government Order. At the relevant point of time, if the workman had been in service, the management would have taken him on consolidated basis and thereafter, he would have been



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dealt with in the same terms as the other employees who were governed in the Government Order. It can be seen that the respondent workman is not at all in employment and that he would have been an absentee or an irregular person in service and hence his name was not included while the list was prepared at the time of passing of the Government Order. The petitioner was not at all in service as of the year 1998 and therefore, there is no question of termination in the year 1998.

5. On the said pleadings, the Labour Court took up the enquiry and in the enquiry, the respondent workman examined himself as *W.W.1* and ***Ex.P-1*** to ***Ex.P-7*** were marked. On behalf of the management, one *M.Ganesan*, was examined as *R.W.1* and ***Ex.R-1*** to ***Ex.R-3*** were marked. The Labour Court, thereafter considering the case of the parties and held that the non-employment is illegal and while denying the back-wages, directed the reinstatement of the workman with continuity of service and also include him in the consolidated basis as per the relevant Government Orders. Aggrieved by this, the present Writ Petition is filed by the management.



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6. Heard *Mrs.N.Devi*, learned Counsel for the petitioner management and *Mr.S.V.Navin Babu*, learned Counsel for the respondent workman.

7. *Mrs.N.Devi*, learned Counsel for the petitioner management would submit that firstly, had the workman being in service, the petitioner management had no personal motive or malafide as against the workman to discriminate against him. He was not there in service even as on 01.01.1996 and that is why, his name was not included in the Government Orders. Therefore, belatedly, the workman cannot make a claim. Even the claim of the workman is that he was non-employed in the year 1998 and this dispute was raised in the year 2007. Therefore, the Labour Court ought to have non-suited him even on the ground of delay. Hence, she prays to allow the Writ Petition.

8. Per *contra*, *Mr.S.V.Navin Babu*, learned Counsel for the respondent workman would submit that after appreciation of the evidence let in by the workman, the case of the management that the workman was not even in service as on 01.01.1996, was rejected and if at all the workman's name was not included in the list of the employees benefited by the Government



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Order, it is the mistake of the management and the workman was in the service till the year 1998 and he was non-employed. As far as the delay is concerned, only for the reason that an advice was given by the Labour Officer and the workman was running pillar to post in implementing the same and thereafter, he approached this Court by way of a Writ Petition, the delay has occurred. In any event, the back-wages are not granted for the said period and for that matter, the entire back-wages are denied. Therefore, he would submit that there is nothing for this Court to interfere by way of this Writ Petition.

9. I have considered the rival submissions made on either side and perused material records of the case.

10. Firstly, it is the case of the management that the workman is not even in the service with reference to the relevant date of the Government Order i.e., 01.01.1996. The Labour Court considered the said pleading of the management along with the oral evidence of the workman as well as the cross-examination of the management side witness. More specifically, while cross-examining the management side witness, the workman marked



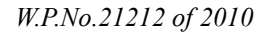
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Ex.P-3, dated 08.06.1999 which is the report of the Junior Engineer and the **Ex.P-4** which is relating to the period May, 1996 to October, 1996 which is a copy of the M-book consisting of six sheets, in which, the name of the workman was also found. In view of the positive evidence let in by the workman, the version of the management was disbelieved. It was held that the workman was in service till the year 1998 and it was the error committed on behalf of the management in omitting to include him in the list of the workman who are benefited by the Government Order.

11. No exception whatsoever can be taken in respect of the findings of the Labour Court which is based on the evidence. Therefore, in view of the proof rendered by the workman that he was on duty even as of the year 1996 and upto the year 1998, I am of the view that the finding of the Labour Court is in order.

12. The second contention that was raised on behalf of the petitioner management is that there is a delay. As rightly contended by the learned Counsel for the workman, the delay in this case is explained. The Labour Officer had given an advice to forthwith reinstate the workman. The details



13. Therefore, finding no merits, this Writ Petition stands dismissed.

12.12.2024

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To
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Labour Court,
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D.BHARATHA CHAKRAVARTHY, J.

grs

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