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W.A.No.558 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2024

CORAM

**THE HONONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONONOURABLE MR. JUSTICE P.DHANABAL**

**W.A.No.558 of 2024
and
C.M.P.No.3866 of 2024**

J.Jayakumar
S/o C.Janardhanan

... Appellant

Vs.

1. The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai - 600 003.
2. The Zonal Officer,
New Zone-IX, Old Zone-VI,
Corporation of Chennai,
Valluvarkottam, Nungambakkam,
Chennai - 600 021.
3. The Presiding Officer,
Principal Labour,
Chennai - 600 104.

... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 10.07.2023 made in W.P.No.31617 of 2016 passed by the learned single Judge of this Court.



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For Appellant : Mr.K.M.Ramesh,Senior Counsel
for Mr.V.Subramani

For Respondents : Mrs.P.T.Ramadevi,
Standing Counsel for R1 & R2
R3-Court.

J U D G M E N T

(The judgment of the Court was delivered by P.Dhanabal,J.)

This appeal has been preferred as against the common order passed in W.P.No.31617 of 2016 wherein the respondents Corporation herein has filed a writ petition challenging the order passed by the labour Court in I.D.No.61 of 2013.

2. The case of the appellant/2nd respondent in W.P. is that he along with other workers have been sponsored by the Employment Exchange, for being engaged as Malaria Desilting Tholilali under the 2nd respondent from 16.07.1997 to 16.10.1998 on a continuous and regular basis of work which is permanent and perennial in nature. However, the respondent Corporation, in order to deny the benefit of permanency and attendant benefits adopted the practise of appointing for a period of 89 days and extending it continuously for more than 5 years. The Government of Tamil Nadu issued G.O.Ms.No.125 Municipal



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Administration and Water Supply Department dated 27.05.1999 directing that all the workers who were employed on daily wage basis prior to 04.05.1999 should be regularised and absorbed in the Corporation on a permanent basis. Prior to that G.O., the respondent Corporation resorted to large scale retrenchment of the existing workers and appointed new hands to the vacancies which arose on account of retrenchment. The Union has filed a writ petition in W.P.No.8505 of 1998 and the same was ordered to consider the representation. But the respondents refused to regularise the service of the appellant herein. Hence, they raised industrial dispute before the Conciliation Officer but no settlement was arrived. Therefore, the appellant herein raised Industrial Dispute. The Labour Court, Chennai, has passed an order directing the respondents to reinstate the appellant without backwages. As against the same, the respondents/Corporation preferred a writ petition and the writ court allowed the writ petition through common order. Challenging the said writ order, the present writ appeal has been preferred by the appellant/2nd respondent in W.P.

3. The learned counsel for the appellant/workman would contend that the appellant and others have been employed as Malaria Desilting



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Tholilali under the respondent Corporation from 16.07.1997 to 16.10.1998 on a continuous and regular work basis. Thereafter, the Government of Tamil Nadu issued G.O.Ms.No.125, Municipal Administration and Water Supply Department dated 27.05.1999 directing all the workers who were employed on daily wage basis prior to 04.05.1989 should be regularised and absorbed in the Corporation on permanent basis. The appellant and others are entitled to the benefit of the above said G.O. They gave representation before the respondent Corporation but they did not consider the representation. Therefore, they raised Industrial Dispute by approaching the Labour Court. The Labour Court, after elaborate discussion, directed the respondents to reinstate the appellant without backwages. But the writ Court, without considering the case of the appellant, directed the Labour Court to find out whether the workmen were continuously employed for 480 days with continuity of service in two calendar years. The Labour Court, after elaborate discussion came to the conclusion that the appellant and others were terminated without compliance of Section 25 of I.D.Act and the learned Judge failed to consider that the respondent Corporation admitted that the similarly placed persons who were given break on completion of 89



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days, were re-engaged. The learned Judge ought to have held that the non regularisation and the subsequent termination of the appellant from service is unjustified and illegal. The award of the labour court is detailed in nature and a reasoned order. But without considering the same, the learned Judge had set aside the order and remanded back the case for fresh consideration. Therefore, the order passed by the learned Judge is liable to be set aside.

4. Learned counsel appearing for the respondent Corporation would contend that the appellant/petitioner and others were sponsored by the Employment Exchange for being engaged as Malaria Desilting Tholilali and they were engaged for conservancy work only for a period of 3 to 6 months and every year new persons were being sponsored by the Employment Exchange. Therefore, the workman could not serve continuously in the respondent Corporation and they seek for regularisation of their services for getting the benefits of G.O.Ms.No.125 dated 27.05.1999. The appellant herein filed a petition before the Labour Court after lapse of 14 years and the Labour Court had ordered for reinstatement of the appellant without backwages. The appellant is not



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entitled to the benefit of G.O.Ms.No.125 dated 27.05.1990, since she has not worked continuously, except during the period of contract. But the Labour Court erroneously held that the appellant is entitled to the benefit of the said G.O. and thereby ordered for reinstatement without backwages. As against the said order, the respondents Corporation preferred writ petitions before the writ Court and the Writ Court, after considering the materials, set aside the order of Labour Court and remanded the case back for fresh consideration and directed the Labour Court to decide whether the workmen were continuously employed for a period of 480 days in two calendar years; whether there was any unfair practice or not; and whether the workmen are entitled for reinstatement de hors the original engagement is a temporary post of Malaria Desilting Tholilali including the point of limitation. Therefore, the order passed by the writ Court is in order. Therefore, the Writ appeal is liable to be dismissed.

5. Heard both sides and perused the records.

6. According to the appellant, he was engaged as Malaria



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Desilting Tholilali from 16.07.1997 to 16.10.1998. However, the respondent Corporation adopted the practice of appointing the appellant for a period of 89 days and extending it continuously for more than 5 years. Thereafter, the Government of Tamilnadu issued G.O.Ms.No.125 dated 27.05.1999 directing that all the workmen who were employed on daily wage basis and prior to 04.05.1999 should be regularised and absorbed in Corporation on permanent basis, but the appellant was not considered. Therefore, they gave representation before the respondent Corporation but the same was not considered. Thereafter, they raised Industrial Dispute and the Labour Court, after passing an elaborate order, directed the respondents to reinstate the appellant in the entry level basis without any backwages. The said order was challenged by the respondents through the writ petition and the writ Court has set aside the order of the Labour Court and remanded the case back for fresh consideration by holding that the appellant was engaged as temporary employee and was engaged for certain period and not continuously in the Corporation, thereby, the Corporation has not regularised the appellant. However, the Labour Court has granted the relief of reinstatement by extending the benefit of G.O.Ms.No.125 dated 27.05.1999 and further,



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directed the Labour Court to decide the fact as to whether the workmen was continuously employed for a period of 480 days in two calendar years; whether there was any unfair labour practise or not; and whether the workmen was entitled for reinstatement de hors the original engagement is a temporary post of Malaria Desilting Tholilali including the point of limitation. With the said directions, the writ petition was allowed.

7. According to the appellant, the above said observation of the writ Court is erroneous because the Labour Court has passed a detailed order and discussed about all the legal aspects and then only, came to a conclusion that G.O. Ms.No.125 dated 27.05.1999 is applicable to the appellant herein.

8. This Court has perused the order of the Labour Court as well as the Writ Court.

9. The Labour Court, after elaborate discussion held that G.O. Ms.No.125 dated 27.05.1999 is applicable to the appellant herein and



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thereby, the appellant is entitled to the benefit of G.O. and directed to reinstate the appellant. But the Labour court failed to consider that the appellant had not completed 480 days of continuous service within 2 calendar years. Therefore, the writ Court has passed the order, after taking into consideration the arguments of both sides counsel and after perusing the order of the Labour Court, the Writ Court in paragraph No.7 has observed as follows:

7. The facts in the present case are not in dispute. Admittedly, the workmen were engaged as temporary employees and engaged for certain period and they have not continuously employed in the petitioner Corporation. Therefore, the employment of the workmen has not been regularised by the petitioner Corporation. However, the Labour Court overlooking the above facts, has granted the relief of reinstatement in favour of the workmen by extending the benefits of the said G.O.(Ms)No.125 dated 27.05.1999. Therefore, this Court is inclined to dispose of these Writ Petitions with the following directions:

“(i) The impugned orders passed by the Labour Court are set aside and the matters are remitted back to the Labour Court for fresh consideration;

(ii) While reconsidering the same, the



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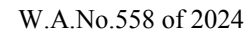
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first respondent / Labour Court is directed to provide an opportunity of hearing to the workmen and pass appropriate orders on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order.;

(iii) The Labour Court shall decide the fact as to whether the workmen were continuously employed for a period of 480 days in a two calender years; whether there was any unfair labour practice or not; and whether the workmen are entitled for reinstatement de hors the original engagement is a temporary post of Malaria Desilting Tholilali including the point of limitation; and

(iv) The petitioner Corporation and the second respondent / workmen are directed to canvass all the points before the Labour Court.”

10. Therefore, the writ Court has passed a detailed order after taking into consideration all the submissions made by both sides counsel and after perusing the records. Thus, the order passed by the writ Court is in accordance with law and does not warrant interference.



(J.N.B,J.) (P.D.B., J.)
22.04.2024

To

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