



W.P.No.28624 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 07.11.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.28624 of 2011

K.Kuppusamy

.... Petitioner

Vs.

1. The Presiding Officer,
Labour Court, Salem.

2. Managing Director,
TWAD Board,
Chepauk, Chennai – 5.

.... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, calling for the records pertaining to ID.No.341 of 1999 and quash the award dated 22.03.2006 passed by the 1st respondent herein dismissing the same and further direct the 2nd respondent to reinstate the petitioner in service with back wages, continuity of service and all other attendant benefits.

For Petitioner

: Mr.Pravin Prabhu
for Mr.K.V.Shanmuganathan



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For Respondents : Ms.S.Shahila Bhanu
Standing Counsel for TWAD Board

ORDER

This writ petition is filed challenging the impugned award dated 22.03.2006 passed by the Labour Court, Salem in I.D.No.341 of 1999.

2. The case of the petitioner/Workman is that he was appointed as a Watchman under the second respondent/Management on 29.08.1991 and while he was so working, on 31.12.1994 without any prior notice or compensation he was non-employed. Therefore, he has raised a dispute and claim petition is filed.

3. The case of the second respondent/Management is that the petitioner was employed as a Watchman with effect from 09.09.1991 in a project of establishing Thevoor Drinking Water Scheme and once the project was over on 15.07.1992 itself, the petitioner was relieved from the duty. The petitioner was paid a sum of Rs.14.20/- per day and the petitioner did not work for 240 days in a year or 480 in two years and therefore, the provisions



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of Sections 25(F) and 25(G) of the Industrial Disputes Act, 1947 need not be followed in respect of the petitioner.

4. Before the Labour Court, during the trial, the petitioner issued a notice to the second respondent/Management to produce the copies of the muster rolls, so as to establish that he was in service up to the year 2004. It is the case of the Management that they do not have any such muster rolls in respect of the petitioner herein. The Labour Court, while perusing the muster rolls in respect of the other employees allowed the claim in respect of the other workmen. As far as the petitioner is concerned, it is found that since there is no document, no adverse inference can be raised as against the Management and held that the petitioner failed to prove that he was in service for more than 240 days in a year and 480 days in two years and therefore, dismissed the claim petition. Aggrieved by which, the present writ petition is filed.

5. Mr.Pravin Prabhu, learned counsel appearing on behalf of the petitioner would submit that this is the case where the petitioner was



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employed as a Security Guard and he was paid in cash. Upon his name being entered into non-muster roll, he was not issued with any appointment order or termination order. In such case, the only way in which the petitioner can prove his claim is by summoning the muster roll. When the second respondent/Management has not produced the muster roll, adverse inference ought to be taken against him. The learned counsel would rely upon the judgment of the Hon'ble Supreme Court of India in ***R.M.Yellatti Vs. Assistant Executive Engineer [(2006) 1 SCC 106]***.

6. The learned counsel would further submit that in identical cases, the Division Bench of this Court after considering the efflux of time, has ordered lump sum compensation to be paid to the workmen. In this case, if reinstatement with back wages has not been considered by this Court, the petitioner's case to be considered at least for payment of lump sum compensation.

7. Per contra, Ms.Shahila Bhanu, learned counsel appearing on behalf of the second respondent would submit that it is a clear and categorical case



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of the respondent board that the petitioner was engaged only in a project and once the project is over, the petitioner was relieved, and that if the records are there with the second respondent/Management, the second respondent/Management certainly would have produced the same with reference to the period in which he was working and marked on behalf of the respondent/Management. When there is no record with the respondent/Management with reference to the years 1993 and 1994, non production thereof cannot be held against the Management.

8. I have considered the rival submissions made on either side and also perused the materials available on record.

9. Firstly, it is the right of the petitioner to prove that he was in employment in the particular period and that he was non-employed as per the date mentioned by the petitioner. The learned counsel for the petitioner is right that in this type of cases, the petitioner cannot produce any document when the respondent/Management have engaged him orally and have been paying them by the muster roll. However, it can be seen that it is a specific



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assertion of the respondent/Management that the petitioner was engaged only for the period of 103 days in the year 1991 and 219 days in the year 1992 and they have also produced the records in respect thereof. Therefore, it is the case of the respondent/Management that the petitioner was not at all engaged in the year 1993 and 1994 and he was relieved from service upon Thevoor Drinking Water project being completed in the year 1992 itself and hence, no adverse inference can be taken as against them. Even, the judgment which is relied upon by the learned counsel for the petitioner in ***R.M. Yellatti*** cited supra, the Hon'ble Supreme Court of India has held that though it is correct that it is only the respondent who has to produce the records, without any plea on behalf of the petitioner that there has been willful suppression of records which are available adverse inference cannot be drawn.

10. The relevant paragraph No.17 is extracted hereunder:

" 17. Analyzing the above decisions of this Court, it is clear that the provisions of the [Evidence Act](#) in terms do not apply to the proceedings under [Section 10](#) of the Industrial Disputes Act. However, applying general principles and on



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reading the aforestated judgments, we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily-waged earners, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant/workman will

not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls *per se* without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against



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the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under [Article 226](#) of the Constitution will not interfere with the concurrent findings of fact recorded by the Labour Court unless they are perverse. This exercise will depend upon facts of each case."

(emphasis supplied)

11. In view thereof, I do not find any error in the Award of the Labour Court, Salem. Without even any *prima facie* material that the petitioner has put in 240 days in a year or 480 days in two years and the petitioner is said to have worked for a meager period in the year 1992 and 1993, I am not in a position to agree with prayer of the learned counsel



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for the petitioner to order some lump sum compensation. Therefore, finding no merits, the writ petition stands dismissed. There shall be no order as to costs.

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Index : Yes
Neutral Citation : Yes
Speaking order : Yes

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D.BHARATHA CHAKRAVARTHY, J.

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