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WP.No.29572 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.06.2024

PRONOUNCED ON : 09.07.2024

CORAM

THE HONOURABLE Mr.JUSTICE **C.KUMARAPPAN**

WP.No.29572 of 2011

C.A.Munusamy

... Petitioner

Vs.

1. The Presiding Officer,
Principal Labour Court,
Vellore.

2. The Management rep by
The District Project Manager
Vazhndhu Kattuvom,
64, 8th East Main Road,
Gandhi Nagar,
Vellore-632 006.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records of the 1st respondent dated 06.10.2010 made in ID No.230 of 2008 quash the same and directing the 2nd respondent to reinstate the petitioner with all attendant benefits and pass such other further orders as this Hon'ble Court may deem fit and proper in the circumstance of the case.



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For Petitioner : Mr.M.Devaraj
For Respondents : R1-Court
R2-No Appearance

ORDER

This writ petition has been filed against the order passed in ID No.230 of 2008 dated 06.10.2010. The petitioner before the Labour Court is the appellant herein. The Management has been arrayed as the 2nd respondent herein.

2. The brief facts, which give rise to the instant writ petition is that, the petitioner joined the service of the respondent-Management on 09.07.2007 as Facilitator, and had been carrying on his duties since then. He further submits that his monthly salary was Rs.7,000/-. While so, on 10.03.2008, the petitioner was served with a Memo, for which this petitioner has given an explanation. In spite of such explanation, without conducting any enquiry and without following the principles of natural justice and also by not following Section 25-F of “The Industrial Disputes Act, 1947” [hereinafter shall be referred to as “ID Act” for the sake of convenience], the respondent-Management has terminated the service of the petitioner. Hence, he has raised



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an Industrial Dispute under Section 2(A)(2) of ID Act.

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3. The said Industrial Dispute was resisted by the Management by contending that they are the Societies registered under the Societies Registration Act, and that they have undertaken the Poverty Alleviating Scheme qua Village Poverty Reduction Committee. The District Collector is the ex-officio Chairman. It is the further submission of the respondent-Management that, the petitioner was engaged as a facilitator on a contract basis by virtue of an agreement dated 09.07.2007 and that during the contractual period, he has committed a misconduct. Therefore, by invoking the conditions stipulated in the contract, he was terminated from the service. It is also the further submission of the respondent that the petitioner is not a workman as contemplated under the Industrial Disputes Act. Hence, prayed to dismiss the claim application.

4. Before the Labour Court, on behalf of the workman, as well as the Management each one witness was examined. The Management have marked 15 documents and no documents have been marked on behalf of the workman.

5. The Labour Court after having considered the pleadings, documents and arguments of either side ultimately has found that the Termination Order



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is valid and comes within the exception of Clause (bb) of Section 2(oo) of the ID Act. Aggrieved with the said order, the instant writ petition has been filed.

6. The learned counsel for the petitioner would submit that the respondent-Management did not follow the principles of Natural justice, and has not followed the mandatory requirement as contemplated under the ID Act. It was the further contention that the respondent has not followed Section 25-F of the ID Act. It was also the contention of the learned counsel for the petitioner that the Termination is attached with imputation. Therefore, such termination ought to have been done after conducting proper enquiry. Therefore, submits that the order passed by the Labour Court is contrary to law. Hence, prayed to allow the writ petition by setting aside the order of the Labour Court and to order for reinstatement with all attendant benefits and back wages.

7. Despite the name of the respondent is printed in the cause list, there is no representation on behalf of the respondent-Management.

8. I have given my anxious consideration to the submissions made by



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the learned counsel for the petitioner.

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9. The sum and substance of the case is that whether the termination order issued by the respondent is inconsonance with the exception of Clause (bb) of Section 2(oo) of the ID Act. It is pertinent to mention here that admittedly there was an agreement between the petitioner and the respondent. The said agreement was marked as Ex.M1. There is a stipulation in the said agreement that the tenure is two years. It was also further stipulated that within 2 years period, subject to the functioning of the workman, he may be discontinued by giving one month notice. Here, in the instant case, within a period of two years, a Memo was issued on 10.03.2008 for misconduct. Further, on getting the explanation, not satisfying with the same, a Termination Order was issued on 17.04.2008.

10. The contention of the petitioner is that an enquiry must have been conducted and charge must have been proved against him. However, without following the above mandatory requirement, termination order was issued. In this regard, it is useful to refer sub-clause (bb) of Section 2(oo) of the ID Act. The same reads as under:-



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“2. Definitions.- *In this Act, unless there is anything repugnant in the subject or context, -*

[(oo) “retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include -

(a)

(b)

[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]”

11. According to the exception (bb), during the contract period, a termination order can be issued. Here, admittedly by complying the terms of agreement by giving one month notice, the respondent was served with the Termination Order. Further, in order to attract Section 25-F of the ID Act, the workman must have been worked for not less than one year. In the case on hand, the agreement was dated 09.07.2007 and the termination order was issued on 17.04.2008. Therefore, there is no application for Section 25-F of The Industrial Disputes Act as the petitioner did not continuously work for



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more than one year.

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12. In the judgment of the Hon'ble Supreme Court in ***National Small Industries Corpn. Ltd., Vs.V.Lakshminarayanan*** reported in (2007) 1 SCC 214, has held that, even if the petitioner is being construed as a “workman” under Section 2(s) of the ID Act, the existence of the contract would bring such “workman” within the exception to sub-clause (bb) of Section 2 (oo). For ready reference, the relevant portion of the said judgment is extracted hereunder:-

“12. In the absence of any such material, it is difficult to understand the reasoning of the Labour Court that the respondent was not an “apprentice trainee” but a “workman” who was made to perform a full-time job under the guise of an apprentice trainee. The High Court appears to have been impressed by the reasoning of the Labour Court with regard to the finding that although designated as an apprentice, the respondent was not undergoing training, but was an employee doing full-time work in the establishment. Such a view, in our judgment, is not supported by the materials on record and is completely contrary to the appointment letter issued to the respondent on 26-4-1990 and the respondent's own letter dated 29-4-1992, in admission of such fact. Had such a letter



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of appointment not been available, the Labour Court and/or the High Court could justifiably have embarked on an exercise as to whether the respondent was in effect a “trainee” under the Apprentices Act, 1961, or a “workman” within the meaning of Section 2(s) of the 1947 Act. There is nothing on record to indicate that the respondent's services had ever been regularised or that he was brought on the rolls of the permanent establishment.

13. Even if it is accepted that the respondent was a workman within the meaning of the 1947 Act, on account of his contractual tenure, his case would come within the exception of clause (bb) of Section 2(oo) thereof. In such a case also, the provisions of Section 25-F of the said Act would have no application to the respondent's case. In the aforesaid circumstances, we are of the view that the respondent's case was covered by the provisions of Section 18 of the 1961 Act and both the Labour Court as well as the High Court erred in proceeding on the basis that the respondent was a workman to whom the provisions of the 1947 Act would be applicable.”

13. In view of the above ratio, this Court is of the indubitable view that by virtue of agreement dated 09.07.2007, the Termination Order issued by the respondent-Management is valid and binding. Therefore, while exercising the power of judicial review, this Court could not find any infirmity or illegality in



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the order passed by the Labour Court.
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14. In view of the above discussion, this writ petition is devoid of merits
and the same is dismissed. No costs.

09.07.2024

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Index : Yes /No

Speaking order : Yes/No

Neutral Citation : Yes/No

To

1. The Presiding Officer,
Principal Labour Court,
Vellore District, Vellore.



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C.KUMARAPPAN, J.

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