



W.P.No.10948 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 08.01.2024

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.10948 of 2019

and

WMP.No.11385 of 2019

1. The Executive Engineer,
Public Works Department,
Lower Palar Basin Sub Division,
PWD Building, Collectorate Compound,
Kancheepuram.

2. The Junior Engineer,
Public Works Department,
Lower Palar Basin Sub Division,
PWD Building,
Collectorate Compound,
Kancheepuram.

3. The Executive Engineer,
Water Resources Organization,
Public Works Department Sub Division,
Lower Palar Basin,PWD Building,
Kancheepuram.



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4. The Assistant Executive Engineer,
Construction and Maintenance Sub Division,
Buildings Organization PWD Sriperumbudur,
Kancheepuram.

...Petitioners

Vs

N.Jayaseelan,

...Respondent

Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, Calling for the records in I.D.No.137 of 2018 dated 23.10.2018 on the file of the Labour Court, Kancheepuram and quash the same.

For Petitioners : Mrs.Mythrayee Chandru,
Special Government Pleader

For Respondent : Mrs.P.Kavitha Balakrishnan

ORDER

Writ petition is filed by the Public Works Department challenging the Award dated 23.10.2018 of the Labour Court in I.D.No. 137 of 2018. By the said Award the Labour Court allowed the claim petition of the workman, directing the 2nd petitioner herein to reinstate him along with continuity of



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service, full backwages and all attendant benefits.

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2. The petitioner's will be referred to as Department and the respondent as workman.

3. The workman was appointed in the year 1984 as sweeper in the tourist Bungalow at Kanchipuram on daily wages of Rs.15/- per day till 1988. He worked as night watchman in the inspection bungalow and thereafter appointed as a Mazdoor Grade I in Junior Engineer, Public Works Department, Lower Palar Basin Sub-Division, PWD Building, Kanchipuram and during this period was paid a salary of Rs.2000/-. According to the workman he worked continuously from November 1988 to December 2003 without any break-in service. He was orally terminated by the petitioner on 10.10.2003 without prior notice, on the alleged misconduct of misbehaviour with the higher officials.



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4. The Department on the other hand contended that the workman was a casual labourer and his statement that he worked continuously from November 1988 to December 2003 was incorrect. According to the Department, the daily wagers were engaged on need basis and their engagement was stopped after completion of project. As the engagement of the workman was co-terminus, with the project there was no requirement of notice of termination.

5. Before the Labour Court the workman examined himself as P.W1 and marked Ex.W1 to Ex.W5. and the Department neither marked any documents nor examined any witness.

6. The Labour Court on consideration of the materials placed before it allowed the claim. Aggrieved by the impugned Award, the Department has filed the above writ petition for the aforesaid relief.



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7. The learned Special Government Pleader appearing for the Department submitted that the claim petition was originally filed in I.D.No. 359/2019 before the Labour Court at Chennai and the case was duly conducted by the Government Pleader. Thereafter it was transferred to Kanchipuram in the I.D.No.137/2018. The Government Pleader who conducted the case in the Kanchipuram Court did not inform about the stage of the case to the Department and so it came to know about the case the only after the impugned Award was passed. The learned Government Pleader further submitted that on 11.09.2018 the case was posted to 12.09.2018 for the Department's evidence. On 12.09.2018 the Department was called absent and on the basis of the arguments of the workman's counsel, the case was reserved for Judgment and orders were passed on 23.10.2018. It is therefore submitted that an opportunity should be given to the Department to establish that the documents produced by the workman are not genuine and were created for the purpose of the case.



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8. The learned counsel for the workman on the other hand submitted that ample opportunity was given to the Department to lead evidence, but the same was not utilised by it and therefore the Labour Court was justified in deciding the matter on merits.

9. I have heard both the learned counsels and I have perused the entire materials placed on record.

10. It is seen from the Award that the Labour Court has not given any finding on whether the workman had completed 240 days of work in a calender year to satisfy the mandate of Section 25(f) of the I.D. Act. The Labour Court has not given any finding on the violation of Section 25(f) of the I.D. Act. The Labour Court even without a finding that the termination order was illegal passed the impugned Award for reinstatement and other reliefs. The Labour Court has not given any finding on the submission of the Department that PWD is not covered under the definition of the



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industry under the I.D Act. The Labour Court has neither framed issues for consideration nor has it given any cogent findings. The Award of the Labour Court is very cryptic.

11. In the writ affidavit it is stated that the case was transferred from Chennai to Kancheepuram. The Government Pleader at Kancheepuram did not communicate the status of the case. It is stated that the case was called on 11.09.2018 and posted for its evidence on 12.09.2018. On 12.09.2018 it was called absent, counsels arguments were heard and orders reserved. The learned Special Government Pleader therefore prayed that an opportunity should be given to the Department to contest the case on merits. Though the learned Government Pleader canvassed vehemently that the documents produced by the workman were not genuine. I do not propose to delve into the same as it is for the Labour Court to appreciate it.



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12. The Labour Court's Award is not in conformity with the settled procedure, which contemplates framing of issues and findings thereon. Further the Labour Court has ordered reinstatement without even discussing whether the mandate of law of completion of 240 days of service in a calendar year was complied with. I am therefore of the view that the Award of the Labour Court is unsustainable and the same is set aside.

13. Hence the Award dated 23.10.2018 in I.D.No.137 of 2018 is set aside and the matter is remanded to the Labour Court for fresh consideration. The Labour Court shall permit the Department and the workman to file additional pleadings and evidence and pass orders on merits in accordance with law within a period of six (6) months from the date of receipt of a copy of this order.



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In the result, writ petition is allowed. There shall be no order as to costs. Consequently connected miscellaneous petition is closed.

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Index:Yes/No

Speaking order:Yes/No

Neutral Citation:Yes/No

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N.MALA,J.

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