



Writ Petition No.2302 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.11.2023

PRONOUNCED ON: 04.04.2024

CORAM

THE HONOURABLE DR.JUSTICE D.NAGARJUN

Writ Petition No.2302 of 2014

The Commissioner,
Ambur Municipality,
Ambur, Vellore District.

... Petitioner

Vs.

1. The Proceedings Officer,
Additional Labour Court,
Vellore,
Vellore District.

2. J. Hemavathi

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records relating to the impugned award passed by the 1st respondent in Industrial Dispute Case bearing I.D.No.135/2011 on 11.07.2013 by the Additional Labour Court at Vellore and quash the same.



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For Petitioner : Mr.Govindasamy
for M/s.S.Loganathan

For Respondents: Mr.E.Srinivasan for R.2

ORDER

This Writ Petition is filed seeking for issuance of a Writ of Certiorari, to call for the records connected to I.D.No.135/2011 on 11.07.2013 by the Additional Labour Court at Vellore and quash the same.

2. The second respondent/ Workmen, was appointed as Technical Assistant Grade II in petitioner's Municipality on 01.03.2010. She has availed maternity leave on 01.02.2011 and delivered female child on 06.02.2011 and has undergone sterilization surgery and discharged from Hospital on 08.02.2011. She has reported on 07.05.2011 before the petitioner Municipality, however the Commissioner has denied the employment to the her and informed her that her services were terminated.

3. Petitioner has raised Industrial Dispute in I.D.No.135 of 2011 under Section 2-A(2) of Industrial Dispute Act before the Labour Court, Vellore alleging that her termination is illegal and sought for reinstatement



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with continuity of service with full backwages and attendant benefits. The petitioner participated in the enquiry before the Industrial Tribunal and after full fledged enquiry, the said I.D.No.135 of 2011 was partly allowed directing the petitioner/ Municipality to reinstate the second respondent into the service with continuity of service and to pay 25 % of the backwages with all attendant benefits. Aggrieved by the same, the Municipality has filed this Writ Petition.

4. It is submitted by the learned counsel for the petitioner/Municipality that the second respondent did not directly work with the petitioner /Municipality and that she has worked under a contractor of Municipality. It is submitted further that the cheque marked as Ex.W.4 filed by the second respondent before the Labour Court for a sum of Rs.4256/- was issued by the petitioner Municipality to the second respondent at the request of the Contractor, and thereby the second respondent basing on the said cheque alone cannot claim that she has been working with the petitioner/Municipality and that she has wrongly invoked



Section 25-F of the Industrial Dispute Act and that there is no sanctioned post of Technical Assistant Grade II in the petitioner/Municipality.

5. Learned counsel for the second respondent/ workmen has submitted that second respondent has worked with the petitioner/Municipality as Technical Assistant Grade-II for which the petitioner has paid salary and the petitioner Municipality has not produced any document before the Court that second respondent was not working in the petitioner/ Municipality and that the findings of the Labour Court in the impugned award are passed after full fledged enquiry, thereby the award cannot be interfered with.

6. Heard both sides and perused the records.

7. Second respondent has invoked Section 25-F of the Industrial Dispute Act, which reads as under:

“25F. Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous



service for not less than one year under an employer shall be retrenched by that employer until— (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].”

8. In order to invoke Section 25-F, the second respondent is expected to prove before the Labour Court that she has worked for not less than one year continuously under the petitioner/ Municipality.

9. According to the learned counsel for the petitioner, the second respondent has not produced any material to show that she has worked continuously for a period of one year with the petitioner/ Municipality. She was examined as WW.1 and filed her Birth Certificate, Medical Summary, conciliation failure report etc. The Labour Court has observed in the impugned orders that she was appointed on 01.03.2010 and she was



preparing Bills, Vouchers and assisting the Municipal Assistant Engineers

Mrs.Sumathi. The second respondent has admitted in her cross examination that she has not filed any document to show that she was appointed in the petitioner's Municipality on 01.03.2010 as Technical Assistant Grade II.

10. It is the contention of the learned counsel for the petitioner that in the petitioner/Municipality there is no sanctioned post of Technical Assistant Grade II. When the petitioner/Municipality has taken specific plea in the written submissions before the Labour Court that there is no sanctioned post of Technical Assistant Grade II in the petitioner/ Municipality, the second respondent did not choose to file any rejoinder. Once there is no post of Technical Assistant Grade II, it is surprising that the second respondent has asserted that she was appointed Technical Assistant Grade II. If really she was appointed, in what capacity she was appointed, how she was appointed, who has conducted the interview, whether her name was sponsored by the Employment Exchange, nothing has been mentioned. The petitioner/ Municipality is governed by the Municipal Act. The Commissioner is not a dictator and he has no powers to appoint anybody in any post as he likes.



Therefore, this Court is not convinced with the submissions of the learned counsel for the second respondent that second respondent was appointed as Technical Assistant Grade II.

11. The main ground on which the second respondent has been asserting that she was appointed in the petitioner/ Municipality as Technical Assistant Grade II is that admittedly the petitioner/ Municipality has issued a Cheque for Rs.4256/- to second respondent. According to the petitioner/Municipality, the said amount of Rs.4256/- was given for the work done by her under a contract. It is also the case of the petitioner that since the contractor has requested the petitioner/ Municipality to pay the said amount of Rs.4256/- directly to the second respondent and the said amount was paid. Basing on the issuance of Cheque by the petitioner/Municipality to the second respondent, the second respondent has claimed that Rs.4256/- is the salary paid to her. If contention of the second respondent is accepted, the salary for second respondent for the working for the period of one month is Rs.4256/-, if really she was appointed as Technical Assistant Grade II, her salary must be much more than Rs.4256/-. Further, if she was really



employed by the petitioner/ Municipality, she must have received salary every month. Except the solitary transaction of Rs.4256/-, there was no other material to show that she was paid salary by the petitioner/ Municipality. Therefore, only basing on an amount of Rs.4256/- paid by the petitioner/ Municipality, the second respondent cannot allege that she worked as Technical Assistant Grade II.

12. The Labour Court in its impugned order has strangely come to the conclusion that second respondent has discharged her burden of proving that she worked with the petitioner/ Municipality as Technical Assistant Grade II simply on the ground that the petitioner has deposed as P.W.1 that she worked as Technical Assistant Grade II in the petitioner/ Municipality. In order to prove that second respondent was employed by the petitioner/ Municipality oral evidence of second respondent alone is not sufficient. The second respondent is expected to produce some more documentary evidence in support of her contention. As already observed, no document filed to show that second respondent was appointed as Technical Assistant Grade II by the petitioner/ Municipality.



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13. According to the second respondent though she was appointed as Technical Assistant Grade II, she was asked to prepare the vouchers, bills etc and assist Mrs.Sumathi. If really she has worked in the petitioner/ Municipality as Technical Assistant Grade II, and assisted the M/s.Sumathi, the second respondent could have examined said Mrs.Sumathi, to depose that second respondent has worked with her as Technical Assistant Grade II. If a solitary oral evidence of any person is accepted as proof of joining in any department, anybody can just walk into the Court and depose that he was appointed, in any of the organization.

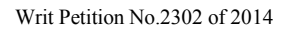
14. In view of the above, the finding of the Labour Court that she has discharged the burden and the petitioner/ Municipality has not produced any documents in support of their contention cannot be accepted. It is to be noted that there can't be any documentary evidence to prove that second respondent has not worked in the petitioner/ Municipality as Technical Assistant Grade II. If at all she has worked in the Municipality she has to produce oral and documentary evidence in her favour, which she has



miserably failed. She was expected to prove that there is a post of Technical Assistant Grade II in the petitioner/ Municipality. Therefore, conclusion of the Labour Court that second respondent worked with the petitioner/ Municipality as Technical Assistant Grade II is erroneous.

15. While considering the second point as to whether the second respondent is entitled for reinstatement with continuity of service under the Industrial Dispute Act, in the impugned orders the Labour Court has observed that the petitioner has not produced the Attendance Register and other relevant records as sought for by the second respondent, thereby adverse inference was drawn and Labour Court gave a finding that the second respondent has worked for more than 240 days.

16. According to the petitioner/ Municipality, the second respondent has never worked with the petitioner/ Municipality. Though the petitioner/ Municipality has not produced the documents as sought for, as seen from the Writ Petition filed by the petitioner/ Municipality, in the typed set of



papers Nominal Muster Role wages pertaining to the second respondent is enclosed.

17. As per the details of Nominal Muster Role Wages, it is clear that second respondent by name J.Hemavathi has worked as NMR from March 2010 to January 2011. In order to invoke provisions under Section 25-F, as already observed there must be a record, before the Court produced by second respondent that she has worked continuously for a period of one month. As per the details enclosed by the Municipality the second respondent worked for 11 months from March 2010 until January 2011. During this period, she has not worked fully on all these days. The number of days worked has been mentioned and this document is not signed by any of the officers of the petitioner/Municipality. This document has not been produced before the Labour Court. This Court in this Writ Petition will consider as to whether award passed by the Labour Court basing on the material placed before the Court, is proper or not.



18. Even if the document is accepted, she worked for 246 days from March 2010 to January 2011, according to the petitioner, the second respondent has joined the petitioner/ Municipality on 01.03.2010 and worked until 31.01.2011. That means, she worked only for a period of 11 months and not one year. From 01.02.2011, until 06.05.2011, she availed maternity leave. In order to invoke Section 25-F, the second respondent should have at least worked minimum for a period on one year continuously. But as already observed, she worked only for 11 months and subsequently she allegedly went on leave and was allegedly terminated. Therefore, since she has not worked continuously for a period of one year as required under Section 25 F it cannot be said that the second respondent retrenched without following the procedure.

19. The learned counsel for the petitioner Municipality has relied on the judgment of Hon'ble High Court of Gujarat, in ***Junagadh Agricultural University vs. Damodar Dhaya Bhai Hirpara(s)***, wherein it is observed as under:



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“Heard the learned advocates appearing on behalf of the respective parties and considered the impugned judgment and award passed by the Labour Court. It appears that the Labour Court has passed an award directing the petitioner to reinstate the respondent with 25% back wages on the ground that though the respondent had worked for 240 days, his services were terminated without any notice and/or notice pay and/or without making payment of retrenchment compensation and the said termination is in breach of award, it appears that the finding given by the Labour Court to the effect that respondent worked for 240-days is based on no evidence. In fact there is no evidence on record to establish that the respondent worked for not less than 240 days in the last preceding year. On the contrary, it appears that the respondent worked for only



104 days as filed labourer and he was called for the duty as and when work was available. Under the circumstances, when the finding of the Labour Court that the respondent worked for 240 days is based on no evidence, the same cannot be sustained and the same deserves to be quashed and set aside. Consequently, when it is not proved that the respondent workman worked for not less than 240 days in the last preceding year, there is no question of complying with Section 25F of the Industrial Disputes Act, 1947 and therefore, the finding given by the Labour Court that the termination/retrenchment is in breach of Section 25F of the Industrial Disputes Act, 1947, also deserves to be quashed and set aside.”

20. Above all the contention of the petitioner is not that she worked for 240 days in a year. According to her, she was appointed as Technical



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Assistant Grade II, a regular post which she could not prove. Here issue of violation of Section 25F need not be considered.

21. Hon'ble Apex Court, in ***Secretary, State of Karnataka & Ors. v. Umadevi & Ors.***, (2006) 4 SCC 1, have made it clear that back door recruitment method has to be scrupulously stopped, giving an opportunity for the eligible candidates waiting in the open market. The second respondent in this case has not mentioned anything as to what are the qualifications required as Technical Assistant Grade II and whether she possesses such qualifications. Therefore it is fit case where the second respondent is making an attempt to enter into the petitioner/ Municipality in back door method and was trying to consolidate her position.

22. In view of the above, the finding of the Labour Court that second respondent has worked with the petitioner/ Municipality as Technical Assistant Grade II from 01.03.2010 and that the relationship between the petitioner and the second respondent established as employer and employee



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and that Section 25-F of the Industrial Dispute Act applies to the second respondent is perverse and the same is hereby set aside.

23. Accordingly, in view of the Writ Petition is allowed, the award dated 11.07.2013, in I.D.No.135 of 2011 passed by the Additional Labour Court, Vellore is hereby set aside. No costs.

04.04.2024

Index: Yes/No
Speaking order: Yes/No
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To

The Commissioner,
Ambur Municipality,
Ambur, Vellore District.



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Dr.D. NAGARJUN, J.

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Pre- Delivery Order

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