



W.P.No.25830 of 2014 & W.P.No.31094 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved On	19.03.2024
Orders Pronounced On	25.03.2024

CORAM:

THE HON'BLE DR JUSTICE D.NAGARJUN

W.P.No.25830 of 2014 & W.P.No.31094 of 2015

and

M.P.No.1 of 2015

In W.P.No.25830 of 2014

National Institute of Tech. Teachers Training & Research
Rep.by its Director,
(Formerly Technical Teachers Training Institute)
TTTI Campus,
Taramani, Chennai – 600 113

...Petitioner.

Versus

- 1.The Presiding Officer,
Central Government Industrial Tribunal Cum Labour Court,
Shastri Bhavan Chennai – 600 006.
- 2.Mr.Sankarlal
- 3.Union of India
represented by its Secretary,
Ministry of Human Resource Development
New Delhi.
- 4.The Chairman
Board of Directors
National Institute of Tech.Teachers Training & Research
Taramani, Chennai – 600 113.
- 5.The Administrative Officer



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National Institute of Tech. Teachers Training & Research
Taramani, Chennai – 600 113.

(Respondent Nos.3 to 5 are given up

No relief claimed against R3 to R5)

...Respondents.

Prayer: This Writ Petition has been filed under Article 226 of the Constitution of India to issue a writ of Certiorari to call for records connected with the award dated 28.07.2014 made in ID No.84 of 2011 made by the 1st respondent Central Government Labour Court.

For Petitioner : Mr.S.Sai Prasad
for M/s.Sai Raj Associates

For Respondents : M/s.V.Balamurugan -R2
: Tribunal - R1
: Given Up - R3 to R5.

In W.P.No.31094 of 2015

D.Shankarlal

...Petitioner

Versus

- 1.Union of India rep by its
Secretary,
Ministry of Human Resources Department,
New Delhi.
- 2.The Chairman,
Board of Directors,
National Institute of Technical Teachers Training
& Research Centre
Chennai.
- 3.The Director,
National Institute of Technical Teachers Training



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& Research Centre
Taramani,
Chennai.

4.The Senior Administrative Officer,
National Institute of Technical Teachers Training
& Research Centre,
Taramani,
Chennai.

...Respondents.

Prayer: This Writ Petition has been filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus calling for the records comprised in F.No.ID.No.84 of 2011 dated 28.07.2014 on the file of the Central Government Industrial Tribunal Cum Labour Court, Shastri Bhavan, Chennai and quash the same and consequently direct the 3rd respondent to reinstate the petitioner with continuity of service with all back wages and attendant benefits.

For Petitioner : Mr.V.Balamurugan

For Respondents : Mr.S.Sai Prasad – R3
: Given Up - R1, 2 & 4.

COMMON ORDER

The writ petition No.31094 of 2015 is filed by the workman challenging the award passed by Central Government Industrial Tribunal, Labour Court in I.D.No.84 of 2011 passed on 28.07.2014. Whereas the writ petition No.25830 of 2014 was filed by the National Institute of Technical Teachers Training & Research Centre, aggrieved by the orders



passed in ID.No.84 of 2011 dated 28.07.2014. Since both these writ petitions are filed challenging the same Award and parties in these two writ petitions are one and the same, both are being disposed of by way of common order. For the sake of convenience during the course of discussion, whenever worker is referred to it is in respect of D.Sankarlal and whenever Management is referred, it is in respect of National Institute of Tech. Teachers Training & Research.

2. The relevant portion of the Award dated 28.07.2014 in ID.No.84 of 2011 runs as under:

“ In view of my discussion above, Respondents 2 to 4 are directed to reinstate the petitioner in service within a month. In the alternative they are at liberty to pay him compensation of Rs.2,00,000/- within a month. In default of the payment of amount, it will carry interest @ 9% per annum from the date of award.”

3. The workman has filed ID.No.84 of 2011 on the file of Central Government Industrial Tribunal – Cum – Labour Court, Chennai under Sub-Section 2A of Section – 10 of the Industrial Disputes Act, 1947 (as amended by Act 24 of 2010 w.e.f.15.09.2010) seeking to regularize his services and to reinstate him with all back wages with all attendant



benefits. According to the workman who is a graduate in B.Com has completed diploma in Refrigeration and Air Conditioning in the National Institute of Technical Teachers Training and Research Center.

4. The workman was appointed as NMR (Nominal Muster Roll) worker for maintaining the Air Conditioners, in the Management on 10.07.2003 and has been working continuously, and maintaining the Air Conditioners. The Management campus is situated in Chennai, consists about 200 Air Conditioners, an Air Conditioner Plant of 11 KV Sub-Station Electric Plant etc. The workman used to work even during Saturdays and Sundays. His services were continuously extended and were being renewed for every 90 days. He worked more than 240 days per annum for about 7 years continuously. However from 13.08.2010 onwards without any notice or without any reason, the workman was prevented from attending the duties in the Management Institute. The workman has submitted representation dated 19.08.2010 to the 3rd respondent/Institute to regularize his services permanently. He filed an OA before the Central Administrative Tribunal, Chennai and later he was advised to approach the Labour Court. Accordingly the petitioner has filed the ID.No.84 of 2011, before the Labour Court.



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5. Basing on the pleadings, the Labour Court has formulated three points which are extracted hereunder:

(i). Whether the petitioner is entitled to the relief of reinstatement in the service of the National Institute of Technical Teachers Training and Research Centre?

(ii). Whether the petitioner is entitled to regularization in service?

(iii). If not what if any is the relief to which the petitioner is entitled?

6. The Labour Court during the course of inquiry has examined three witnesses on behalf of the workman and got marked about 47 documents on workman's side and on contrary on behalf of the Management Institution, one witness was examined and about 2 documents were marked.

7. On considering the entire material evidence placed before the Labour Court, the Labour Court gave a finding ultimately that the workman is not entitled for regularization of his services in the Management Institution. However, in respect of reinstatement, it is observed that the Management Institution to take the workman back in



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service within a month or in alternate to pay a compensation of Rs.2,00,000/- to the workman.

8. Aggrieved by the said order of the Central Government Industrial Tribunal – Cum – Labour Court, Chennai, both workman and Management Institution filed two separate writ petitions.

9. It is the submission of the learned counsel for the workman that the workman has worked for about more than 240 days per annum for a period of 7 years continuously, in the regular vacancy, thereby his services have to be regularized. In respect of removal of service is concerned, it is submitted by him that the employer has suddenly told him, not to come without issuing any notice or proceedings.

10. It is further submitted that the Management has previously regularized services of many NMR workers serving in various cadres between 1978 to 2009 and that the Management had issued notification for appointment of AC Mechanic, however the recruitment could not be done and finally the workman has sought the Labour Court to direct the Management Institution to regularize services for permanently to reinstate



him and fix the salary with back wages.

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11. Learned counsel for the Management has submitted that the workman was appointed only as an NMR for a fixed period and after the completion of the said period his services stood automatically terminated and subsequently as and when required, the workman is being appointed again as an NMR. The workman was appointed to attend AC maintenance work, he was not in charge of AC plant and that he was not in charge of AC maintenance. The workman was not continuously engaged for more than 240 days in a year and he was appointed for a period of 90 days and upon completion of the said period the services of the said workman stood automatically determined and his subsequent appointment was also for a specific period and it was not of continuous in nature.

12. During the month of July 2010, the Management Institute has decided to entrust various works like Civil, Electrical, AC Maintenance, Gardening to the Empaneled Contractors and that the workman was given opportunity to empanel himself as one of the contractors of the institute



and finally submitted that the services of the workman cannot be regularized, he cannot be reinstated with back wages.

13. The burden lies on the workman to make out a case before the Labour Court that he was working continuously. The workman has filed many proceedings of appointing him as an NMR. The Labour Court has clearly observed in the impugned order that though the workman has filed number of proceedings appointing him as NMR, the name of the workman is not specifically mentioned in any of the proceedings. Therefore, there is no record before the Labour Court to show that the workman was continuously working as NMR uninterruptedly for more than 240 days. However there is no dispute that except the workman there was no other person working as AC Technician. Thereby the proceedings filed by the workman appointing NMR coupled with the oral evidence, it is clear that those proceedings are in respect of engaging workman as NMR. The Labour Court has concluded that the workman is a “workman” as defined under Section 2 (s) of the Industrial Disputes Act, 1947.

14. Every appointment has to be made by following thorough



selection process from open market by following the Rule of Reservation.

In case, if such recruitment, is taken up for any post in the management institution including the post of AC Technician, if the workman is qualified, if he makes an application, and if he is eligible he can be considered subject to fulfilling the criteria. However, the workman cannot claim for regularizing the services, by adopting back door method, which deprives the right of other persons, in the open market who are eligible for appointment.

15. Learned counsel for the workman has cited a judgment of Hon'ble Apex Court in ***Mahanadi Coalfields Ltd. Vs. Brajrajnagar Coal Mines Workers' Union*** 2024 INSC 199 decided on 12.03.2024, the relevant portions of the said judgment are extracted hereunder:

“22.The above-referred facts speak for themselves, and that is the reason why the Tribunal has come to a conclusion that the denial of regularization of the 13 workmen is wholly unjustified. As stated previously, we do not find any grounds in the artificial distinction asserted by the appellant. However, as the case was argued at length we thought it appropriate to give reasons for rejecting the appeals. What we have referred to hereinabove are all findings of fact by the Tribunal as affirmed by the High Court. In view of the concurrent findings of fact on the issue of nature of work, the continuing nature of work, continuous working of the workmen, we are of the opinion that there is no merit in



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the appeals filed by the appellant. .

23.This is a case of wrongful denial of employment and regularization, for no fault of the workmen and therefore, there will be no order restricting their wages.

24.With respect to payment of back wages, we are of the opinion that the workmen will be entitled to back wages as observed by the Industrial Tribunal. However, taking into account, the long drawn litigation affecting the workmen as well as the appellant in equal measure and taking into account the public interest, we confine the back wages to be calculated from the decision of the Tribunal dated 23.05.2002. This is the only modification in the order of the Tribunal, and as was affirmed by the judgment of the High Court.

25.For the reasons stated above, the appeals arising out of the final judgment and order of the High Court in W.P. (C) No. 2002/2002 and order in Review Petition No. 77/2017 are dismissed with the direction that the concerned workmen shall be entitled to back wages with effect from 23.05.2002. There shall be no order as to costs.”

16. The judgment referred above by the petitioner counsel is in respect of regularizing 19 workmen out of the 32 even though rest of them were similarly placed. However the case in hand, the submission of the workman is that by considering his length of work of 240 days per annum for a period of 7 years. Therefore, the facts of case on hand and the judgment referred too by the workman are totally distinct, therefore,



the judgment cited by the learned counsel for the workman will not help the workman.

17. The learned counsel for the workman has also relied upon the judgment of Hon'ble Apex Court in **Jeetubha Khansangji Jadeja Vs. Kutchh District Panchayat** reported in 2022 SCC Online SC 1284, the relevant paragraphs relied upon by the learned counsel run as under:

“ 13. In *Bharat Sanchar Nigam Limited v. Bhurumal*,⁴ on the other hand, the discretion of the court in directing reinstatement with backwages in the event of a retrenchment being declared illegal, was described in the following terms:

“33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of *Section 25-F* of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

34. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of



non-payment of retrenchment compensation and notice pay as mandatorily required under [Section 25-F](#) of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was 4 2014 (7) SCC 177 working on daily-wage basis and even after he is reinstated, he has no right to seek regularisation [see [State of Karnataka v. Umadevi](#)(3) [(2006) 4 SCC 1]. Thus when he cannot claim regularisation and he has no right to continue even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose.”

18. The above referred judgment would also not come to rescue the workman as it is in respect of a situation where the management is alleged to have employed unfair labour practices. In fact the case on hand, the workman is seeking regularisation and not seeking reinstatement as NMR.

19. Learned counsel for the management has cited *Secretary, State*



of Karnataka and Ors. Vs. Uma Devi and Ors. reported in AIR 2006

SCC 1806, the relevant portions relied upon by the management run as under:

“36. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the



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consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in [Article 14](#) of the Constitution of India.

38. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.”



20. The petitioner who was engaged as NMR is aware of consequences of his appointment being temporary, casual or contractual in nature and thereby he cannot invoke the theory of legitimate expectation for being confirmed in the post when the appointment to the post could be made only by following proper procedure.

21. The workman had been working only as an NMR for a specific period which was being renewed from time to time, thereby he cannot be claim that his services be regularized as AC Mechanic/AC Technician in the management institution, as the said post has to be filled by way of giving regular notification inviting applications from the open market. Therefore, the finding of the Labour Court that the workman not been appointed on regular basis cannot be interfered with.

22. In respect of the reinstatement of the workman in the Management Institution, is concerned. It is submitted by the learned counsel for the Management that in the course of pendency of the writ petition, the post of AC Technician/AC Mechanic was filled up by regular employment by following due process. The Labour Court also while considering this aspect has observed that until the post is filled by



following the recruitment procedure, the workman can be allowed to continue the same work which he was working earlier. Therefore, the relief granted by the Labour Court for reinstating him was contingent upon non-filling up of regular post of AC Mechanic and AC Technician. Since the Management Institution has filled up the vacancy by following regular recruitment process, direction to reinstate the workman as an NMR cannot be given. Thereby such part of direction of the Labour Court hereby is set aside. However, in case, if the services of the AC Technician are required, the Management Institution can certainly prefer the services of the workman to work as an NMR.

23. The Labour Court, in its order has directed the Management Institution to reinstate the petitioner or to grant compensation for a sum of Rs.2,00,000/- these orders were passed in the year 2014 about 10 years ago. The Management Institution without paying the said amount of compensation of Rs.2,00,000/- has approached this Court and filed this writ petition. Considering the circumstances, this Court directs the Management to pay compensation of Rs.4,00,000/- instead of Rs.2,00,000/- towards full and final settlement of the issue between the workman and the management.



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24. With these observations and directions, both the writ petitions stand disposed of. There shall be no order as to costs. Connected Miscellaneous petition is closed.

25.03.2024

Index : Yes/No
Speaking : Yes/No
Neutral Citation Case : Yes/No
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To:

- 1.Union of India
represented by its Secretary,
Ministry of Human Resource Development
New Delhi.
- 2.The Presiding Officer,
Central Government Industrial Tribunal Cum Labour Court,
Shastri Bhavan Chennai – 600 006.
- 3.The Chairman
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4.The Senior Administrative Officer,
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D.NAGARJUN.J.,

nst

Pre-Delivery Order in

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and
M.P.No.1 of 2015



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Order Pronounced On

25.03.2024