



W.P.No.19212 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.No.19212 of 2018

and

WMP.No.22607 of 2018

The Managing Director,
M/s.Karaikal Market Committee,
Thirunallar Road,
Karaikal.

... Petitioner

Vs.

1.U.Ramkumar

2.P.Manikandan

3.R.Subashini

4.S.Maheswari

5.P.Janagi

6.G.Jeevanandham

7.V.Datchayani

8.R.Prakash

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the award dated 18.04.2018 in I.D.(L).No.46 of 2017 on the file of the Labour Court, Pondicherry and quash the same.



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For Petitioner : Mr.V.Vasanthakumar
Additional Government Pleader (Pondy)

For Respondents : Mr.Balan Haridas

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ORDER

This Writ Petition is filed to call for the records relating to the award dated 18.04.2018 in I.D.(L).No.46 of 2017 on the file of the Labour Court, Pondicherry and quash the same.

2.The Labour Court dismissed the ID as regards the respondents 3 to 8. As regards the respondents 1 and 2 the Labour Court allowed the I.D. The Management will be referred to as the petitioner and the respondents 1 and 2 as the respondents.

3.It was the respondents case that they were engaged by the petitioner to do menial work and they were paid wages at the rate of Rs.200 per day. The respondents worked continuously for a period of three years and though they were termed as temporary employees, they were actually doing the work of regular employees. While so, the petitioner orally terminated the services



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of the respondents during August, 2016. According to the respondents they worked for more than 240 days in a calendar year and so they ought to have been terminated by following the procedure provided under Section 25 F of the Industrial Disputes Act, 1947. The respondents therefore raised a dispute before the Industrial Tribunal cum Labour Court at Puducherry against their illegal termination which was registered as I.D.(L).No.46 of 2017.

4.In the counter statement the petitioner stated that the engagement of the respondents was against the Government Order namely, the Puducherry “Casual Labourers Engagement and Regulation Scheme 2009”. As the engagement of the respondents was without the approval of the general body, their engagement was itself illegal. It was the further case of the petitioner that as the respondents were engaged as daily wage employees there was no question of their termination being in violation of Section 25 F of the ID Act.

5.Before the Labour Court no oral evidence was adduced by both the parties. Ex.P1 to Ex.P5 were marked on the side of the respondents and Ex.R1 to Ex.R5 were marked on the side of the petitioner. The Labour Court on an appreciation of the entire evidence on record dismissed the claim



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petition as regards respondents 3 to 8 and as regards respondents 1 and 2 directed the petitioner to reinstate them in service, within a period of one month from the date of receipt of a copy of the order with further direction to pay 30% backwages with continuity of service and other attendant benefits, Aggrieved by the award of the Labour Court, the Management of M/s. Karaikal Market Committee, Thirunallar Road, Karaikal has filed the above writ petition.

6.The learned Government Advocate appearing for the petitioner submitted that the Labour Court failed to note that the respondents were engaged by the erstwhile Managing Director on co-terminus basis and therefore there was no question of termination. The learned counsel referring to Ex.R1 submitted that the Labour Court failed to take note of Ex.R1, wherein it was clearly stated that the Managing Director could appoint Personal Assistants on co-terminus basis/out-sourcing basis at the rate approved by the Government. The learned counsel therefore submitted that the award of the Labour Court was unsustainable and the same deserved to be set aside.



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7.The learned counsel appearing for the respondents on the other hand submitted that absolutely no plea was taken by the respondents that they were appointed on co-terminus basis and in the absence of a plea the Labour Court rightly rejected the document Ex.R1. The learned counsel submitted that as the award was based on proper appreciation of the evidence on record the same did not call for any interference by this Court.

8.It is seen from the counter filed by the petitioner before the Labour Court that there was absolutely no pleading on the engagement of the respondents on co-terminus basis. The Labour Court found that the petitioner had not disputed that the respondents 1 and 2 had put in more than 3 years of service. The Labour Court relying on Ex.P2 gave a factual finding that the respondents 1 and 2 had put in more than 240 days of service in a calendar year and therefore they were entitled to the benefit of Section 25 F of the ID Act. As the petitioner terminated the services of the respondents 1 and 2 without any notice and without conducting any enquiry, the termination was set aside as illegal. I find absolutely no perversity in the finding of the Labour Court and hence it is confirmed. As far as the contention of the petitioner that the engagement of the respondents was on



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co-terminus basis is concerned, I am of the view that the same cannot be countenanced, as the plea was not at all taken by the respondents in their counter to the claim petition and for that reason Ex.R1 also cannot be looked into. It is trite that no amount of evidence can be looked into on a plea not raised.

9. Useful reference can be made to the Judgment in the case of **Shankar Chakravarti vs Britannia Biscuit Co.Ltd. & Anr.** Reported in 1979 SCR (3) 1165 in this regard, following the Judgment in **Tin Printers (P) Ltd. Vs. Industrial Tribunal, 1967 LLJ 677 @ 680** it was held that “The rules of fair play demand that where a party seeks to establish a contention which if proved would be sufficient to deny relief to the opposite side, such a contention has to be specifically pleaded and then proved. But if there is no pleading there is no question of proving something which is not pleaded. This is very elementary”.

10. For all the above reasons, I find no merits in the writ petition and the same is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.



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Index : Yes / No

Internet : Yes / No

Speaking order/Non-speaking order
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To

1.The Presiding Officer,
Labour Court, Pondicherry.

2.The Managing Director,
M/s.Karaikal Market Committee,
Thirunallar Road,
Karaikal.



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N.MALA, J.

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