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W.A.No.879 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.06.2024

Pronounced on: 10.07.2024

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR.JUSTICE P.DHANABAL

W.A.No.879 of 2023

and

C.M.P.No.8685 of 2023

1. The Divisional Forest Officer,
Thirupattur.

2. The Conservator of Forests,
Fort, Vellore - 632 004.

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

... Appellants

vs.

1. M. Munirathinam
2. Mahendran

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letter Patents to set aside the order dated 30.06.2021 in W.P. No.11486 of 2012.



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For Appellant : Mr. R. Neelakandan,
Additional Advocate General,
assisted by Dr. T. Seenivasan,
Special Government Pleader.

For Respondents : Mr. S.T. Varadarajulu

JUDGMENT

(Judgment of the Court was made by P.DHANABAL,J.)

This Writ appeal has been preferred as against the order passed in W.P. No.11486 of 2012 on the file of this Court dated 30.06.2021, wherein the respondents herein have filed a Writ petition challenging the award passed by the Principal Labour Court, Vellore in I.D. Nos.239 & 240 of 2016 dated 05.01.2011. The said Writ petition was ordered by modifying the award into one of continuity of service only for the purpose of pensionary benefits. Aggrieved by the said order, the respondents therein have preferred this Writ appeal.

2. The brief facts of the case are as follows:-

The respondents herein joined the service of the appellants in the year 1980 and 1986 as Garden Watchman and worked till 28.03.2001 and 31.12.2008 respectively. Though they have worked for more than 240 days

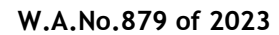


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of continuous service every year, the respondents department had not regularized their service on the ground that their names do not find place in the seniority list. Therefore, the respondents raised industrial dispute in I.D. Nos.239 and 240 of 2010 respectively before the Labour Court, Vellore, wherein they sought for reinstatement and continuity of their services, backwages and all other attendant benefits. The said industrial dispute was dismissed by the Principal Labour Court, Vellore through award dated 05.01.2011. As against the said award, they filed a Writ petition before the Writ Court and the Writ Court modified the award of the Labour Court and ordered continuity of service only for the purpose of pensionary benefits. Aggrieved by the said order, the present Writ appeal is filed by the respondents department.

3. The learned Additional Advocate General appearing for the appellants would contend that the respondents 1 and 2 herein raised an industrial dispute alleging that they had worked from 01.09.1980 to 28.02.1995 and 14.01.2000 to 28.03.2001 as Gardener and were terminated by the appellant management and were transferred to Rural Development department, but they failed to give employment to them. The respondents have not filed any documents to show that they had worked for 15 years



3.1 The learned Additional Advocate General further submitted that



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the respondents were not the regular employees and hence there is no question of transferring them from one department to another department would arise. The respondents worked temporarily as Mazdoor on daily wages in Tiruppattur Range and whenever work arises in Scheme, they worked and they never worked for 240 days continuously and they were engaged in Mazdoor post only on daily wages based on the scheme sanctioned and the fund availability. The Labour Court after taking into consideration all these aspects, dismissed the industrial disputes raised by the respondents. The Writ Court also came to a conclusion that the employer had given certificate to the workmen and there was no examination by the management with regard to the 2nd respondent Mahendiran and the management has not disputed the factum of employment and they denied the fact that the employees worked continuously and taken a stand that the respondents themselves abandoned the work and after having waited for judgment in other cases, approached the Writ Court. The approach adopted by the employees is not correct and it is clear case of gambling on the part of employees. However, awarded continuity of service only for the purpose of pensionary benefits and the same is against law. Therefore, the order passed by the Writ Court is liable to be set aside by allowing this Writ appeal.



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4. The learned counsel appearing for the respondents would contend that the respondents are working under the appellants establishment for more than 32 years of continuous service as Garden Watchman. The Government of Tamilnadu vide G.O. No.592, Environment and Forest Department dated 16.09.1989 transferred the 1st respondent and other employees to respective Panchayat union. But the said Panchayat union refused to take them as per the said Government order and the Government did not take any further steps to offer employment to the respondents. Before denying employment, the appellant did not follow any procedure established under law. They have not issued any notice under Section 25 F of Industrial Dispute Act. Therefore, they raised industrial dispute before the Labour Court, Vellore. The Principal Labour Court has erroneously dismissed the petitions filed by the respondents. The Labour Court failed to consider that the names of the respondents who had been deliberately left out to be included in the seniority list, though they have worked continuously for more than 240 days in a year. Therefore, the order passed by the Principal Labour Court, Vellore was challenged through Writ petition and the Writ Court after analysing the evidence, fairly came to a conclusion that "*when the evidence let in has not been taken into account*



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at all then this Court can come to a conclusion that there is perversity in the order passed by the Labour Court. From the public document, it is clear that two employees were in employment". Therefore the order passed by the Writ Court is in order and the present Writ appeal is liable to be dismissed.

5. Heard both sides'. Perused all the materials available on record.

6. In this case there is no dispute that the respondents 1 and 2 herein have been engaged on daily wages by the appellant. The respondents in the Writ petition themselves admitted through affidavit that they worked in the appellant department only on daily wages employment, whenever there is work. The persons like the respondents 1 and 2 will be engaged on daily wage basis and their services will be required whenever there is work and their services were utilized in the Village Panchayat under 'SIDA SCHEME' launched by Forest Department. The said scheme was closed and the persons like the respondents 1 and 2 were disbanded and shifted to Rural Development Department by G.O. Ms. No.592 dated 16.02.1989. After 15 years of continuous service rendered, respondents have been transferred to District Rural Development Department. When the



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respondents 1 and 2 approached District Rural Development Department, they were not offered employment. Therefore, from the affidavit itself, the respondents admitted that they will be utilized on wage basis and their services will be required when there is work. While so, it is the duty of the respondents 1 and 2 to prove that they worked for more than 240 days continuously in a year. In order to prove the same, they have not filed any document and the same also admitted by them.

7. The respondents 1 and 2 have only produced Ex.W1 and Ex.W2 before the Labour court. Those documents are the certificates issued by the department. Those documents do not reveal the number of days worked by the respondents. Before the Labour Court, the 1st respondent Munirathinam alone was examined as witness. The 2nd respondent Mahendiran was not examined as witness. In this context, the Labour Court observed that "*the respondents worked temporarily as daily wagers and they have no right to seek permanency in the appellant department and they were not in service on 08.03.1999 and they have filed petitions after a period of more than 8 years and they are not entitled to get the relief for the reasons stated above*". Therefore, the above said observation of the Labour Court after elaborate discussion, is in order, but the Writ Court set



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aside the said order of the Labour Court. The observation of the Writ Court is extracted hereunder:

"12. When the evidence let in has not been taken into account at all then this Court can come to a conclusion that there is perversity in the order passed by the Labour Court. From the public document, it is clear that two employees were in employment. From Exs.W1 and W2, it is clear that Munirathinam was employed and that employer has given certificate for the common evidence rendered by the Workmen, there was no examination by the Management with regard to Mahendiran.

13. Admittedly, there is no evidence on the side of the second petitioner / Mahendiran. The Management has not disputed about the factum of employment. But however, they deny the fact that the employees worked continuously and taken a stand that they have themselves abandoned the work. They have admitted in the cross examination that no notice was issued to the employees asking them to report for work. The employees have taken their own time to approach the Labour Court for redressal.

14. It cannot be lost sight to the fact that they have been worked for Department and the Respondent thus, after having waited for judgment in other cases, approached this Court. The approach adopted by the employees is not correct. It is a clear case of gambling on the part of employees. An affidavit has been filed by the petitioners, wherein it has been stated that the employees are willing to give up backwages, and therefore, this Court is inclined to modify the award into one of continuity of service only for the purpose of pensionary benefits".

Therefore, the Writ Court has not discussed about whether these respondents 1 and 2 have continuously worked for 240 days in a year and there is no any findings rendered in respect of their permanency. In order to get pensionary benefits, permanency has to be determined by the Court. The Writ Court has not determined and made discussion about the



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permanency of the respondents 1 and 2. Therefore, the order passed by the Writ Court is liable to be set aside and the order passed by the Labour Court is liable to be restored.

8. In the result, this Court is of the opinion that this Writ appeal is to be allowed and accordingly, the Writ appeal is allowed by setting aside the order of the Writ Court dated 30.06.2021 in W.P. No.11486 of 2012 and by restoring the award passed by the Principal Labour Court, Vellore in I.D. Nos.239 & 240 of 2016 dated 05.01.2011. No costs. The connected miscellaneous petition is closed.

(J.N.B.J.) & (P.D.B.J)

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mjs

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Index:Yes/No

Neutral Citation:Yes/No



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J.NISHA BANU,J
and
P.DHANABAL,J

(mjs)

Pre-delivery judgment in
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