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WA.No.3195 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2024

CORAM

**THE HONOURABLE MRS. JUSTICE J. NISHA BANU
&
THE HONOURABLE MR.JUSTICE P.DHANABAL**

**WA.No.3195 of 2023 &
CMP.No.26154 of 2023**

The Managing Director,
Pondicherry Industrial Promotional
Development & Investment Corporation
Ltd., No.60, Romain Rolland Street,
Puducherry

...

Appellant

Vs.

1. The Presiding Officer,
Industrial Tribunal cum
Labour Court, Puducherry.
2. T.Gopu
3. B. Arul Jothi

...

Respondents

Writ Appeal filed under Clause 15 of Letters patent Act against the order dated 14.08.2023 made in W.P.No.16897 of 2017 passed by the learned Single Judge.



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For Appellant : Mr. D. Ravichander

For Respondents : R1- Tribunal
Mr.Sai Srijan Tayi for R2
Mr.K.Raja Shrinivas for R3

J U D G M E N T

This Writ Appeal has been preferred by the Appellant/Management challenging the order passed in W.P.No.16897 of 2017, dated 14.08.2023, in and by which, the learned Single Judge affirmed the Award passed by the Industrial Tribunal cum Labour Court, Pondicherry reinstating the respondents 2 and 3 in service with continuity of service along with 30% back wages till their reinstatement

2. The learned Single Judge, while dismissing the Writ Petition, *inter-alia*, observed as follows;

"Though the petitioner claim that once the SEZ project was over on 31.03.2012, the engagement of the respondents 2 and 3 also came to end, the petitioner has



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not taken any steps to repatriate them to the parent department i.e., revenue department and has engaged respondents 2 and 3 as casual labourers. Further the petitioner Management did not produce any closure scheme. In the absence of any closure scheme, since the respondents 2 and 3 have worked for more than 240 days in a calender year continuously, they are entitled for reinstatement. Hence, this Court is not inclined to interfere with the impugned award.'

3. The respondents 2 and 3 have filed a petition in I.D.No.37 of 2013 before the Industrial Tribunal Cum Labour Court, Pondicherry challenging their termination as the same is made without notice and against the labour policy. They sought for reinstatement along with backwages and other reliefs.

4. Refuting the same, the appellant/corporation filed its counter and among other averments, it was stated that since the respondents 2 and 3 have not worked more than 240 days in the appellant/corporation, they did



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not fall under the definition of 'workmen' and are not entitled to claim any relief sought by them.

5. The Industrial Tribunal cum Labour Court at Pondicherry, on appreciation of facts and evidence let in by both sides, partly allowed the claim of the respondents 2 and 3 by concluding that the respondents 2 and 3 are entitled for reinstatement with continuity of service and 30% backwages till their reinstatement.

6. Aggrieved against such reinstatement, the Appellant Corporation preferred Writ Petition in W.P.No.16897 of 2017 before this Court. The learned Single Judge, by order dated 14.08.2023 dismissed the writ petition affirming the order passed by the Labour Court.

7. Being dissatisfied with the dismissal order passed by the learned Single Judge, the Appellant Corporation has preferred the present Writ Appeal.



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8. The learned counsel for the Appellant/ Corporation submitted that the Appellant Corporation was appointed as a Nodal Agency for the purpose of Land Acquisition for Special Economic Zone. The respondents 2 and 3 were deputed from the Revenue Department to the Appellant Corporation for the purpose of assisting in matters pertaining to land acquisition. The Appellant was nominated as a temporary body for the purpose of SEZ Scheme and so also is the Land Acquisition Cell which is a temporary establishment. On termination of project, the SEZ Scheme was dropped and naturally the nodal agency also gets terminated, hence the respondents 2 and 3 cannot claim any right of regularisation.

9. The appointment to Government or State owned institutions can be done only through proper channel. Hence the respondents 2 and 3 who are appointed as temporary employees do not have any right to seek for regularisation. They do not have any right to raise industrial dispute and



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hence the petition filed by them before the Labour Court is not maintainable. However, the Labour Court converted the petition filed u/s.33 of ID Act to Sec.2A(2) of ID Act and granted relief in their favour. Therefore, the Labour court exceeds the jurisdiction which is not vested in it. That apart, the respondents 2 and 3 were employed only by the Revenue Department and therefore the petition before the Labour Court seeking reinstatement and regularization of services is not maintainable. Pleading so, the learned counsel for the appellant/corporation prays for allowing of this writ appeal.

10. Per contra, the learned counsel appearing for the respondents 2 and 3 submit that the respondents served as casual labourers on daily rated basis in the Land Acquisition Cell from 01.06.2005 to 18.09.2012 and 01.06.2005 to 29.10.2012 without any break. In the month of August 2012, a Senior Manager of the Appellant Corporation demanded a sum of Rs.1,50,000/- as bribe for their regularization. When the respondents



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refused to give the said amount, they were terminated from service without issuing any notice. As per GO.Ms.No.22 of 2009 dated 27.02.2009 issued by the Department of Personnel and Administrative Reforms (Personnel Wing), they could not be terminated without any notice. Therefore, such termination is illegal, unlawful and against principles of natural justice.

11. The learned Single Judge, while dismissing the writ petition has granted liberty to the respondents 2 and 3 to work out the remedy for regularisation of their service by observing that '*...several persons who were engaged as casual labourers were regularised in service, however, the service of the respondents 2 and 3 were not regularised...*'. Therefore, there is no infirmity or illegality in the order passed by the learned Single Judge.

12. Heard the rival submissions of both sides and perused the materials and evidence available on record.



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13. Perusal of records would go to show that respondents 2 and 3 have been in continuous services by receiving salary from 01.06.2005 to 01.07.2012. It is not in dispute that the Appellant/Corporation paid salary for the respondents 2 and 3 from the funds sanctioned by the Government for creating SEZ for the period from 01.06.2005 till the month of August 2012. It is also not disputed that the employment of the respondents 2 and 3 is continuous and their services were terminated after 7 years and they are under direct employment and control of the Appellant Corporation and their salaries were also directly paid by the Appellant Corporation to the respondents 2 and 3. Further, it is the admission of RW1-Deputy Manager of the appellant Corporation that the respondents were employed as casual labourers in appellant/Corporation and they were terminated after 7 years. The above facts would prove that the respondents 2 and 3 were employed under Appellant Corporation for more than 240 days in a year, therefore, they are considered to be the permanent workmen of the Appellant Corporation and entitled for protection under the Industrial Disputes Act.



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14. Perusal of records would further reveal that the Appellant corporation without following the due procedure as contemplated under section 25 F of Industrial Disputes Act, all of a sudden, stopped the respondents 2 and 3 from work through oral instructions, which, in the considered opinion of this court, is illegal and invalid.

15. It is also the admission of the Deputy Manager of the Appellant Corporation during his cross examination that the co-worker who has been appointed along with the respondents 2 and 3 has been still in service without any termination.

16. It is pertinent to note that the Labour Court, in its Award, in para 19 pointed out that *'on perusal of evidence as well as documents, the government has extended the said project till March 2013 and that therefore when the project is also pending till 2013, the petitioners have been terminated from service without giving notice in the month of August*



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2012'. The learned Single Judge, in the impugned order, has observed that '*the petitioner Management did not produce any closure scheme. In the absence of any closure scheme, since the respondents 2 and 3 have worked for more than 240 days in a calender year continuously, they are entitled for reinstatement.*'

17. From the above, it is clear that though the said project was extended till March 2013, the appellant Corporation, all of a sudden, without any valid reason, terminated the respondents 2 and 3 orally from service in August 2012. The Appellant Corporation did not take any efforts to repatriate them to their parent department after the SEZ project was over. It is also apparent that the person who was appointed as casual labourer along with the respondents 2 and 3 was regularised in service, but the services of the respondents 2 and 3 were not regularised. In view of the foregoing discussions, this court is of the opinion that the termination of respondents 2 and 3 is illegal and they are entitled for reinstatement with continuity of service.



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18. In the absence of any evidence on the side of the Appellant Corporation, that the respondents 2 and 3 have earned income after their termination from service, the Labour Court has rightly granted partial backwages of 30% to the respondents 2 and 3 till their reinstatement.

19. In view of the foregoing discussions, We do not find any infirmity or illegality in the order passed by the learned Single Judge affirming the Award passed by the Labour Court. This Writ Appeal is devoid of merits and accordingly, it is hereby dismissed. No costs. Consequently, the connected CMP.No.26154 of 2023 is closed.

[J.N.B.,J.] [P.D.B.,J.]
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Index: yes/no
Internet:yes/no
msr

**J. NISHA BANU, J.
&
P. DHANABAL, J.**

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