



W.P.No.1992 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2024

CORAM

THE HON'BLE DR. JUSTICE D.NAGARJUN

W.P.No.1992 of 2019

S.Devaraj

...Petitioner

Versus

The Management
Tamil Nadu Tourism Development Corporation Ltd.,
Hotel Tamilnadu
Walajah Road,
Chennai – 600 002.

...Respondent

Prayer: This writ petition is filed under Article 226 of the Constitution of India, with a prayer to issue a writ of Certiorarified Mandamus to call for the entire records connected with the order of Labour Court, Salem made in I.D.No.56 of 2004 dated 03.07.2013 and quash the same in so far as the same denied the petitioner the relief of reinstatement and consequently direct the respondent to reinstate the petitioner as Room Boy-cum-waiter under the Manager, Tamil Nadu Tourism Development Corporation Ltd., Hotel Tamil Nadu, Hosur, Krishnagiri District against any regular vacancy or create such super numerical post and accommodate the petitioner in the post.

For Petitioner	:	Mr.S.Sathia Chandran
For Respondents	:	Mr.P.Raghunathan for M/s.T.S.Gopalan & Co.



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ORDER

This writ petition is filed for issuance of certiorarified Mandamus to call for the records in ID.No.56 of 2004 dated 03.07.2013 and to quash them.

2. The petitioner is a physically challenged person studied up to higher secondary school. On 23.02.1992, the petitioner joined respondent, Tamil Nadu Tourism Development Corporation Ltd. as a Room Boy-cum-Waiter. After completion of five (5) years of service in the year 1997, he filed a representation to respondent to regularize his services alleging that he has worked more than 480 days in 24 months. The said request was rejected on the ground that he was not sponsored by the employment exchange. On 12.01.2001 he made one more representation to the respondent. However, on 07.10.2001 he was orally terminated from service.

3. The petitioner filed W.P.No.8599 of 2002 seeking reinstatement as casual labourer and for regularization of the services from the date of his original appointment that is February 1992 with all attendant benefits. By order dated 14.03.2002 the said writ petition was disposed of by



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directing the petitioner to make fresh representation within two weeks, and to consider the same and on filing of such representation the respondent was directed to consider on merits within two weeks thereafter. On 02.04.2002, the petitioner made a representation and also sent reminders on 22.04.2002 and on 30.08.2002, however, by way of proceedings dated 18.11.2002, his request was rejected.

4. The petitioner has raised ID.No.56 of 2004 against the respondent to reinstate him on permanent status and pay the back wages alleging that he has completed 480 days of continuous work. After conclusion of the inquiry the Labour Court has passed the award holding that the petitioner has worked 240 days in a year, prior to his termination orally. However, it was observed that since the work that was being performed by the D-category employees is being outsourced the respondent was directed to engage the petitioner on outsourcing basis to engage the petitioner on outsourcing basis and to pay 50 per cent of back wages from 07.10.2001 to December 2008. On 06.01.2014 the petitioner was paid 50 per cent of the back wages and he joined the duty on 20.01.2014 on outsourcing basis. However this writ petition is filed challenging the Award passed in ID.No.56 of 2004 dated 03.07.2013.



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5. The learned counsel for the respondent/corporation has filed a counter affidavit. The sum and substance of the counter affidavit is that the respondent/Tamil Nadu Tourism Development Corporation Limited is company registered under the Companies Act for promoting the tourism in the State of Tamil Nadu, any person can become the employee of the Respondent Corporation only against the sanctioned post. No person having work for some time as casual worker who has rendered some service to the corporation will not get any right to claim regular employment. As a corporation of the Government all the Government orders and circulars will apply to the respondent. The petitioner being physically challenged person living near Hosur was engaged temporarily as Room Boy-cum-waiter solely to create some source of livelihood. The petitioner is not a workman within the definition under Section 2 (s) of the Industrial Disputes Act, 1947.

6. By way of G.O.Ms.No.49 dated 14.05.2002, the Government of Tamil Nadu has ruled that the workers of Gourp II employees like Sweepers, Scavengers and Cleaner and other menial jobs be interested to



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outsourcing agencies by following due process. The respondent has implemented the Award by appointing the petitioner as a outsource person and paid back wages to a tune of Rs.52,084/- thereby sought for dismissal of the writ petition.

7. Heard both sides and perused all the available materials on record.

8. The petitioner was terminated aggrieved by the same the petitioner has raised industrial dispute in ID.No.56 of 2004 which was disposed off with following observations:

“In the result, the petition is partly allowed. The respondent is directed to accommodate the petitioner as an outsourced employee in the same post he was holding earlier within a period of two (2) months from today and also directed to pay 50 % back wages for the period from 07.10.2001 to December 2008.”

9. Basing on the directions, the respondent management has not preferred any writ petition aggrieved by the orders of the Labour Court and in the contrary the respondent management has implemented the



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orders of the Labour Court and paid 50% of the back wages as directed and also engaged the petitioner as an outsourcing employee.

10. The grievance of the petitioner is that his services were not regularized. The Labour Court has observed that the termination of the petitioner is against Section 25 (f) of the ID Act. Once termination is said to be irregular as per Section 25 (f) of the ID Act, normally the workman has to be reinstated in the same position from where he was terminated. The petitioner was not working as a regular employee. As on the date of termination, his services were not regularized, though he has filed a petition for regularization of his services on the ground that he has completed 480 days in two years.

11. Before the Labour Court the issue was only as to whether termination of the petitioner was proper and that the Labour Court has answered it holding that the termination of the petitioner was irregular and directed the respondent to reinstate the petitioner. The issue as to whether the petitioner services should have been regularized was not subject matter of ID, thus there was a discussion to that extent.



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12. In addition to that seeking regularization, the petitioner has filed W.P.No.19116 of 2014 and the said writ petition stated to have been withdrawn by the petitioner. Therefore, parallel to this litigation in respect of his termination, the petitioner was also making an attempt to get his services regularized. This writ petition is filed challenging the orders of ID which were confined only in respect of his termination.

13. Since the petitioner seeking his appointment in the regular vacancy in this writ petition, both the counsel have submitted elaborately about the issues in respect of regularization of his services. The petitioner was not sponsored by the employment exchange, and that the Respondent is a Government owned corporation and all the Government Orders are applicable on it. Being the Government Corporation, any recruitment or any vacancy in the corporation will have to be done only by way of following the due procedure of either seeking the candidates from employment exchange or inviting the applications from the open market, by following rule of reservation. Therefore, the persons who are appointed on casual basis cannot be regularized in the respondent corporation. If the petitioner is regularized in the existing vacancy it amounts to depriving rights of the other candidates who are waiting for



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employment. Back door methods to enter into the services has to be discouraged. Apart from that the petitioner has joined as daily wage employee without any protest.

14. Further the petitioner has filed this writ petition in the year 2019 aggrieved by the orders of ID.No.56 of 2004 which were passed on 03.07.2013. Once the orders have been passed, if at all the petitioner is aggrieved, the writ petition should have been filed in the year 2013 itself, but the petitioner took five (5) long years, according to the learned counsel for the petitioner subsequent to passing of Award on 03.07.2013 in ID No.56 of 2004, the petitioner has filed WP.No.19116 of 2014, thereby there is a delay in filing a fresh writ petition. It is true that the petitioner has preferred W.P.No.19116 of 2014 prior to filing of this writ petition. However, the said earlier writ petition in W.P.No.19116 of 2014 was filed seeking for regularization, it is nothing do with the present dispute of reinstating the petitioner to the regular vacancy. Therefore, the excuse of the petitioner that on account of filing of WP No.19116 of 2014 delay caused cannot be accepted. As already observed at the time of reinstatement of the petitioner on daily wages, the petitioner has not made any protest and he has happily accepted and which is evident from his



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letter.

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15. In view of the above the petitioner failed to make out the case on all angles. Considering every angle, this writ petition stands dismissed.

There shall be no order as to costs.

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Speaking Order : Yes/No

Index Case : Yes/No

Neutral Citation : Yes/No

nst

To:

The Management

Tamil Nadu Tourism Development Corporation Ltd.,

Hotel Tamilnadu

Walajah Road,

Chennai – 600 002.

DR.D.NAGARJUN , J.

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