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W.P.No.10389 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 28.01.2025

Orders pronounced on : **12.02.2025**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.10389 of 2024

T.Senthilkumari

.. Petitioner

Versus

The Deputy High Commission for the
Democratic Socialist Republic of Sri Lanka in
Southern India,
56, Sterling Road, Nungambakkam,
Chennai - 600 034.

.. Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India
praying for a Writ of Certiorarified Mandamus calling for the records from
the files of the Central Government Industrial Tribunal-cum-Labour Court,
Chennai in I.D.No.127 of 2019 and quash the impugned award passed
therein dated 21.10.2022 and consequently direct the respondent herein to



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reinstate the petitioner in service, with continuity of service, with back wages and with all other attendant and consequential benefits within a time frame.

For Petitioner : Mr.K.M.Ramesh,
Senior Counsel,
Asstd. by Mr.V.Subramani

For Respondent : Notice served

ORDER

This Writ Petition is filed challenging the award of the Central Government Industrial Tribunal-cum-Labour Court, Chennai, dated 21.10.2022 made in I.D.No.127 of 2019. By the said award, the Claim Petition filed by the petitioner, claiming reinstatement into service with all back wages and continuity of service, stood rejected.

2. The case of the petitioner is that she was appointed as a Clerk/Typist with the respondent management namely, the Deputy High



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Commission for the Democratic, Socialist, Republic of Sri Lanka at Chennai

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on 01.03.2008. After three months, the services of the petitioner were terminated. Again, on 26.09.2008, she was appointed as Consular Assistant. Ever since, she was working continuously without any break in service. While so, on 17.09.2012, an order was issued appointing her for further period of three years. By the letters, dated 16.12.2016 and 19.12.2017, the petitioner's services were extended. However, by the letter, dated 21.12.2018, the services of the petitioner were terminated and she was relieved from the post on 31.12.2018 by issuing a cheque for Rs.40,014.50 ps for one month salary. Aggrieved thereby, the petitioner raised a dispute. The conciliation failed.

3. The petitioner's Claim Petition was taken on file as I.D.No.127 of 2019. After receipt of notice, none appeared on behalf of the respondent management and they were set *ex parte*. The petitioner let in oral and documentary evidence. She examined herself as *W.W.1* and *Exs.W-1* to *W-*



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10 were marked. The Labour Court took up the matter for consideration.
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The Labour Court considered Clause-2 of the appointment letter that says that the petitioner was temporary, non-pensionable employee and cannot claim any permanent employment under the Government of Srilanka or any gratuity thereof. It was specifically mentioned in the appointment order that the appointment will be terminated by one month prior notice. Therefore, when the petitioner is appointed with those terms and conditions, she cannot claim permanency and upon completion of the period of contract, when the petitioner was terminated by paying one month salary, the same needs no interference. Accordingly, the Labour Court rejected the Claim Petition. Aggrieved by the same, the present Writ Petition is filed by the petitioner.

4. Heard *Mr.K.M.Ramesh*, learned Senior Counsel for the petitioner.

Even before this Court, even notice was served on the respondent, none appears on behalf of the respondent management.



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5. *Mr.K.M.Ramesh*, learned Senior Counsel for the petitioner would submit that the Labour Court totally ignored the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 as well as the provisions of the Industrial Disputes Act, 1947 while deciding the issue. When the petitioner has put in long number of years of service from the year 2008 onwards, the provision under Section 2(oo)(bb) of the Industrial Disputes Act, 1947 cannot be invoked as it is a contract employment and therefore, non-employment would amount to retrenchment and in the absence of payment of any compensation, the same is illegal.

6. I have considered the submissions made by the learned Senior Counsel and perused the material records of the case. The following two questions arise for consideration in the present case:-

(i) Whether or not the award of the Labour Court, in rejecting the claim of the petitioner on the basis that the petitioner agreed to the terms in



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the appointment order, is sustainable?

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(ii) Whether the respondent management has any immunity as the agency of the foreign sovereign namely, the Republic of Srilanka?

(iii) To what relief, the petitioner is entitled?

Question No.i:-

7. The office of the respondent management would be within the definition of the establishment under Section 2 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981.

It also falls within the definition of the 'industry' under the Industrial Disputes Act, 1947. Therefore, when the petitioner was engaged as a Clerk/Typist, thereafter, as Consular Assistant and was working and if the services were not needed, certainly, the action of the management amounts to retrenchment. Therefore, the same could not have been done without paying the compensation as envisaged under Section 25F of the Industrial Disputes Act, 1947. Further, the petitioner had put in 480 days of service in



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two calendar years as early as in the year 2020 and therefore, deemed to be permanent.

8. To consider the petitioner as contract employee, it must be for a specific term of contract. When the petitioner was initially appointed as Clerk and Typist and thereafter as Consular Assistant and was working without mentioning any period, it is only from the year 2012 onwards the management mentions the period of employment with an outer limit. Therefore, suddenly, the nature of employment will not change as a contract employee as the petitioner had already put in 480 days of service in two calendar years and is deemed to be a permanent employee as per the provisions of the Tamilnadu Industrial Establbishments (Conferment of Permanent Status on Workmen) Act, 1981 and the petitioner is a regular employee under the respondent management. Therefore, the award of the Labour Court considered the only terms of the appointment letter, without considering legal provisions under the Industrial Disputes Act, 1947 and the



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Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 is thoroughly illegal.

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Question No.ii:-

9. It is true that the office of the respondent management is that of the Deputy High Commission which is the agent of the foreign sovereign and enjoys immunity. Such agent cannot be sued without the express permission of the Central Government as per Section 86 of the Code of Civil Procedure. However, with reference to the remedies under the Industrial Disputes Act, 1947, already, the question has been considered by the Constitution Bench by the Hon'ble Supreme Court of India in *H.H. The Maharaja Sahib Shri Bhagwat Singh Bahadur of Udaipur Vs. State of Rajasthan and Ors.*¹, where under, it was held that the remedy before the Industrial Tribunal or the Labour Court, will not fall within the mischief of the same and it cannot be deemed to be a Court for that purpose and therefore, held that in cases of Industrial Disputes, the employees can file disputes as against foreign

¹ 1963 SCC OnLine SC 119
<https://www.mhc.tn.gov.in/judis>



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sovereign also.

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10. This apart, the Diplomatic Relations (Vienna Convention) Act, 1972 has been enacted by the Parliament to give effect to the Vienna Convention on Diplomatic Relations, 1961. According to Section 2 of the said Act, the various provisions set out in the schedule to the Act of the Vienna Convention on Diplomatic Relations, adopted by the United Nations Conference on Diplomatic Intercourse and Immunities on the 14th day of April, 1961, shall have the force of law in India. The schedule contains the provisions. Article 33 is extracted hereunder for ready reference:-

"1. Subject to the provisions of paragraph 3 of this article, a diplomatic agent shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the receiving State.

2. The exemption provided for in paragraph 1 of this article shall also apply to private servants who are in the sole employ of diplomatic agent, on condition:

(a) that they are not nationals of or permanently resident in the receiving State; and

(b) that they are covered by the social security provisions which may be in force in the sending State or a third State.



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3. A diplomatic agent who employs persons to whom the exemption provided for in paragraph 2 of this article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this article shall not preclude voluntary participation in the social security system of the receiving State provided that such participation is permitted by that State.

5. The provisions of this article shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future."

(emphasis supplied)

Therefore, in order to claim exemptions from the social security legislations and provisions, the exemption provided for in paragraph No.1 of the article is not applicable to the nationals of the receiving state. In respect of such employees, to whom the exemption provided in paragraph No.2 of the article does not apply, then, the diplomatic agent shall observe obligations which the social security provisions of the receiving State impose upon employers. In such view of the matter, no immunity can also be claimed by the management. Accordingly, I answer the question.



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Question No.iii:-

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11. Once the non-employment is illegal, the petitioner will be entitled for reinstatement into service. As far as the back wages are concerned, considering the fact that the petitioner was put in the service from the year 2008 till the year 2018 and that from the year 2018 till date, the litigation is pending, I hold that the petitioner will be entitled for 30% of the back wages. However, the petitioner will be entitled for continuity of service and all other attendant benefits.

12. In view thereof, this Writ Petition is allowed on the following terms:-

(i) The award of the Central Government Industrial Tribunal-cum-Labour Court, dated 21.10.2022 made in I.D.No.127 of 2019 shall stand set aside;

(ii) The non-employment of the petitioner is held to be unjustified and the petitioner will be entitled for reinstatement into service with all



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continuity of service and attendant benefits;

(iii) However, the petitioner will be entitled for 30% of the back wages;

(iv) The respondent management shall reinstate the petitioner into service within a period of eight weeks from the date of receipt/production of a web-copy of this order;

(v) The arrears shall also be paid within a period of eight weeks from the date of receipt/production of a web-copy of this order;

(vi) If the petitioner is not reinstated within the time as stated above, then, the petitioner will be entitled for full wages from today;

(vii) There shall be no order as to costs.

12.02.2025

Neutral Citation : yes
grs

To

The Deputy High Commission for the

<https://www.mhc.tn.gov.in/judis>



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D.BHARATHA CHAKRAVARTHY, J.

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