
(1997) 08 MAD CK 0005
In the Madras High Court

M. Mohammed Abdulla

APPELLANT

Vs

Tamil Nadu Housing Board

RESPONDENT

Date of Decision : 12-08-1997

Acts Referred:

Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (1998) 2 MLJ 241

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Judgement

P.D. Dinakaran, J.—Heard both sides. The petitioner has prayed for writ of certiorarified mandamus, after calling for the records from the

file of the respondent pertaining to the proceedings in Ref. memo No. 2/42335/87 and quash the order dated 10.2.1997 and consequently direct

the respondent to regularise the services of the petitioner from the date on which his immediate juniors were regularised, together with all

consequential benefits, award exemplary costs.

2. Mr. Chandru, learned Counsel for the petitioner invited my attention that the petitioner was employed by the respondent as a Nominal Muster

Roll employee by their Besant Nagar Division with effect from 5.8.1982. He was attending his duties as a watchman and such other duties allotted

by the Engineer. He was working so, continuously without break including on Sundays and other holidays.

3. According to the learned Counsel for the petitioner the petitioner was terminated from service with effect from 12.2.1987 without assigning any

reason. An industrial dispute was raised, and several conciliation meetings were held. The respondent-Board took up the contention that there was

no attendance register for the persons like the petitioner. The Government of Tamil Nadu by G.O.Ms.No. 2320, Labour and Employment

Department, dated 26.2.1986 referred his non-employment issue for adjudication. Consequently, the Labour Court adjudicated the matter in

I.D.No. 458 of 1988. Even though originally the Board was set ex parte on 6.2.1989 and thereafter ex parte order was restored. Again the Board

remained absent and consequentially an ex parte award was passed on 9.9.1989. In continuation of the said award dated 9.9.1989, the petitioner

expressed his readiness to report for duty.

4. Thereafter the respondent has filed an application in I.A.No. 289 of 1990 to set aside the ex parte after a delay of 197 days in filing the petition

and the said petition was dismissed by an order dated 31.7.1990. The award dated 9.9.1989 became final and on the basis of which the petitioner

has filed an application in C.P.No. 184 of 1990 u/s 33-C(2) of the Industrial Disputes Act claiming wages for the period from 12.2.1987 till

28.2.1990 totalling a sum of Rs. 19,477.50. It is alleged that once again the respondent-board remained ex parte and the amount as prayed for

was computed vide order dated 28.2.1991. Then the respondent filed an application in I.A.No. 470 of 1991 in C.P.No. 184 of 1990 for

restoration. After allowing the restoration in C.P.No. 184 of 1990, the lower court passed an order dated 19.11.1992, wherein the amount

payable to the petitioner had been computed.

5. Since the petitioner was not reinstated as per the award dated 9.9.1989, he has filed W.P.No. 570 of 1993 for employment as per the award

dated 9.9.1989. The writ petition was admitted on 11.1.1993.

6. During the pendency of the writ petition, the respondent-Board by its letter/ dated 17.7.1996 expressed its view that the claim of the petitioner

will be considered only after regularisation of his service.

7. W.P.No. 570 of 1993, which was alone pending before the court at that time, was also withdrawn by an order dated 22.8.1996. The petitioner

again made a representation on 14.9.1996 to the respondents and requested them to regularise his service.

8. After receiving the said letter dated 17.7.1996 and the copy of the order dated 22.8.1996, the respondents by their letter dated 10.2.1997 has

stated that the request of the petitioner to regularise his service will be

considered only if he withdraws the case regarding the claim of backwages

for the period from 1.3.1990 to 24.2.1993. Aggrieved by the said letter dated 10.2.1997, the petitioner has approached this Court.

9. Mr. K. Chandru, learned Counsel for the petitioner has rightly pointed out that as a matter of fact no claim petition is pending before the Labour

Court at all. The above petition has not been disputed by the learned Counsel for the respondent, except saying that the petitioner also filed

C.R.No. 422 of 1994 for the wages between 1.3.1990 and 24.2.1993 for a total sum of Rs. 26,934-50. Mr. Chandru immediately invited my

attention to the orders of the labour court dated 9.4.1996 wherein final order had already been passed in C.P.No. 422 of 1994. Therefore,

nothing is pending before the Labour Court for withdrawal.

10. I have considered the submission of both sides.

11. A careful perusal of the facts and circumstances of the case would show that the respondent is deliberately and wantonly evading the

settlement of the award amount and also is refusing to regularise the petitioner in service. Learned counsel for the respondent is not in a position to

explain, the reason for refusing to regularise the petitioner's service. I strongly condemn the approach of the respondent demanding to withdraw

the legal proceedings as a condition precedent for considering the legitimate lights of the petitioner for regularisation of his service and for

settlement of his award. The impugned proceedings of the respondent is, therefore arbitrary and unreasonable. Hence, I am obliged to interfere

with the impugned proceedings dated 10.2.1997 and quash the same. Consequently, I direct the respondent to regularise the petitioner's service

and place the petitioner above the rank of his juniors from the date on which his immediate junior was regularised and to pass suitable order within

six weeks from the date of receipt of this order.

12. Considering the agony to which the poor employee, was subjected by arbitrary exercise of powers of the respondent-Board, the respondent is

directed to pay a cost of Rs. 2,000 (Rupees two thousand only) to the petitioner, in addition to the arrears to be paid to him.

13. In the result, the writ petition is allowed as prayed for with the above directions. Consequently, no order is necessary in W.M.P.No. 8101 of

1997.