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**(2011) 07 MAD CK 0411**

**In the Madras High Court**

**Case No :** Writ Petition No. 12506 of 2009 and M.P. No. 1 of 2009

The Management Maris Gardens Vaniar Estate A  
DivisionYercaud

APPELLANT

Vs

The Presiding Officer, Labour Court and General Secretary,  
Naalamamalai Thotta Thozhilalar Sangam

RESPONDENT

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**Date of Decision :** 20-07-2011

**Acts Referred:**

**Citation :** (2011) 07 MAD CK 0411

**Hon'ble Judges :** K. Chakndru, J

**Bench :** Single Bench

**Advocate :** D. Shivakumaran, for the Appellant;

**Final Decision :** Allowed

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## **Judgement**

K. Chakndru, J.—The Petitioner is the Management of Plantations situated in Salem District. They have come forward to challenge an Award passed by the first Respondent Labour Court, Salem in I.D. No. 251 of 2002 dated 27.03.2008.

2. By the impugned Award, the Labour Court held that denial of employment from 06.04.2000 to 26.09.2000 in respect of four workers M/s. Natarajan, Ramar, Selvakumari and Saroja was not justified. Therefore, it directed the payment of wages for the said period with continuity of service.

3. The writ petition was admitted on 30.10.2009. Pending the writ petition, this Court granted an interim stay on condition that the Petitioner deposits a sum of Rs.5,000/- to the credit of the I.D. It is stated by the learned Counsel for the Petitioner that they were ready to comply with the conditional order but the time limit granted by this Court had expired, they could not do so. This excuse cannot be accepted as the Petitioner had ample opportunity to move this Court seeking for extension of time. In any event, even after notice being served, the second Respondent has not appeared either through any authorised representative or through counsel. This Court directed the original records filed before the Labour

Court to be circulated for perusal by this Court. Accordingly, the Registry has circulated the original records.

4. The facts leading to the passing of the impugned Award are as follows:

The second Respondent Union raised a dispute with reference to the denial of wages in respect of four of their members before the Government Labour Officer. On failure report being sent to the State Government, the State Government issued G.O.(D) No. 175 Labour and Employment Department dated 28.02.2002 and referred the issue for adjudication by the first Respondent Labour Court.

5. On receipt of the reference, the Labour Court took up the dispute as I.D. No. 251 of 2001 and issued notice to both sides. On the side of the Second Respondent Union, the Claim Statement was filed on 09.07.2002. The Petitioner Management filed counter statement dated Nil (March 2003).

6. Before the Labour Court, on the side of the Management, one P. Murugan was examined as R.W.1 and they filed one document which was marked as Ex.R1., which is a Wage Register for the year 1998-99 and 2001-02. On the side of the workmen, one V.K. Nallamuthu was examined as P.W.1 and filed 12 documents which were marked as Exs.P1 to P12.

7. The Labour Court on an analysis of documents held that the workmen were regular employees. When they sent notice to the Management about the denial of employment, the same was not received by the Management and had come back unserved and those returned covers were marked as Exs.P2, P4, P6 and P8. The Labour Court basing its finding on those four returned covers held that the workers were denied employment. On the wage register produced, which was marked as Ex.R1 series, the Labour Court held that the Management had not filed any document to prove that the workers were working in some other estate and in the absence of the work in other estate, they were engaged by Petitioner Management. The Labour Court also relied upon the evidence of P.W.1 V.K. Nallamuthu and found that the Management had employed the worker for more than 240 days in a year and they were denied employment from 06.04.2000.

8. But a perusal of the oral evidence of P.W.1 V.K. Nallamuthu, who was General Secretary of the second Respondent Union shows that except for the oral evidence, there is no other records produced by the Union. In the cross examination, he had stated that if the documents on the side of the Management are looked into, then the number of days worked by the workers will be made known.

9. On the other hand, R.W.1 who is the Estate Manager had marked the Wage Register and had stated that the Management is maintaining all the registers that are required to be maintained under the Plantation Labour Act but they have not filed those documents. In the Ex.R1, signature of the Plantation Inspector was not found. At the same time, he denied the suggestion that Ex.R1 was prepared for the purpose of the case. This Court also had a perusal of Ex.R1 series, where left

hand thumbimpression of all the workers including the four workerscovered by the reference was found. There is no reason todispute the genuineness of the said document and if the total number of days worked by these workmen are takenote of from the said register, none of the four workershave served 240 days in a year. Therefore, the findingsrecorded by the Labour Court is not based upon documentary evidence filed by the Management. The Labour Court had nowhere held that Ex.R1 was prepared for the purpose of this case. Infact, a perusal of the Awardshows that the Labour Court had not even looked into thesaid document and made a superficial statement that theManagement should have produced some other document forthe purpose of disproving number of days worked by theWorkmen.

10. On an analysis of the documentary and oralevidence produced, this Court is of the view that theworkers inasmuch as they had not worked 240 days in a year and hence they are not eligible for getting anyrelief. The impugned Award suffers from materialirregularity and non-application of mind. In thiscontext, it is necessary to refer to the judgment of theSupreme Court in Chief Engineer, Ranjit Sagar Dam and Another Vs. Sham Lal, . In that case, the Supreme Court had held that the burden of proving that a workmen had worked for240 days or more is on the workman and not on theemployer. In this case, the employer had produced Ex.R1series before the Court. In the absence of any otherdocument being summoned, no adverse inference can bedrawn.

11. In the light of the above, the writ petitionstands allowed and the impugned Award stands set aside. However, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.