

A THE SUPERINTENDING ENGINEER TWAD BOARD &  
ANOTHER

v.

M. NATESAN ETC.

B (Civil Appeal Nos. 4875-4884 of 2019)

MAY 10, 2019

**[R. BANUMATHI AND R. SUBHASH REDDY, JJ.]**

- Industrial Disputes Act, 1947– s.17-B– Between 1986-89, the*
- C *respondents-workmen were engaged temporarily as Store Watchman on daily wages in newly created Sectional stores in various Sub Divisions under the control of Rural Water Supply (RWS) Divisions, Nagercoil – Engagement Order mentioned that the services will be terminated when the requirement is over and that they cannot claim any further appointment in the appellant-Board – Sectional stores*
- D *closed– Respondents terminated – Labour Court directed reinstatement of the respondents with back wages for the period of non-employment and with continuity of service – Single Judge affirmed the award to the extent of reinstatement of the workmen and held that since the matter was pending from 1991, the respondents were entitled to get 50% back wages only – Writ appeal – Dismissed – Held: For temporary workers like respondents, it is mandatory to show that they continuously worked for 240 days in a year – Initial burden is on them to adduce evidence – Only when the initial burden is discharged by the respondents, the burden can be shifted on the appellant – Single Judge and the Division Bench*
- E *not right in placing the burden on the appellant to prove that the respondents had not worked continuously for 240 days in a year – However, in the peculiar facts and circumstances of the case, this question not gone into any further as most of the respondents have attained the age of superannuation therefore, there is no question of reinstatement – Amount already paid to each of the respondents (including Rs.2 lakhs ordered by the Supreme Court as condition for stay of the impugned judgment) shall be in full quit of all claims including 50% back wages and also the quantum of compensation in lieu of reinstatement – In appeal arising out of Writ Appeal No.1439 of 2016, Rs.2 lakhs be paid by the appellant to the legal*
- H

*representatives of the Respondent-since deceased – Amount lying in the deposit of Labour Court/High Court along with accrued interest be refunded to the appellant – Order passed in the peculiar facts and circumstances of the case, not a precedent.* A

**Disposing of the appeals, the Court**

**HELD:** 1.1 For temporary worker like NMR respondents, it is mandatory to show that they have continuously worked for 240 days in a year. The initial burden is upon the respondents-workmen to adduce evidence showing that they have worked continuously for 240 days. Only when the initial burden is discharged by the respondents-workmen, the burden can be shifted upon the appellant-Board. Both the Single Judge as well as the Division Bench were not right in placing the burden upon the appellant-Board to prove that the respondents-workmen had not worked continuously for 240 days in a year. However, in the peculiar facts and circumstances of the case, this question is not gone into any further as most of the respondents have attained the age of superannuation therefore, there is no question of reinstatement. [Para 9] [865-F-H; 866-A] B

1.2 The amount already paid to each of the respondents (including Rs.2,00,000/- ordered by the Supreme Court) shall be in full quit of all claims including 50% back wages and also the quantum of compensation in lieu of reinstatement. In appeal arising out of Writ Appeal No.1439 of 2016) Rs.2,00,000/- shall be paid by the appellant-Board to the legal representatives of the respondent-since deceased. The amount lying in the deposit of Labour Court/High Court along with accrued interest is ordered to be refunded to the appellant-Board. The above order is passed in the peculiar facts and circumstances of the case and may not be quoted as a precedent. [Paras 11, 12] [867-B-D] C

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4875-4884 of 2019. D

From the Judgment and Order dated 16.12.2016 by the High Court of Judicature at Madras in Writ Appeal Nos. 1434-1443 of 2016. E

C. Paramasivam, Vinodh Kanna B., Advs. for the Appellants. F

G H

A Ms. Sanya Kumar, N. K. Verma, Trideep Pais, Ms. Sanya Su, Ms. Anjana Chandrashekhar, Advs. for the Respondents.

The Judgment of the Court was delivered by

**R. BANUMATHI, J.** 1. Leave granted.

B 2. These appeals arise out of the judgment dated 16.12.2016 passed by the High Court of Madras in Writ Appeal No.1434 of 2016 and batch in and by which the High Court has affirmed the order of the learned Single Judge directing reinstatement and the back wages at 50%.

3. Between 1986-89, the respondents were engaged as Store

C Watchman on daily wages under NMR basis temporarily in newly created Sectional stores in various Sub Divisions under the control of Rural Water Supply (RWS) Divisions, Nagercoil. In the Engagement Order, it has been specifically mentioned that the engagement on daily wage basis will be purely temporary and the services will be terminated when the requirement is over and that they cannot claim any right for any further

D appointment in TWAD Board. In the Engagement Order itself, it is clearly stated that engagement is purely temporary and their services will be terminated when the requirement is over without prior notice. In view of the Board decision, all the Sectional stores were closed and the Divisional stores (each for one district) were formed. Consequent on formation of

E Divisional stores, the respondents were terminated from their services in the year 1990 for want of vacancies.

F 4. The respondents raised an industrial dispute and on failure of the conciliation proceedings, the same was referred to the Labour Court, Madurai. The Labour Court allowed the petitions and held that the termination of the services of the respondents is not valid and is not sustainable. The Labour Court passed the award on 12.04.2000 directing reinstatement of the respondents into service with back wages for the period of non-employment and with continuity of service. Being aggrieved, the appellant-Board filed writ petition in W.P.No.23720 of 2002 challenging the award of the Labour Court.

G 5. The learned Single Judge found that the workmen have not produced any documents to show that they have worked continuously for 240 days. The learned Single Judge also pointed out that the Management also has not produced any documents to show that the respondents-workmen have not worked continuously for 240 days.

H

However, the learned Single Judge affirmed the award passed by the Labour Court to the extent of reinstatement of the workmen. Insofar as the back wages are concerned, the learned Single Judge held that since the matter has been pending from 1991, the respondents-workmen are entitled to get 50% back wages only.

6. Being aggrieved, the appellant-Board has filed the writ appeal before the Division Bench which came to be dismissed by the impugned judgment. Being aggrieved, the appellant-Board has preferred the present appeals.

7. On 10.08.2018, the Supreme Court granted stay of the impugned judgment on condition that the appellant-Board to pay a sum of Rs.2,00,000/- (Rupees two lakhs) to each of the contesting respondents in addition to the amount that has already been paid to the respondents. Mr. Paramasivam, learned counsel appearing on behalf of the appellant-Board has submitted that in compliance of the order dated 10.08.2018, the appellant-Board has paid Rs.2,00,000/- (Rupees two lakhs) to each of the respondents which has been recorded (*vide* order dated 14.01.2019).

8. We have heard Mr. Paramasivam, learned counsel appearing on behalf of the appellant-Board as well as Ms. Sanya Kumar, learned counsel appearing on behalf of the respondents-workmen.

9. In the judgment passed in the writ petition, the learned Single Judge has pointed out that the respondents-workmen have not produced any documents to prove that they have worked continuously for 240 days. For temporary worker like NMR respondents, it is mandatory to show that they have continuously worked for 240 days in a year. This aspect, in our view, ought to have been taken note by the Division Bench before affirming the order of reinstatement of the respondents. In the impugned judgment, the Division Bench has observed that the attendance register, salary certificates and other relevant documents were in the possession of the appellant-Board and the same were not marked as documents. It is to be pointed out that the initial burden is upon the respondents-workmen to adduce evidence showing that they have worked continuously for 240 days. Only when the initial burden is discharged by the respondents-workmen, the burden can be shifted upon the appellant-Board. Both the Single Judge as well as the Division Bench were not right in placing the burden upon the appellant-Board to prove that the respondents-workmen had not worked continuously for 240 days in a

A year. However, in the peculiar facts and circumstances of the case, we are not inclined to go into this question any further. The reason being that most of the respondents have attained the age of superannuation therefore, there is no question of reinstatement.

10. All that we are concerned is the payment of 50% back wages B and also the quantum of money payable in lieu of reinstatement. Learned counsel appearing for the appellant- Board has produced a chart as to the 50% back wages payable from the date of termination upto the order of the Labour Court dated 12.04.2000 at the rate of Rs.18/- per day as wages payable and also 50% of the back wages payable as per schedule rates from the date of termination till the date crossing the age limit or death which reads as under:-

**50% BACK WAGES CALCULATED FROM THE DATE OF TERMINATION TILL THE DATE OF CROSSING OF AGE LIMIT OR DEATH**

D	Sl.No.	Name	Date of termination	Date of crossing age limit (or) death	50% back wages from the date of termination upto Labour Court order dt.12.4.2000 at Rs.18/- per day wage paid at the time of termination	50% of back wages from 13.04.2000 till the date of crossing the age limit or death	Total amount payable	50% back wages as per the schedule rates from the date of termination till crossing the age limit (or) death	Amount already paid including Rs.2,00,000/- as ordered by the Hon'ble Court
E			1	2	3	4	5 [3+4]	6	7
F	1.	R. Piramuthu	31.05.1990	06.02.2011	31707	32310	64017	2,35,394	2,64,525
F	2.	K. Thangappan	13.08.1990	12.06.2010	31329	30114	61443	1,96,694	2,60,205
G	3.	S. Ponnaian	23.07.1990	01.06.2011	31509	33255	64764	2,42,837	2,66,685
G	4.	V. Harris	23.07.1990	24.04.2018	31509	34038	65547	5,73,633	2,71,280
G	5.	N. Muthusamy Nadar	23.07.1990	18.09.2004 (Death)	31509	14355	45864	1,30,172	0
G	6.	D. Sundararaj	13.08.1990	22.05.2013	31968	39654	71622	3,09,373	2,7,9105
G	7.	M. Nadesan	06.08.1990	08.04.2017	31392	46431	77823	4,04,780	4,67,130
G	8.	N. Yesudhas	29.06.1990	09.05.2013	31716	42363	74079	3,19,738	2,70,740
G	9.	S. Johnson	31.07.1990	25.02.2019	31437	49257	80694	3,70,113	6,75,679
H	10.	V. Kathiyadas	06.08.1991	03.06.2013	31392	42570	73962	2,85,300	2,71,280
H				Total:	3,15,468/-	3,64,347/-	6,79,815/-	30,68,034/-	30,26,629/-

The above amount so far paid to the respondents under Section 17-B of the Industrial Disputes Act, 1947 and Rs.2,00,000/- paid to each of the workmen (except M. Muthuswamy Nadar-who is dead) shall be treated as back wages and also the compensation in full quit of all claims in lieu of reinstatement and all other claims. A

11. The appeals are disposed of with the following directions and B observations:-

The amount already paid to each of the respondents (including Rs.2,00,000/- ordered by the Supreme Court) shall be in full quit of all claims including 50% back wages and also the quantum of compensation in lieu of reinstatement. So far as the respondent-M. Muthuswamy Nadar (appeal arising out of Writ Appeal No.1439 of 2016) is concerned, the amount of Rs.2,00,000/- (Rupees two lakhs) ordered by this Court shall be paid to his legal representatives by the appellant-Board. The amount lying in the deposit of Labour Court/High Court along with accrued interest is ordered to be refunded to the appellant-Board. C

12. The above order is passed in the peculiar facts and circumstances of the case and may not be quoted as a precedent. D

Divya Pandey

Appeals disposed of.