

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2017

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.1052 of 2017
and
C.M.P.No.14793 of 2017

The Management
State Transport Corporation
(Division-1) Ltd.,
Tirunelveli-627 003. Appellant

-vs-

1.The Presiding Officer,
The Labour Court, Tirunelveli.

2.S.Brahmma Nayagam ... Respondents

Appeal filed under Clause 15 of the Letters Patent, against the order passed by this Court in W.P.No.7572 of 2002 dated 11.03.2010. Writ Petition filed under Article 226 of the constitution of India praying to issue a writ of Mandamus, calling for the records of the presiding Officer, Labour Court, Tirunelveli, the 1st respondent herein passed in I.D.No.43/95 dated 28.02.2001 and quash the same.

For Appellant :: Mr.K.Venkataramani,
Additional Advocate General
assisted by Mr.P.Kannan Kumar
For Respondents:: Mr.Ajay Khose for R2

JUDGMENT

(Judgment of the Court was delivered by
HULUVADI G.RAMESH, J.)

This writ appeal has been filed against the order passed by this Court dated 11.03.2010 in W.P.No.7572 of 2002, confirming the order passed by the first respondent in I.D.No.43 of 2005 dated 28.02.2001 wherein it was ordered that the second respondent-worker has to be reinstated with continuity of service and back wages by the appellant.

2.The case of the second respondent is that he was working in the canteen of the appellant-Corporation for several years and the daily wage received by him before termination of his service, was Rs.12.50. He was working continuously without making any offence under Section 25b of the Industrial Disputes

Act. While so, he was removed from his job on 01.05.1994 without assigning any reason. The second respondent filed a petition in I.D.No.43 of 1995 before the first respondent-Labour Court for reinstatement with continuity of service and other benefits and the same was allowed by order dated 28.02.2001 with a direction that he should be given job with continuity of service along with back wages by the appellant-Corporation. Aggrieved by the same, the appellant-Corporation filed a writ petition in W.P.No.7572 of 2002 and this Court by order dated 11.03.2010, confirmed the order passed by the Labour Court, holding that even though the second respondent was not employed through the Employment Exchange, he was employed by the appellant Transport Corporation on a daily wage basis but on a monthly payment for more than 240 days before the year in which he was terminated from service and therefore he is entitled for protection under Section 25(F) of the Industrial Disputes Act.

3.Challenging the order passed in the writ petition, the Transport Corporation has come up with this appeal.

4.The learned Additional Advocate General appearing for the appellant has submitted that the learned single Judge has failed to take into consideration of the fact that the second respondent had not proved that he had worked for more than 240 days by letting any positive documentary evidence as he has the burden to prove the said aspect. He further submitted that any recruitment to the appellant Corporation should be only through Employment Exchange, but the second respondent's appointment was not made so. It is also his submission that the learned single Judge has failed to note that the second respondent had not produced his appointment order and had the appointment order been produced, it would expose that he was appointed only as casual labour on adhoc basis. Stating so, the learned Additional Advocate General prayed for quashing the impugned order made in the writ petition.

5.The learned counsel for the second respondent would submit that the second respondent was appointed in the canteen of the appellant Transport Corporation in accordance with law. He further submitted that the second respondent had worked for 240 days continuously and hence he should be considered as a workman and he is entitled to protection under Section 25(F) of the Industrial Disputes Act, 1947. He contended that the appointment of the second respondent as casual labourer without associating the Employment Exchange in the matter of appointment would not dilute the position that he is entitled to protection under Section 25(F), as he is deemed to be a workman, who had put in 240 days of continuous service. Stating so, he prayed for sustaining the impugned order which is under challenge in this appeal.

6.Heard the learned counsel on either side and perused the materials available on record.

7.The second respondent was appointed in the canteen of the appellant Transport Corporation and initially he was drawing a daily wage of Rs.12.50. Thereafter, he was drawing a sum of Rs.200/- per day and he was working as labourer for nearly five years in the canteen and thereafter he was appointed as casual labourer to the cook and initially he was paid Rs.300/- as daily wage. It appears that there is no direct relationship of master and servant as he was appointed as labourer to the cook in the canteen who was given a contract by the appellant- Transport Corporation. After hearing the Additional Advocate General appearing for the appellant for some time and also the counsel representing the second respondent, we find that the second respondent was appointed as labourer to the cook in the canteen who was given a contract by the appellant - Transport Corporation. Without analysing these aspects, the Labour Court has passed the order to reinstate the second respondent with back wages and continuity of service and the same was also confirmed by the learned single Judge of this Court. Hence the order impugned herein requires reconsideration in the hands of this Court.

8.It is seen that the second respondent had put in 5 years of service and at this juncture only 5 years service is left behind. It is also seen that the second respondent has been reinstated after the order passed by this Court in the writ petition. In these circumstances, we are of the view that the second respondent is not entitled for continuity of service. Further, the second respondent is also not entitled for back wages on the basis of 'no work no pay'.

9.In the result, the writ appeal is allowed in part and while sustaining the order in respect of reinstatement, it is made clear that the second respondent is not entitled for continuity of service and back wages. Therefore, the period of service already rendered before removal from service and the remaining period of service after reinstatement, alone shall be taken into consideration, while awarding the terminal benefits. The order of the learned single Judge in W.P.No.7572 of 2002 dated 11.03.2010 is modified accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

KM

To

The Presiding Officer,
The Labour Court, Tirunelveli.

+ 1 cc to Mr. P. Kannan Kumar, Advocate SR.71205

+ 1 cc to Mr. V. Ajoy Khose, Advocate SR.71002

W.A.No.1052 of 2017

and

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KGK(CO)
EU(15/11/2017)



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