

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2018

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.40389 of 2006

P.Thangavel

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Coimbatore.

2.Management of
Tamil Nadu State Transport Corporation,
(Division - 2), Coimbatore.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to I.D.No.79/2001 on the file of the first respondent and quash the award dated 06.10.2003, passed by the first respondent and further direct the second respondent to reinstate the petitioner in service, with backwages continuity of service and all other attendant benefits.

For Petitioner : Mr.K.V.Shanmuganathan

For Respondents : Mr.P.Kannan Kumar for R2

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus calling for the records pertaining to I.D.No.79/2001 on the file of the first respondent and to quash the award dated 06.10.2003, passed by the first respondent and to further direct the second respondent to reinstate the petitioner in service, with backwages, continuity of service and all other attendant benefits.

2.The case of the petitioner is that the petitioner joined the services of the second respondent on 09.06.1998 as Driver. However, he was orally terminated from service with effect from 12.04.1999. Challenging the said termination, the petitioner raised Industrial Dispute before the Labour Officer, Coimbatore. The Labour Officer, Coimbatore initiated conciliation proceedings, however, it ended in failure. Hence the petitioner preferred claim statement before the first respondent

challenging his termination as illegal for noncompliance with Section 25 F of the ID Act, 1947. The industrial dispute raised by the petitioner was seized in I.D.No.79 of 2001 and the first respondent vide the impugned award dated 06.10.2003, held that the petitioner has not completed 240 days in the year and that he was not appointed as per Rules and hence, the petitioner is not entitled to continue in service. Hence, the petitioner has filed this writ petition.

3.Before the Tribunal, the petitioner examined one Sasikumar as witness and marked seven documents as exhibits. The second respondent Management has also examined one Sundarasami as witness and has marked eighteen documents as exhibits. However, the documents produced by the petitioner are self serving documents and no document was produced before the Labour Court to establish that the petitioner had continuously worked for 240 days. Considering the documents marked on either side and also the evidence adduced on either side, the Labour Court had passed the impugned award.

4.The Hon'ble Supreme Court has dealt with the similar issue in the following case and the relevant portion of the same is extracted hereunder:

(i) H.U.D.A. Vs. Jamal Singh reported in 2006 5 SCC 764

"We are unable to appreciate the approach made by the Labour Court in calculating the statutory period of 240 days in a year. In our opinion, both the Labour Court and the High Court have failed to appreciate the fact that the respondent has failed to complete the statutory period of 240 days in a year to entitle him for claiming any benefits whatsoever. As already noticed, evidence has been led to the said fact before the Labour Court but still the issue of attendance of the respondent has been decided in his favour. This apart, the respondent was appointed only as a daily wage earner and not as a permanent employee of the appellant and hence the respondent cannot claim any right to the post in question and that no right has accrued to him to claim any benefits from the appellant. This fact has been overlooked by the Labour Court and also by the High Court. The fact remains that the respondent has not worked for the statutory period of 240 days which

has been clearly established by the appellant. It is settled law that the workman has to prove that he had worked for 240 days. In the instant case, the workman has not established that he has served the appellant for the statutory period of 240 days. "

5. Applying the ratio laid down by the Hon'ble Apex Court in the present case, it could be seen that the petitioner was not able to establish that he has continuously worked for 240 days in the calendar year i.e., without any break in service in the calendar year. Hence, the petitioner was not entitled to claim reinstatement in the Management.

6. Upon consideration of entire materials placed before this Court, I am of the considered view that the petitioner did not make out any case that he has continuously worked for 240 days in a calendar year. On the contrary, the Management has established that the petitioner was not employed continuously for 240 days in a calendar year. Accordingly, the petitioner is not entitled to reinstatement.

7. In the absence of any document to prove that the petitioner has worked continuously for 240 days in an English Calendar year, this Court is not inclined to interfere with the impugned order.

8. This writ petition is accordingly dismissed. No costs.

Sd/-

Assistant Registrar (CS V)

//True copy//

Sub Assistant Registrar

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To

1. The Presiding Officer,
Labour Court, Coimbatore.

2. Management of
Tamil Nadu State Transport Corporation,
(Division - 2), Coimbatore.

+1cc to Mr.K.V.Shanmuganathan, Advocate SR.No.50756

+1cc to Standing Counsel TNSTC, SR.No.50896

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GN(28/08/2018)