

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.45807 of 2006

Kandasamy

... Petitioner

Vs.

1. The Presiding Officer,
Labour Court,
Coimbatore.

2. The Management of Tamil Nadu
State Transport Corporation
(Coimbatore Division) Ltd.,
37, Mettupalayam Road,
Coimbatore.

... Respondents

Prayer:Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent in I.D.No.274 of 2000 quash the award of the first respondent dated 19.07.2004 and direct the second respondent to confirm the services of the petitioner effective 05.05.1999 along with back wages.

For Petitioner : Mr.A.Prasannavenkat
for APR Associates.

For Respondents : Ms.Rajini Ramadoss

O R D E R

The petitioner has filed the petition seeking a Writ of Mandamus to call for the records of the first respondent in I.D.No.274 of 2000 and to quash the award of the first respondent dated 19.07.2004 and to direct the second respondent to confirm the services of the petitioner with effect from 05.05.1999 along with back wages.

2. The case of the petitioner is that after completion of necessary training in driving passenger bus and after obtaining valid driving license, he registered the same before the District Employment Office (Technical Personnel), Coimbatore on

13.04.1993. Thereafter the respondent sent communication dated 24.07.1998 was sent to the petitioner and he was asked to appear for the personal interview on 10.08.1998 before the second respondent (Transport Corporation). After attending interview the petitioner was subjected to Driving Test held by the Selection Committee. Thereafter, he was directed to report before the Branch Manager of the second respondent for his duty. Accordingly, he reported before the said Branch Manager on 07.09.1998. After receiving the original driving license, he was paid a sum of Rs.75/- per day per shift. The petitioner was continuing to work as driver with the second respondent since 07.09.1998 without any blemish or break of service up to 22.04.1999. Thereafter, by way of oral order his services were terminated.

3. Though the petitioner joined as driver with the second respondent, however he was not given any formal order of appointment and he was working more than 240 duty days within a continuous period of one year and he was treated as a Casual Labour Driver. The petitioner filed a Writ Petition in W.P.No.10454 of 1999 challenging the oral termination order with consequential direction to the second respondent to issue appointment order with effect from 07.09.1998. However, this Court by its order dated 21.06.1999, directed the petitioner to submit a representation to the second respondent and further directed the second respondent to pass orders on his representation according to law within a period of six months.

4. Pursuant to the direction of this Court, the petitioner submitted a representation dated 05.07.1999 to the second respondent for issuance of appointment, on the ground that he completed 248 duty days within a continuous period of 228 days and further requested the second respondent to regularize the petitioner's service. However, the second respondent issued a letter dated 10.09.1999 intimating the petitioner to appear before the Deputy Manager (Administration) of the second respondent on or before 22.09.1999 with relevant records to prove the factum of employment from 07.09.1998 to 22.04.1999. Accordingly, the petitioner appeared before the said officer on 20.09.1999 and submitted all the documents which were sought for by the second respondent. Thereafter, the second respondent by letter dated 20.12.1999 informed the petitioner that the petitioner failed to prove that he has continually working for 240 days in a calendar year. Hence, his service cannot be regularised. Challenging the said order dated 20.12.1999, the petitioner initially raised proceedings under Section 12 (3) of ID Act before the Special Deputy Commissioner (Conciliation), Madras. Since conciliation ended in failure, the Labour Officer, Coimbatore, sent a conciliation failure report dated 04.07.2000. On the basis of the said report, the petitioner filed a petition under Section 2 (A) (2) of ID Act before the Labour Court,

Coimbatore and the same was taken on file in I.D.No.274 of 2000. The petitioner also examined himself as W.W.1 and marked 14 documents and however the first respondent rejected the claim petition on 19.07.2004 and the same was served to the petitioner on 14.12.2004. Challenging the same, the present Writ Petition is filed.

5. Heard the learned counsel for the petitioners as well as the respondent.

6. The undisputed facts are that the petitioner was engaged as driver by way of oral engagement and he was paid at Rs.75/- per day per shift. According to the petitioner, he was working continuously without any break in service up to 22.04.1999. Thereafter, he was orally terminated, against which he approached the conciliation officer. Since the conciliation officer filed a failure report and hence the petitioner approached this Court by way of Writ Petition in W.P.No.10454 of 1999, this Court by its dated 21.06.1999, directed the petitioner to make a representation to the second respondent/Management. Accordingly, the petitioner made a representation. However, the said representation was rejected. Thereafter, the petitioner raised Industrial Dispute in I.D.No.274 of 2000 before the first respondent/Labour Court and the Labour Court has rejected the claim petition. Therefore, the present Writ Petition is filed.

7. The issue involved in this case, whether the petitioner had worked continuously for 240 days in the calendar year in the second respondent/Management. On a perusal of the entire materials including counter statement reveals that the petitioner was engaged as a driver in the respondent corporation for a short time. He was engaged on an ad-hoc basis on 05.09.1998 on the clear understanding that the engagement was ad-hoc would cease as soon as regular appointees are engaged. Accordingly, the petitioner was discharged on 23.04.1999. Though the petitioner was examined as WW1 and marked 14 documents before the first respondent, all these documents does not establish that the petitioner had worked continuously for 240 days in the calendar year. However, the claim petition stated that he had completed 228 days and 248 duties since the petitioner did not established that he was continuously worked for 240 days in a calendar year.

8. 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. "

9. Applying the ratio laid down by the Hon'ble Apex Court in the present case, on a perusal of the claim statement as well as the written statement, it could be seen that the petitioner was not able to establish that he was continuously worked for 240 days in the calendar year i.e., without any break in service. Hence, the petitioner not entitled to claim of reinstatement in the second respondent management.

10. In view of the above discussion and decision cited supra the order of the Industrial Tribunal is confirmed. In the result, this Writ Petition is dismissed. No costs.

-s/d-

Deputy Registrar

True Copy

Sub-Assistant Registrar

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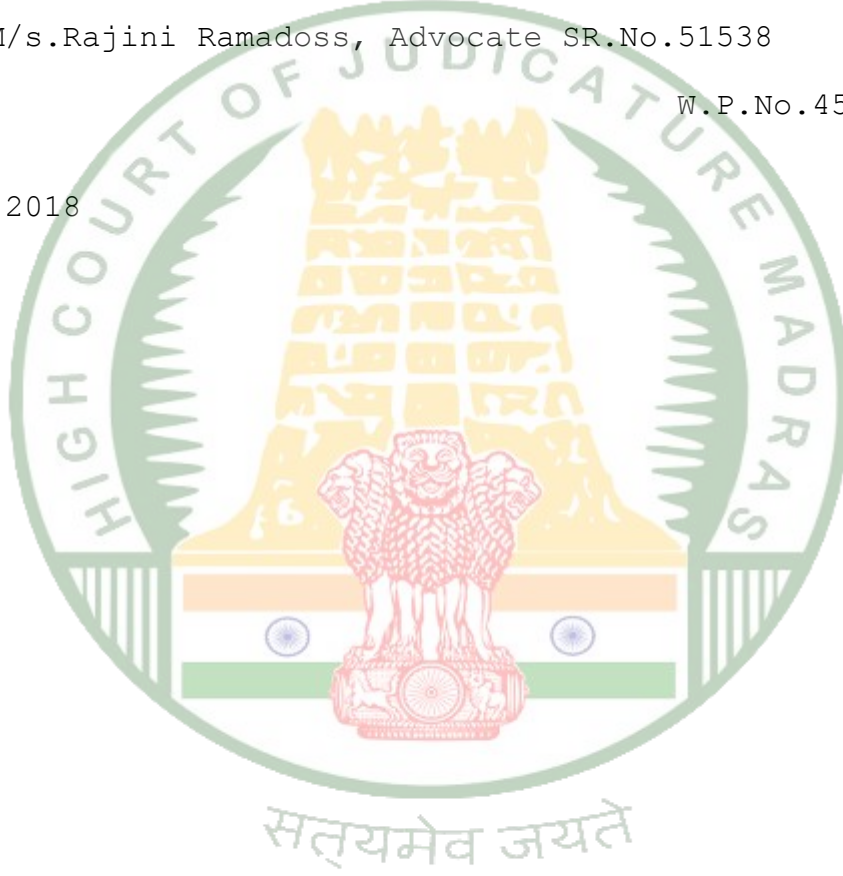
To

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37, Mettupalayam Road,
Coimbatore.

+1 cc to M/s.Rajini Ramadoss, Advocate SR.No.51538

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KR(CO)
CSL/16.10.2018



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