

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.20823 of 2002
and
W.P.M.P.No.39290 of 2004

M.Chandrasekaran,
Proprietor,
Sivaranjani Bus Company (S.V.M.),
3/11, Rathinabhavan, Bungalow Medu,
Mettupalayam - 641 301. ... Petitioners

Vs.

1.The Presiding Officer,
Labour Court,
Coimbatore.

2.R.Subbiayan ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of writ of Certiorari, calling for the records relating to the award dated 30.08.2001 passed in I.D.No.582 of 1999 on the file of the first Respondent, the Presiding Officer, Labour Court, Coimbatore and quash the order passed therein.

For Petitioner : Mr.S.Silambanan, Senior Counsel
for Mr.N.Umapathy
For R2 : No Appearance

O R D E R

The present Writ Petition is filed for issuance of writ of Certiorari, calling for the records relating to the award dated 30.08.2001 passed in I.D.No.582 of 1999 on the file of the first respondent herein and quash the same.

2.Heard the learned Senior Counsel appearing for the petitioner and perused the entire materials on record. Though notice has been served on the second respondent and his name is printed in the cause list, there is no representation for him, either in person or through counsel.

3. According to the petitioner, the second respondent was working as conductor in the petitioner management from 1989. While so, on 19.01.1999, the second respondent sought leave for two days i.e., on 19.01.1999 and 20.01.1999, as his daughter was not well and went on leave. On 21.01.1999, when he returned for duty, he was not permitted to join duty and petitioner orally terminated the services of the second respondent from 21.01.1999. The second respondent reportedly requested the petitioner to take him back into the service and give him work personally and also with Trade Union friends. The petitioner refused to give him work. The second respondent raised Industrial Dispute in I.D.No.582 of 1999 on the file of the first respondent herein. The petitioner filed counter statement before the first respondent and contended that the second respondent was not terminated by the petitioner. The petitioner further contended that on various dates, the second respondent misappropriated the collection amount and was taking leave without informing the petitioner. The second respondent was given show cause notice by the petitioner for misappropriation of collection amount and he gave letters, seeking apology and promised that he will not repeat the said misconduct. On 18.01.1999, when the Checking Inspector Mr. Shanmugam, inspected the bus, in which the second respondent was working as conductor, it was found that he has issued ticket to the value of Rs.1.75 to three passengers, while the actual fare is Rs.5/-. The second respondent has also not issued ticket to two passengers and also issued expired tickets. Therefore, explanation was called for but without giving any explanation, the second respondent did not turn up for duty amounting to abandonment of service. The petitioner did not terminate the services of the second respondent but he himself abandoned the work. He did not report for duty, even after the petitioner sent a letter to him. Before the first respondent, the second respondent examined himself as W.W.1 and one Mahalingam as W.W.2 and marked 4 documents as Exs.W1 to W4. The first respondent considering the pleadings, oral and documentary evidence, held that the petitioner has not proved that the second respondent abandoned the service and held that termination of second respondent without any enquiry is not valid and ordered reinstatement with continuity of service with attendant benefits and back wages. Against the said award, the petitioner has come out with the present Writ Petition.

4. From the materials available on record, it is seen that the petitioner has not produced any document to substantiate their contention that the second respondent abandoned the services of the petitioner and petitioner did not orally terminate the service of the second respondent. In the counter statement filed before the first respondent, the petitioner has stated that they have issued letter to the second respondent but

he failed to report for duty. The petitioner has not produced the said letter calling upon the second respondent to report for duty, before the Labour Court. It is the contention of the petitioner that on 18.01.1999, the second respondent misappropriated the funds and it was detected by the Checking Inspector Mr. Shanmugam and on fear, the second respondent did not report for duty. On the other hand, the second respondent contended that he sought for leave on 19.01.1999 and 20.01.1999 for two days as his daughter was not well. The wife of the petitioner gave the second respondent an advance amount of Rs.1,000/- for taking his daughter to hospital and gave a recommendation letter dated 20.01.1999, to the doctor, which was marked as Ex.M4. The witness examined by the petitioner as M.W.1 admitted that signature in Ex.M4 is that of the petitioner. The first respondent considering the documents produced by the petitioner, second respondent and pleadings, held that petitioner has not issued any notice to the second respondent to report for duty in the notice issued for conducting enquiry. The petitioner has also not produced any document to show that enquiry was conducted and the second respondent was terminated. The first respondent has further held that if the second respondent had committed misappropriation of the amounts on so many occasions as alleged by the petitioner, the petitioner would not have allowed the second respondent to continue in service for more than 10 years. For the above reason, the first respondent has held that termination of the services of the second respondent by the petitioner is not valid and ordered reinstatement with continuity of service with attendant benefits and back wages. There is no error or perversity in the reasoning of the first respondent warranting interference by this Court.

5. In the result, this Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

krk

To

The Presiding Officer,
Labour Court,
Coimbatore.

+1 cc to Mr.K.V.Shanmuganathan Advocate sr64416
+1 cc to Mr.Silambanan Associates sr64158

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