

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.26274 of 2003
and
W.P.M.P.No.32163 of 2003

K.Arumugham

... Petitioner

Vs.

1.The Management,
Namakkal Ramavilas Transport,
5, K.K.P. Street, A.S.Pettai,
Namakkal - 637 001.

2.The Labour Court,
Salem.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus to call for the records of the 2nd Respondent Labour Court, Salem in C.P.No.262/2000 and quash the order dated 29.05.2003 and consequently direct the 1st respondent to pay the salary and other employment benefits together with damages as claimed by the petitioner in the above claim petition.

For Petitioner : Ms.K.Indu priya
for Mr.V.P.Senguttuvel

For R1 : Mr.K.Vaidyanathan
for Mr.P.Premkumar

O R D E R

The present Writ Petition is filed for issuance of writ of Certiorarified Mandamus, to call for the records of the 2nd Respondent Labour Court, Salem in C.P.No.262/2000 and quash the order dated 29.05.2003 and consequently direct the 1st respondent to pay the salary and other employment benefits together with damages as claimed by the petitioner in the above claim petition.

2.According to the petitioner, the first respondent Transport Company is the owner of number of LPG Tanker Lorries and they are operating the said LPG Tankers in the South Zone on

contract with Hindustan Petroleum Corporation for transporting LP Gas from the Refinery to other filling stations in different places such as Visakapattinam, Calcutta, Vijayawadha, Bangalore, Tuticorin, etc,. The petitioner joined the service of the first respondent company as Tanker Lorry driver from the month of January 1995 and his salary was fixed at Rs.9,800/- per month and Rs.1,500/- as allowance. He has to drive the vehicle of the first respondent from the godown of the Hindustan Petroleum Corporation to various places. The petitioner was working continuously from January 1995 and he was not paid salary by the first respondent. The petitioner requested the first respondent to pay his salary to his wife. The first respondent on eight occasions totally paid only a sum of Rs.8,000/- to the petitioner's wife and did not pay any further amount. Subsequently, the petitioner demanded payment of salary from January 1995 to December 1997. In view of such demand, the first respondent directed the petitioner not to attend the work. On the above averments, the petitioner filed claim petition in C.P.No.262 of 2000 on the file of the second respondent under Section 33 (c)(2) of Industrial Disputes Act, 1947, claiming total sum of Rs.4,28,020/- together with interest at the rate of 18% under different heads.

3.The first respondent filed counter statement and denied all the averments made in the claim petition. According to the first respondent, the petitioner was not a driver employed by the first respondent and he did not continuously work as driver from January 1995. The petitioner was not a regular driver employed by the first respondent. He was only a casual worker engaged by the first respondent when the regular driver was on leave for that particular trip only. There was no contract of service between the petitioner and first respondent. At that time of work, the petitioner was paid a sum of Rs.1,500/-. The first respondent never agreed to pay any monthly salary to the petitioner. The first respondent also stated that it is not true that from January 1995 to December 1997, the petitioner worked as a driver and insisted on full payment of his alleged salary and due to that his service was terminated. The petitioner's wife received a sum of Rs.30,000/- for urgent need of the family in different times and to avoid repayment of that amount, the petitioner has come forward with the claim petition. The petitioner has not worked 240 days continuously in 12 calendar months in the first respondent management and he is not entitled to any amounts as claimed in the claim petition and prayed for dismissal of the claim petition.

4.Before the second respondent, the petitioner examined himself as P.W.1 and marked 44 documents as Exs.P1 to P44. The first respondent examined one Elango as R.W.1 and marked 3 documents as Exs.R1 to R3. The second respondent considering

the oral and documentary evidence, dismissed the claim petition. Against the said order of dismissal dated 29.05.2003 made in C.P.No.262 of 2000 on the file of the second respondent, the petitioner has come out with the present Writ Petition.

5.The learned counsel appearing for the petitioner contended that the petitioner has produced documents and proved that he was continuously working in the first respondent Transport Company from January 1995 to December 1997. The documents produced by the petitioner clearly proves that the petitioner was continuously working in the first respondent Transport Company during that period. The reasons given by the second respondent for dismissing the claim petition is erroneous and prayed for allowing the Writ Petition.

6.Per contra, Mr.K.Vaidyanathan, learned counsel representing Mr.P.Premkumar, learned counsel appearing for the first respondent contended that the petitioner did not continuously work as a driver in the first respondent management. The petitioner was given casual work in the place of regular driver. Whenever the regular driver absented, the petitioner was sent in the lorry as casual driver for that particular trip only. There was no contract of service between the petitioner and first respondent. The petitioner failed to prove that he is a permanent driver working in the first respondent management and his monthly salary is Rs.9,800/- and allowance is Rs.1,500/-. The documents filed by the petitioner did not prove that he was continuously working from January 1995 to December 1997. The second respondent has given valid reason for dismissing the claim petition and there is no error in the said order warranting interference by this Court and prayed for dismissal of the Writ Petition.

7.Heard the learned counsel appearing for the petitioner as well as the first respondent and perused the entire materials on record.

8.The petitioner has claimed various amounts in the claim petition on the ground that he was a permanent driver working under the first respondent Transport Company on a monthly salary of Rs.9,800/- and Rs.1,500/- as allowances. Apart from the salary from January 1995 to December 1997, the petitioner claimed various other amounts in the claim petition. To substantiate this, apart from letting in oral evidence, the petitioner marked 44 documents. The documents marked by the petitioner relates to inspection report of the lorry, load bills, weigh bills, etc,. The second respondent found the signature of the petitioner in some of the documents. As rightly held by the second respondent, these documents do not prove the continuous employment of the petitioner with the first

respondent. The petitioner has not let in any evidence to show that he has worked for 240 days in 12 calendar months during this period. Further the reasoning of the second respondent that it is not believable that a person did not demand and receive salary for three years is not erroneous. Further the second respondent has taken note of the fact that the petitioner has not filed any claim petition immediately after his alleged termination and approached the Court after a delay of three years, in the year 2000. The petitioner has failed to prove that he worked 240 days in 12 calendar months and the claim petition under Section 33 (c)(2) of Industrial Disputes Act, 1947, is not maintainable as the petitioner failed to satisfy the ingredients of Section 33 (c)(2) of Industrial Disputes Act, 1947, to maintain the claim petition. For the above reason, there is no error in the order of the second respondent warranting interference by this Court.

9. In the result, this Writ Petition stands dismissed as devoid of merits. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Management,
Namakkal Ramavilas Transport,
5, K.K.P. Street, A.S.Pettai,
Namakkal - 637 001.

2. The Judge,
Labour Court,
Salem.

+1cc to Mr.V.P.Sengottuvel, Advocate Sr.55302
+1cc to Mr.P.Premkumar, Advocate Sr.55338

W.P.No.26274 of 2003 and
W.P.M.P.No.32163 of 2003

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srg 26/07/2019