

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 27.03.2019

Delivered on : 02.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.41297 of 2006

and

W.P.No.1 of 2006, M.P.No.1 of 2007 and M.P.No.1 of 2010

S.Prema

W/o.Late Subramania Gounder

Proprietrix,

Senthil Ayappan Bus Service,

No.33,Ari Chetty Street Extension,

Tiruppattur -635 601.

Vellore District.

.... Petitioner

Vs.

1.The Presiding Officer,

Labour Court,

Vellore.

2.S.Mani

.... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the Award dated 15.07.2004 passed in I.D.No.6 of 2003 on the file of the First Respondent herein and to quash the same.

For Petitioner : M/s.Elizabeth Rani
for Mr.P.Raja

For Respondents : M/s.K.M.Ramesh for R-2

O R D E R

The case of the Petitioner is that she is the Proprietrix of M/s.Senthil Ayyappan Bus Service and that the Second Respondent herein was engaged by her as a casual employee on 03.01.2000 when the regular and permanent drivers were unavailable.

Therefore, the Petitioner states that the Second Respondent was not employed for more than 240 days continuously in a year.

2.The Petitioner further states that the Second Respondent, on his own volition, stopped coming to work from 16.05.2002 and that he thereafter initiated proceedings under the Industrial Disputes Act,1947(the Act) at the instance of third parties. Thereafter, the case before the First Respondent was filed in the year 2003 and the Petitioner entered appearance through counsel. Before the First Respondent, the Petitioner defended the case on the basis that the Second Respondent was not a regular temporary or permanent employee but a casual employee whose services were engaged when permanent drivers were unavailable.

3.According to the Petitioner, the case was posted on 13.07.2004 and the Second Respondent filed a proof affidavit on the said date. On receipt of the proof affidavit, the Petitioner states that the First Respondent took up the case for hearing in spite of the fact that the Petitioner's counsel reported that he had no instructions. On that basis, the First Respondent proceeded to allow the petition and directed reinstatement with back wages and other benefits.

4.The Petitioner states that she was unwell during that period and came to know that the Petition was allowed upon receipt of a notice from the First Respondent in the claim Petition filed under Section 33(c)(2) of the Act. Thereafter, the Petitioner filed an application before the First Respondent on 10.12.2004 to set aside the Award dated 15.07.2004 along with an application to condone the delay of 135 days. The Petitioner further states that the First Respondent was unwilling to take up the said application on the basis that the Award was not an ex-parte Award.

5.The case of the Second Respondent is that he was engaged as a driver by the Petitioner on 25.07.1990 and that he was in the employment of the Petitioner until 15.05.2002 when he was refused further work because the two sons of the Petitioner were of the view that he had been in employment for a long period and would therefore create problems by making demand in respect of salary and bonus. The Second Respondent further states that he sent a registered letter to the Petitioner in connection with the termination of services but that he did not receive a response. Therefore, he initiated conciliation proceedings under the Act but that the said proceedings ended in failure on

account of the non-participation of the Petitioner. According to the Second Respondent, I.D.No.6 of 2003 was filed before the First Respondent in these facts and circumstances.

6.At the hearing on 27.03.2019, the learned counsel for the Petitioner submitted that the Second Respondent was engaged on casual basis as a casual driver as a substitute for permanent drivers when they were unavailable. The learned counsel also submitted that the Petitioner was not heard by the First Respondent while deciding the Industrial Dispute and that therefore the Petitioner should be given an opportunity to present her case. The learned counsel further submitted that the Second Respondent did not provide proper evidence to establish that he was employed by the Petitioner from 25.07.1990 and that the only piece of evidence, in this regard, was a gate pass issued by TVS Sundaram Motors on 17.06.1998. Therefore, according to the learned counsel for the Petitioner, the Impugned Award was liable to be set aside so as to provide an opportunity to the Petitioner.

7.In response, the learned counsel for the Second Respondent submitted that the Impugned Award is not an ex parte Award. In this regard, the learned counsel adverted to paragraphs 6 and 7 of the Impugned Award and pointed out that the First Respondent considered the available evidence. For instance, he submitted that the First Respondent recorded that the Petitioner herein did not deny that the Second Respondent was employed as a driver with the Petitioner. In fact, the First Respondent considered the Agreement dated 03.01.2000, which was submitted by the Petitioner to establish that the Second Respondent was employed as a driver on 03.01.2000 and not earlier, and held that employers ordinarily issue a letter of employment and do not ask the employee to sign this type of agreement and that therefore this agreement should not be given any importance. He also pointed out that the oral evidence of the Second Respondent to the effect that he was a driver from 25.07.1990 was not contravened by the Petitioner herein by leading oral evidence to the contrary. The learned counsel also pointed out as to how the First Respondent held that the Petitioner herein did not prove that the Second Respondent was employed as a casual employee who substituted for permanent drivers when they were on leave.

8.In order to substantiate the submissions, the learned counsel for the Second Respondent referred to the Judgement of the Hon'ble Supreme Court in INDIAN OVERSEAS BANK Vs. IOB STAFF CANTEEN WORKERS UNION reported in 2000 (II) CTC 506. In

particular, the learned counsel referred to paragraph 17 of the said judgement wherein the Hon'ble Supreme Court held that evidence should not be reappraised in the exercise of supervisory jurisdiction and that as long as the decision is based on relevant evidence, it should not be interfered with on the ground that another view could reasonably be taken. He also referred to the judgement of a Division Bench of this Court in THE MANAGEMENT OF SOUTH INDIAN BANK AND ANOTHER Vs. THE DEPUTY COMMISSIONER OF LABOUR (APPEALS) COIMBATORE AND OTHERS, 2009 (4) CTC 875, wherein several judgments of the Hon'ble Supreme Court were considered and it was held that unless the findings of the Appellate Authority are perverse or based on no evidence, the findings should not be interfered with in the exercise of supervisory jurisdiction under Article 226 of the Constitution.

9. The affidavit, counter affidavit, documents and oral arguments were carefully considered.

10. It is the admitted position that the Second Respondent was employed as a driver by the Petitioner. It is also admitted that the Petitioner runs a small bus service agency with about two buses. The Petitioner has admittedly not participated in the conciliation proceedings. Thereafter, the Petitioner entered appearance through counsel before the First Respondent and also filed a counter to the Petition. This counter, however, was not filed in this writ Petition. The Petitioner has also admittedly filed a document before the First Respondent and this document has been considered by the First Respondent in the Impugned Award. The finding of the First Respondent that the Petitioner herein failed to prove that the Second Respondent herein was appointed as a driver on a casual basis to temporarily substitute for the permanent drivers is a reasonable finding on the available evidence. Given the fact that the Petitioner runs only about two buses, it would have been very easy for the Petitioner to provide credible evidence as to who the permanent drivers were in order to establish that the Second Respondent herein was appointed on casual basis. It does not appear from the record that the Petitioner herein has produced such evidence.

11. As rightly pointed out by the learned counsel for the Second Respondent and as per the binding decisions relied on by him, this Court would not ordinarily reappraise evidence unless it is very clear that the findings of the Labour Court are perverse or such that no reasonable person could reach that conclusion on the available evidence. On examining the Impugned Award, it cannot be said that the conclusion is unreasonable on the basis of available evidence. As stated earlier, the Award is

on the merits and the counter and document filed by the Petitioner herein were taken into consideration in passing the Impugned Award. Therefore, the Impugned Award is not liable to be interfered with in the exercise of supervisory jurisdiction.

12.In fine, this Writ Petition is dismissed but there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

The Presiding Officer,
Labour Court, Vellore.

+1 cc to Mr.K.M.Ramesh, Advocate, Sr.No. 31507
+1 cc to Mr.P.Raja, Advocate, Sr.No. 31851

CSL/02.05.2019

Order in
W.P.No.41297 of 2006

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