

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 05.07.2019

CORAM:
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.4676 of 2011

R.Sundararajan

.. Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Salem.

2.The Commissioner,
Panchayat Union,
Yercaud,
Salem District.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus calling for the records connected with the award dated 28.10.2009 passed by the 1st respondent in I.D.No.30 of 2007, quash the same and also direct the 2nd respondent panchayat union to reinstate the petitioner into service with continuity of service, back wages along with other attendant benefits.

For Petitioner : Ms.S.Girija

For R2 : Mr.A.Arumugam

O R D E R

The present Writ Petition is filed for issuance of writ of Certiorarified Mandamus calling for the records connected with the award dated 28.10.2009 passed by the 1st respondent in I.D.No.30 of 2007, quash the same and also direct the 2nd respondent panchayat union to reinstate the petitioner into service with continuity of service, back wages along with other attendant benefits.

2.According to the petitioner, he was working as Jeep Driver under the service of the second respondent from 08.06.1998, on daily wages till the month of April 2005. The petitioner's father was critically ill and petitioner took four days leave from 25.04.2005 to 28.04.2005 to admit his father in the hospital at Salem. When he reported for duty on 29.04.2005, the second respondent refused to permit him to join duty and orally terminated the services of the petitioner, which is

illegal. The second respondent did not consider the petitioner's representations dated 04.10.2005 and 17.05.2005. Before the Labour Officer the petitioner filed failure report and raised an Industrial Dispute in I.D.No.30 of 2007 on the file of the first respondent to set aside the oral dismissal order of the second respondent dated 29.04.2005 and to reinstate the petitioner in service, with continuity of service, backwages along with other attendant benefits with cost.

3.The second respondent filed counter statement before the first respondent and denied the averments of the petitioner and contended that the petitioner was engaged as Jeep Driver on daily wages, as and when they required and he was paid for the days he worked. The second respondent denied that the petitioner worked for 240 days in 12 calendar months and he was paid monthly salary by the second respondent. The second respondent denied that the petitioner was terminated from service on 29.04.2005. There was no permanent post of Jeep Driver in the second respondent office. The petitioner was not appointed as Jeep Driver on any contract. No permanent driver was appointed by the Government in the second respondent office and prayed for dismissal of the Industrial Dispute.

4.Before the first respondent, the petitioner examined himself as P.W.1 and marked 25 documents as Exs.P1 to P25. One Yuvaraj on behalf of the second respondent was examined as R.W.1 and the second respondent marked 9 documents as Exs.R1 to R9. The first respondent, considering the pleadings, oral and documentary evidence dismissed the Industrial Dispute holding that the petitioner failed to prove that he was in continuous employment in the second respondent office and failed to prove that he worked for 240 days in a year as alleged by him. Against the dismissal of the Industrial Dispute, the petitioner has come out with the present Writ Petition.

5.The learned counsel appearing for the petitioner contended that the first respondent erred in holding that the petitioner failed to prove that he was in continuous employment in the second respondent office. The first respondent failed to properly consider Exs.P1 to P11, P13, P15 and P20 to P22. The second respondent has passed a resolution for appointing the petitioner as Jeep Driver and also recommended the case of the petitioner for permanent absorption in Yercaud Union. It is not the specific case of the second respondent that the petitioner did not work for 240 days in preceding 12 months before the date of termination. The first respondent failed to note that the petitioner was appointed as Jeep Driver based on the resolution passed by the second respondent and termination of the petitioner without any notice is in violation of provision under Section 25 (F) of the Industrial Disputes Act, 1947. The first respondent failed to see that the witness examined by the second

respondent candidly admitted that the petitioner could have been appointed as Jeep Driver, but for the fact that he was over aged on that date, he was not appointed and prayed for allowing the Writ Petition.

6. Per contra, the learned counsel appearing for the second respondent contended that the petitioner was engaged on daily wages only when the services of Jeep Driver was required. He was not continuously engaged and was not paid salary on monthly basis. Even though the second respondent and the District Collector recommended the appointment of the petitioner as Jeep Driver, the same was not accepted due to ban order. The petitioner never worked for 240 days in 12 calendar months. The petitioner failed to prove that he worked for 240 days preceding 12 months when he was alleged to have been terminated on 29.04.2005. There is no error in the dismissal of the Industrial Dispute by the first respondent and prayed for dismissal of the Writ Petition.

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

8. The contention of the learned counsel appearing for the petitioner is that the petitioner was continuously working in second respondent Panchayat Union from 08.06.1998 on daily wages and he worked for 240 days every year till 29.04.2005, when the second respondent orally terminated his services. On the other hand, it is the case of the second respondent that the petitioner was engaged as Jeep Driver as and when required and he was paid wages for the days he worked. In view of the rival contention, it is for the petitioner to prove that he worked for 240 days in 12 months preceding 29.04.2005. The petitioner as P.W.1 has marked various documents to show that he worked in second respondent Panchayat Union. But he has failed to produce any documents to show that he worked continuously for 240 days every year from the date of his joining i.e., 08.06.1998 especially for 240 days preceding 12 months on 29.04.2005. The documents produced by the petitioner with regard to his employment in second respondent relates to 2001 and he has not produced any other documents. The first respondent considering Ex.P18/copy of the letter dated 17.10.2005 written by the petitioner to the District Collector, has given a finding that the petitioner has not worked for 240 days. The first respondent considering the oral and documentary evidence has given a finding that the petitioner failed to prove that he worked for 240 days in every year as alleged by him. There is no error in the finding of the first respondent warranting interference by this Court.

9.In the result, this Writ Petition stands dismissed. No costs.

Sd/-
Assistant Registrar (Insp.Cell)

//True Copy//

Sub Assistant Registrar

krk

To

1.The Presiding Officer,
Labour Court, Salem.

2.The Commissioner,
Panchayat Union,
Yercaud,
Salem District.

+1cc to Mr.S.Girija, Advocate, S.R.No.57565

+1cc to Mr.A.Arumugam, Advocate, S.R.No.56412

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VD(CO)

RRS (22/08/2019)



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