

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2019

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.4738 of 2011

P.V.Mohan

... Petitioner

Vs.

1.Hindustan Petroleum Corporation Limited,
Represented by its Shift Officer,
Auto Care Centre,
K.R.Ajithkumar,
No.625, Anna Salai,
Chennai 600 006.

Now at

CMDA Building, Gandhi Irvin Road, Egmore,
Chennai 600 008.

2.The Presiding Officer,
Central Government Industrial Tribunal cum
Labour Court,
I Floor, B Wing, 26 Haddows Road,
Shastri Bhavan, Chennai 600 006.

3.The Deputy Chief Labour Commissioner (C),
Office of the Deputy Chief Labour Commissioner (C),
Shastri Bhavan,
5th Floor, Chennai 600 006.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records of the Second Respondent the award passed by the second respondent dated 19.04.2010 in I.D.No.55 of 2007 and quash the same and direct the first respondent to re-instate the petitioner in service with all consequential benefits including back wages.

For Petitioner :Mrs.S.Rajeni Ramadass

For Respondents:Mr.M.Vijayan for

M/s.King & Partridge for R1

R2 - Tribunal

Mr.J.Ramesh,

Additional Government Pleader for R3

O R D E R

The present writ petition has been filed by the petitioner against the award passed by the second respondent dated 19.04.2010 in I.D.No.55 of 2007 and to direct the first respondent to re-instate the petitioner in service with all consequential benefits including back wages.

2. According to the petitioner, he was employed in the first respondent Corporation in various units for a period from 1999 to 2003. While he was working continuously for the above said period, his service was terminated without following the procedure as contemplated under the provisions of the Industrial Disputes Act. In view of the unjust termination, the petitioner raised a dispute and the same was referred for adjudication before the second respondent Industrial Tribunal-cum-Labour Court in I.D.No.55 of 2007.

3. The second respondent, after advertng to the evidence and various materials placed on record, ultimately dismissed the claim of the petitioner on the ground that the petitioner has not established the factum of his employment that he had worked continuously for a period not less than 240 days in a year, in order to attract Section 25(F) of the Industrial Disputes Act. The conclusion as reached by the Industrial Tribunal in paragraph No.9, is extracted hereunder:-

"9. In this case the petitioner has failed even to plead or prove a concrete case of claim to show that he has been entitled to the status of a permanent employee in terms of Section-25B of the ID Ac and thereby rendering his order of termination illegal and violative of Section-25F of the ID Act. Therefore, it is held that the petitioner has not worked as casual worker from 10.04.1999 to 19.08.2003 continuously. His services were not to be terminated following the provisions of the ID Act as though he is a regular employee. He is not entitled to any relief."

As against the award of the Tribunal, the present writ petition has been filed.

4. The learned counsel for the petitioner would submit that the consistent stand of the petitioner was that he had worked continuously from the year 1999-03 and unfortunately, he was not in a position to establish the fact as he was only a casual labourer. He has produced no document in support of his claim. In the said circumstances, an Interlocutory Application was filed in I.A.No.3 of 2008 in I.D.No.55 of 2007, seeking production of documents like Daily Worksheet, Attendance Register, Salary Register and Shift Schedule Register. The Interlocutory Application was resisted by the first respondent Corporation stating that the petitioner herein was being a

casual employee, was employed on and of for a brief period and no registers were maintained. He was paid daily wages on the same day and there was neither Salary Register and Shift Schedule Register nor Attendance Register maintained by the Corporation.

5. The learned Industrial Tribunal, after accepting the explanation given by the Corporation, dismissed the Interlocutory Application. Thereafter, the Industrial Tribunal has proceeded to hold that the petitioner workman has not established the factum of his employment for not less than 240 days in a year and therefore, held that he was not entitled to the relief as prayed for.

6. The learned counsel for the petitioner would submit that the second respondent ought to have drawn an adverse inference against the first respondent Corporation for not having produced the documents as sought by the petitioner in the Interlocutory Application. Instead of that, the second respondent had accepted the case of the Corporation in the face of the fact that the petitioner had not worked continuously in the first respondent Corporation from 1999 to 2003. The learned counsel would also submit that the petitioner herein was entitled to the benefit of doubt and he was also entitled to the relief as prayed for.

7. On the other hand, the learned counsel for the first respondent would submit that even in the evidence let in before the Industrial Tribunal, the petitioner workman has not deposed about his employment of not less than 240 days in a year. He merely deposed that he was not aware as to how many days he was worked. Even in his claim statement, he was not stated anywhere that he worked for more than 240 days in a year. In such scenario, the second respondent Industrial Tribunal has rightly concluded that he has not discharged his burden of being employed for not less than 240 days in a year. In the absence of discharge of burden on the part of the workman, the Industrial Tribunal had rightly concluded against the petitioner and the same does not call for any interference of this Court.

8. The learned counsel for the first respondent Corporation would also submit that the dismissal of Interlocutory Application by the second respondent Industrial Tribunal vide its order dated 23.05.2008, has not been put to challenge. Therefore, it is not open to the petitioner workman to contend that the dismissal order of the second respondent in dismissing the Interlocutory Application seeking for production of documents, is bad at this distance of time, when challenge in the writ petition is in regard to the main award passed by the second respondent.

9. This Court has considered the submissions of the learned counsel appearing on either side. No doubt the petitioner has been employed between the year 1999 and 2003 in the first respondent Corporation on casual basis. However, the petitioner workman has not come forward with the clear case of his employment of atleast 240 days in a year during his entire spell of his employment in the first respondent Corporation. As rightly contended by the learned counsel for the Corporation, even in the evidence rendered by the petitioner before the second respondent, he has not stated categorically that he has worked for not less than 240 days in a year, in order to attract the provisions of the Industrial Disputes Act.

10. In the said circumstances, the second respondent Industrial Tribunal has rightly held that the petitioner has failed to establish the factum of his employment for atleast to the minimum period of 240 days in a year, warranting interference of the Industrial Tribunal with the termination of the petitioner workman. In the absence of clear claim on the part of the petitioner workman about his period of employment, the second respondent Industrial Tribunal has proceeded to hold that the petitioner was not entitled to the relief of reinstatement.

11. This Court is of the view that the conclusion reached by the Industrial Tribunal does not suffer from any infirmity and the Industrial Tribunal has passed an award dismissing the claim of the petitioner on the basis of the materials as made available and in such circumstances, this Court does not think that the award of the Industrial Tribunal cum Labour Court requires any interference of this Court.

12. For the above said reasons, this Court finds that the present writ petition lacks merits and the same is dismissed. No costs.

Sd/-
सत्यमेव जयते
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gsk

To

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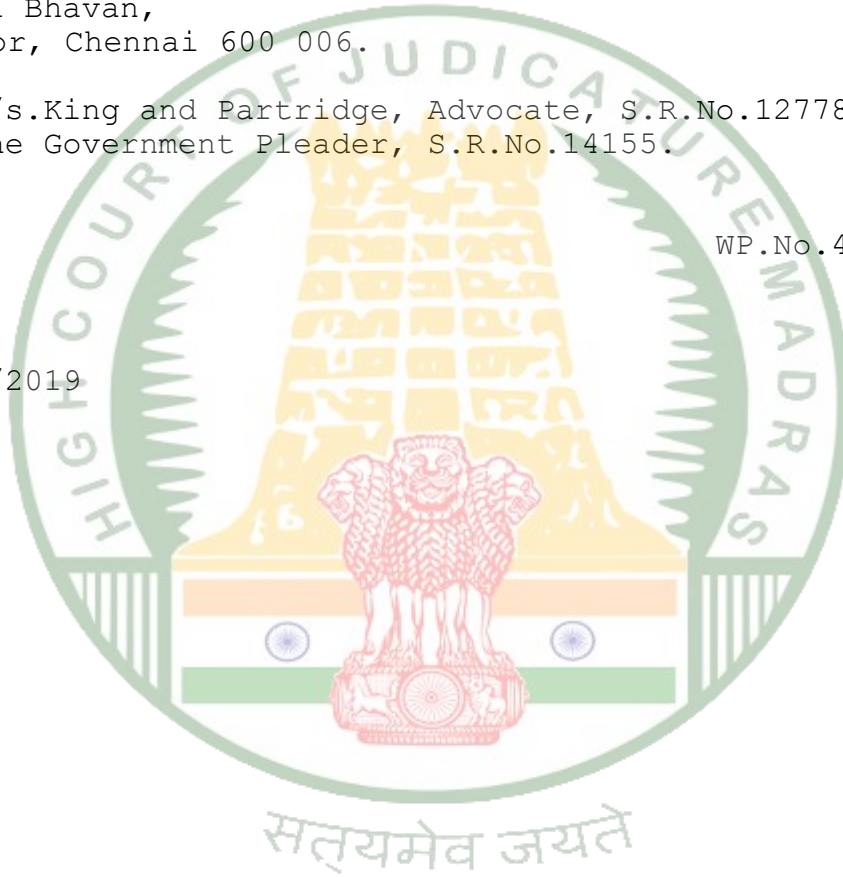
3.The Deputy Chief Labour Commissioner (C),
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5th Floor, Chennai 600 006.

+1cc to M/s.King and Partridge, Advocate, S.R.No.12778
+1cc to the Government Pleader, S.R.No.14155.

WP.No.4738 of 2011

SJ(CO)

rrs 22/03/2019



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