

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.362 of 2012
and M.P.No.1 of 2012

The Management of M/s.P.N.P.Bus Services,
C.L.Road,
Vaniyambadi Taluk,
Vellore District.

.. Petitioner

Vs.

1. M.Senthilkumar

2. The Presiding Officer,
Additional Labour Court,
Vellore.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records relating to the impugned award made in I.D.No.126/2008 dated 24.08.2011 on the file of the Additional Labour Court, Vellore and quash the same.

For Petitioner : Mr.K.Premkumar

For R1 : No appearance

For R2 : Court

सत्यमेव जयते
O R D E R

The present Writ Petition is filed for issuance of a Writ of Certiorari, calling for the records relating to the impugned award made in I.D.No.126/2008 dated 24.08.2011 on the file of the Additional Labour Court, Vellore and quash the same.

2.The 1st respondent raised an I.D.No.126/2008 before the 2nd respondent, contending that he was employed as a car driver in the service of petitioner Management with effect from 01.08.2001 on a monthly salary of Rs.1,500/-. The petitioner has not paid salary as per payment of the Minimum Wages Act and has not granted other benefits like D.A, salary for weekly and

Government holidays. The 1st respondent has worked for not less than 240 days in a year. The petitioner without any prior notice and without any reason terminated the services of the 1st respondent with effect from 01.12.2007. The 1st respondent requested the petitioner to give him work and settle the matter. The 1st respondent filed a petition before the Conciliation Officer, Vellore. The petitioner did not participate in conciliation proceedings and did not file any counter. The Conciliation Officer filed Failure Report under Section 12(4) of the I.D Act. In such circumstances, the 1st respondent raised an Industrial Dispute for continuity of service with full salary and benefits as per the Minimum Wages Act.

3.The petitioner filed counter statement before the 2nd respondent and denied all the averments and denied that the 1st respondent worked as a driver in the petitioner Management at any point of time and stated that the 1st respondent never received any payment for the same as alleged by him. The owner of the vehicle is one Uma Mageshwari and the vehicle is driven by her husband and son. They never engaged driver and prayed for dismissal of the Industrial Dispute.

4.Before the 2nd respondent, the 1st respondent examined himself as W.W.1 and examined one Arul as W.W.2 and marked Conciliation Failure Report dated 24.04.2008 as Ex.W1. The petitioner examined one Ramamurthy as M.W.1 and no document was filed by the petitioner. The 2nd respondent considering the pleadings, oral and documentary evidence, partly allowed the dispute raised, directing the petitioner to reinstate the 1st respondent in service with continuity of service and other benefits and ordered 50% of back wages.

5.Against the said award in I.D.No.126/2008, the petitioner has come out with the present Writ Petition.

6.The learned counsel appearing for the petitioner contended that the 1st respondent failed to establish the existence of master-servant relationship between the petitioner Management and 1st respondent, before the 2nd respondent. Not a single document was produced by the 1st respondent to substantiate his case. The 1st respondent has not worked continuously for 240 days in a year and the 2nd respondent erroneously shifted the burden on the petitioner to prove that the 1st respondent did not work for 240 days in the preceding year. The learned counsel for the petitioner further contended that the Lower Court Advocate did not guide the petitioner properly and therefore, they have not marked any document to prove that the 1st respondent was not an employee of the petitioner Management.

7.Though notice has been served on the 1st respondent and

his name is printed in the cause list, there is no representation for him either in person or through counsel. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

8.It is the contention of the 1st respondent that he was working as a car driver in the petitioner Management with effect from 01.08.2001 and on 01.12.2007, the petitioner without any notice and without complying Section 25-F of the Industrial Disputes Act, terminated the service of the 1st respondent. Before the 2nd respondent, the 1st respondent examined himself as W.W.1 and deposed the above facts. In addition to that effect, he has examined one Arul as W.W.2, co-employee of the 1st respondent who deposed that he worked as a cleaner in the petitioner Management with effect during 1990-2008 and he left service from petitioner's Management in the year 2008. He further deposed that the 1st respondent worked as a car driver between 2001 to 2007. He also deposed that the petitioner Management is maintaining wage Register and attendance Register. The petitioner Management did not cross-examine W.W.2, the co-employee. The 2nd respondent considering the evidence of W.W.1 and W.W.2-Arul, held that the 1st respondent proved that he worked for 240 days. Once the 1st respondent has let in evidence to prove the same, it is for the petitioner Management to prove that he has not worked for 240 days. M.W.1-Ramamurthy has admitted that the 1st respondent was working as an acting driver in their bus Company and he was working on daily wages. M.W.1 admitted that there were four workmen and one Manager in the petitioner Management, but he deposed that the petitioner has not maintained any document in their bus Company. The 2nd respondent considering the pleadings, oral and documentary evidence, has held that the 1st respondent is a car driver and he is a 'worker' as defined under Section 2 (S) and that the petitioner has not complied with Section 25-F of the Industrial Disputes Act. On the above finding, the 2nd respondent ordered reinstatement of the 1st respondent with continuity of service and other benefits and ordered 50% back wages from 01.12.2007. There is no error in the award of the 2nd respondent.

9.For the above reason, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Deputy Registrar (CJ Conf.)

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Sub Assistant Registrar

gsa

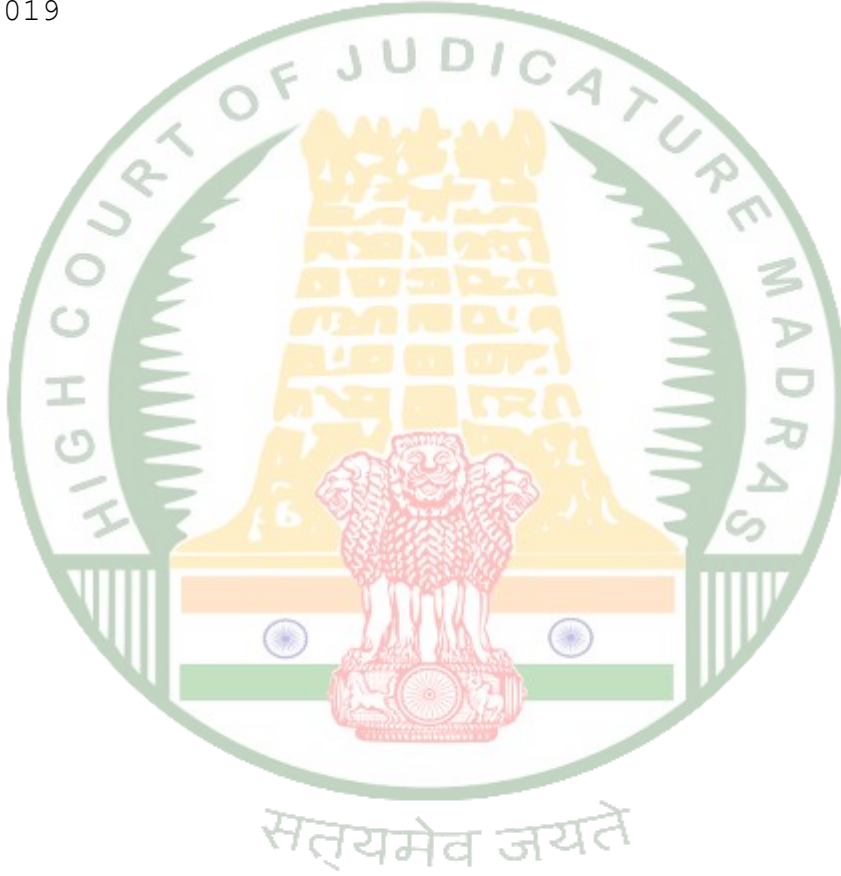
To

The Presiding Officer,
Additional Labour Court,
Vellore.

+1cc to Mr.K.Premkumar, Advocate, S.R.No.45011

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