

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.Nos.34024 and 34025 of 2013

M.Thangavel ... Petitioner in W.P.No.34024 of 2013

P.Muthukrishnan ... Petitioner in W.P.No.34025 of 2013

vs.

1. The Presiding Officer,
Labour Court,
Salem.
2. The Management,
Tamil Nadu State Transport Corporation
(Kovai) Limited,
Erode Region,
Chennimalai Road,
Erode-1.

... Respondents in both W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India seeking issuance of writ of Certiorarified Mandamus, to call for the records pertaining to I.D.Nos.65 and 70 of 2006, respectively, on the file of the 1st Respondent herein and quash the Award dated 24.06.2013 passed thereon and further direct the 2nd Respondent to reinstate the Petitioner, respectively in service with backwages, continuity of service and all other attendant benefits.

For Petitioner in both W.Ps. : Mr.Mohd. Nazrullah

For 2nd Respondent in both W.Ps.: Mr.P.Kannan Kumar

COMMON ORDER

Aggrieved by the Award dated 24.06.2013 passed by the 1st Respondent/Labour Court in I.D.Nos.65 and 70 of 2006, respectively, Petitioners are before this Court with the above Writ Petitions, seeking to quash the same and for a consequential direction to the 2nd Respondent/Transport Corporation to reinstate them in service with backwages, continuity of service and all other attendant benefits.

2. As the issue involved in both Writ Petitions is one and the same, the cases are taken up for disposal by a common order.

3. It is seen that the Petitioner viz. M.Thangavel in W.P.No.34024 of 2013 joined the services of the 2nd Respondent/Transport Corporation as a Driver on 04.12.2004 and the Petitioner viz. P.Muthukrishnan in W.P.No.34025 of 2013 joined the services of the 2nd Respondent/Transport Corporation as a Driver on 07.10.2004. As both the Petitioners were terminated from service on 01.09.2005 without any enquiry or notice, when they have actually worked for more than 240 days in a year prior to the date of their termination, they raised an Industrial Dispute before the Labour Court, Erode.

4. As the conciliation proceedings ended in failure, both the Petitioners preferred Claim Statements before the 1st Respondent/Labour Court, challenging their termination on several grounds, including non-compliance with Section 25-F of the Industrial Disputes Act, 1947 (in short 'the Act') before effecting termination of their service. However, the 2nd Respondent/Transport Corporation resisted the claim of the Petitioners that they were appointed only on daily wage basis and that their termination would attract Section 2(o)(bb) of the Act.

5. Before the Labour Court, Petitioners were examined as W.W.1 in the respective Industrial Disputes and Conciliation Failure Report was marked as Ex.A1. Whereas, on the side of the 2nd Respondent/Transport Corporation, the Assistant Manager of the Corporation viz. N.Muthukumarasamy was examined as M.W.1 in both cases. However, no document was marked on their behalf.

6. According to the Petitioners, M.W.1 had admitted in his evidence that the 2nd Respondent/Transport Corporation has been in possession of all relevant records like Attendance Registers, documents showing payment of wages, etc. It is the case of the Petitioners that the Labour Court, without considering the evidence adduced on behalf of the parties, erroneously dismissed the Industrial Disputes in I.D.Nos.65 and 70 of 2006, respectively, vide Award dated 24.06.2013. Hence, aggrieved by the same, Petitioners are before this Court.

7. Learned counsel for the Petitioners contended that the Labour Court was not right in holding that the Petitioners had failed to prove that they had worked for 240 days in a year prior to their termination. According to the learned counsel, the 2nd Respondent/Transport Corporation is duty bound to

maintain records pertaining to daily wagers and produce them before the Court of law, when dispute touching their non-employment is raised. In support of his case, learned counsel has relied on a decision of the Apex Court in the case of Director, Fisheries Terminal Division vs. Bhikubhai Meghajibhai Chavda reported in (2009) 1 SCC 47.

8. In reply, learned counsel appearing for the 2nd Respondent/Transport Corporation submitted that the Petitioners herein are only Drivers, who had worked on contract basis and they were neither sponsored for permanent vacancies by the Employment Exchange nor appointed after issuing advertisement calling for Applications. He further submitted that the Petitioners herein have not worked for 240 days in a year and when the Labour Court questioned about the same, Petitioners have stated that they have worked 50 duties in 25 days. Finding that there is no evidence in proof of the Petitioners' claim, the Labour Court dismissed their Claims.

9. Heard the learned counsel on either side and perused the material documents available on record.

10. The issue on hand is as to whether the claim of the Petitioners that they have worked for more than 240 days in a period less than a year before their termination, on the basis that they have rendered two services a day, is acceptable or not.

11. The claim of the Petitioners is that they are entitled to reinstatement with continuity of service and other benefits solely on the ground that the 2nd Respondent/Transport Corporation has not complied with the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. To substantiate their stand, Petitioners, in their respective evidence have stated that before their termination, they have worked for 300 days in a year in the 2nd Respondent/Transport Corporation, in the manner as tabulated below:

Month & Year	No. of days	Attendance
October 2004	25	50
December 2004	25	50
February 2005	25	50
April 2005	25	50
June 2005	25	50
August 2005	25	50
Total	150	300

12. But, the Labour Court came to the conclusion that the burden is on the workman to establish that he had worked for 240 days in a calendar year and hence, rejected the claim of the Petitioners.

13. Insofar as the question of onus regarding working for more than 240 days is concerned, the Apex Court in the case of Range Forest Officer vs. S.T. Hadimani reported in (2002 (3) SCC 25), has held as under:

"2. In the instant case, dispute was referred to the Labour Court that the Respondent had worked for 240 days and his service had been terminated without paying him any retrenchment compensation. The appellant herein did not accept this and contended that the Respondent had not worked for 240 days. The Tribunal vide its Award dated 10.08.1998 came to the conclusion that the service had been terminated without giving retrenchment compensation. In arriving at the conclusion that the respondent had worked for 240 days, the Tribunal stated that the burden was on the Management to show that there was justification in termination of the service and that the affidavit of the workman was sufficient to prove that he had worked for 240 days in a year.

3. ... In our opinion, the Tribunal was not right in placing the onus on the Management without first determining on the basis of cogent evidence that the Respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own evidence for any court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engaged for this period was produced by the workman. On this ground alone, the Award is liable to be set aside. ..."

14. To substantiate his stand, learned counsel appearing for the 2nd Respondent/Transport Corporation has relied on a decision of the Apex Court in the case of Krishna Bhagya Jala Nigam Ltd. vs. Mohammed Rafi reported in 2006 (9) SCC 697 : 2006 (3) LLJ 755, wherein, it has been categorically held that the burden of proof is on the claimant to prima facie establish that he had worked for 240 days in a given year.

15. The said submission of the learned counsel appearing for the 2nd Respondent/Transport Corporation, cannot be accepted. The principle laid down by the Apex Court is that, only initial burden is on the workman, as could be seen from the decision of Three Judges, rendered by the Apex Court in the case of Manager, Reserve Bank of India, Bangalore vs. S.Mani, (2005 (5) SCC 100). Once the initial burden is discharged, the ball will be in the court of the Management, to prove otherwise.

16. Thus, it is clear that the burden of proof is discharged only upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged workman, there will be no letter of appointment or termination and there will also be no receipt or proof of payment. In most cases, the workman can only call upon the employer to produce before the Court the Nominal Muster Roll for the given period, the letter of appointment or termination, if any, the Wage Register, the Attendance Register, etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. Mere affidavits or self-serving statements made by the workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year.

17. Tamil Nadu Industrial Dispute Rules, 1958, categorically provides for summoning all documents and appearance of parties, apart from the fact that the Labour Court/Tribunal/Board/Conciliation Officer is entitled to enter and cause inspection of the employer's premises after sunrise and before sunset, after giving reasonable notice to enter any building, inspect any document, and interrogate any person. The Tribunal can appoint an Advocate Commissioner to cause inspection and the Inspection Report can be produced before the Court. That apart, the Labour Court/Tribunal has got powers to suo motu summon and examine any person, whose evidence appears to be material and in such circumstances, it shall be deemed to be a Civil Court within the meaning of "Civil Procedure Code".

18. In the light of Section 11 of the Industrial Disputes Act, 1947, the Court is empowered to compel the production of documents and material objects, and that every enquiry or

investigation shall be a judicial proceeding. In connection with the same, the workman should have filed a Petition in terms of Section 11 of the Industrial Disputes Act, 1947 read with Tamil Nadu Industrial Disputes Rules, 1958 calling for documents from the Management and in the absence of production of documents, the Labour Court is empowered to draw an inference. Once an Application is filed by the workman seeking production of certain documents by the Management, the same have to be produced by the Management and based on the same, the workman can establish his case. In case, when the documents called upon are not in the custody of the Management, then the burden automatically shifts on the workman to produce the same and prove his case.

19. Further, with regard to the production of documents by the Management, the workman is supposed to take a plea at the earliest point of time, preferably before the Conciliation Officer or before the concerned Court/Tribunal, and once such plea is made, the Management is supposed to keep all the documents pertaining to the dispute, in a safe custody and produce the same before the Conciliation Officer/Board/Tribunal/Labour Court, when called upon to produce the same, for the purpose of effective adjudication of the dispute.

20. In this case, even though the Petitioners have stated that they have rendered two services a day, which is more than 240 days in the given year, they have neither called for any documents from the Management nor produced any evidence available with them to establish their case. Even otherwise, the version of the Petitioners/workmen has been disbelieved by the Labour Court. Once the evidence of the workmen is disbelieved and the Labour Court has arrived at a conclusion based on facts, this Court cannot interfere with the same and come to a different conclusion. Thus, in view of the foregoing, this Court finds no reason to interfere with the Award dated 24.06.2013 passed by the Labour Court in I.D.Nos.65 and 70 of 2006, respectively.

In fine, these Writ Petitions are dismissed with the above direction and observation. No costs.

Sd/-

Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

(aeb)

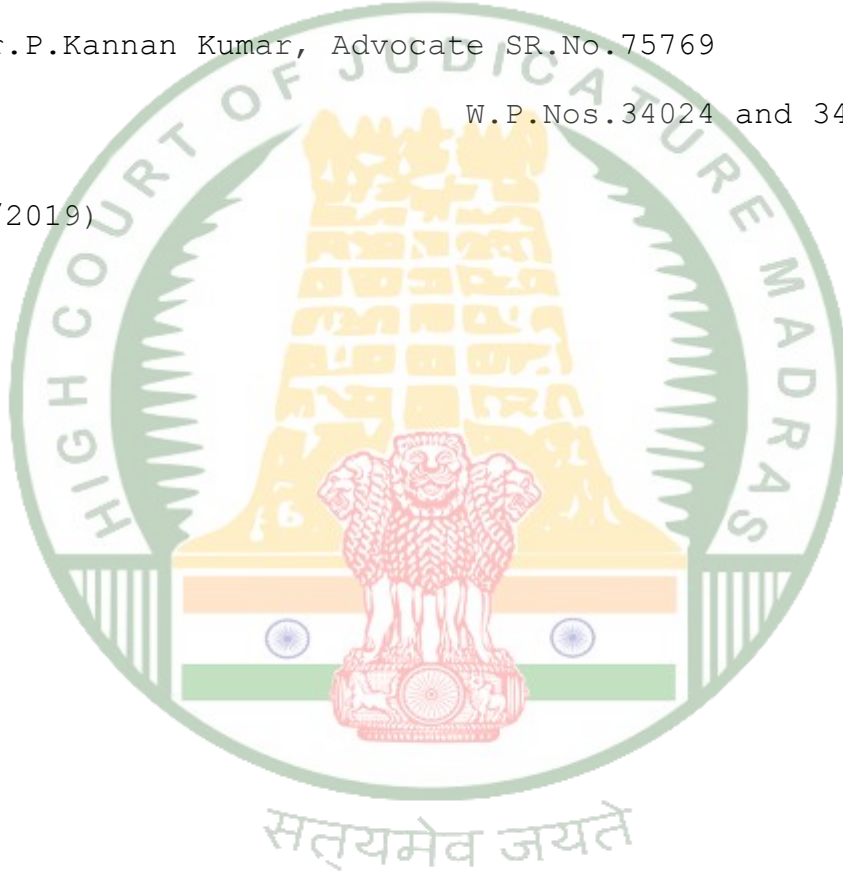
To:

1. The Presiding Officer,
Labour Court, Salem.
2. The Management,
Tamil Nadu State Transport Corporation
(Kovai) Limited,
Erode Region,
Chennimalai Road, Erode-1.

+1cc to Mr.P.Kannan Kumar, Advocate SR.No.75769

W.P.Nos.34024 and 34025 of 2013

RR(CO)
GMY(05/11/2019)



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