

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2019

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.34800 of 2013

The Management of
Tamil Nadu State Transport Corporation
Coimbatore Ltd.,
rep. by its General Manager, Erode Region,
No.37, Mettupalayam Road,
Coimbatore 641 043.

... Petitioner

-vs-

1. The General Secretary
Tamil Nadu Thozhilalar Kurai
Theerkum Sangam,
173, B 6th Street,
Sakthi Nagar, Thindal,
Erode 638 012.

2. The Presiding Officer,
Labour Court,
Coimbatore.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Certiorarified calling for the records made in I.A.No.808 of 2013 to I.A.No.813 of 2013 in I.D.No.172 of 2011 and I.D.No.174 of 2011 to 178 of 2011 on the file of the second respondent dated 06.08.2013 and quash the same.

For Petitioner : Mr.P.Kannankumar

For Respondents : M/s.P.Murugesan for R1

O R D E R

The petitioner has filed this writ petition, challenging the common order dated 06.08.2013 made in I.A.Nos.808 to 813 of 2013 in I.D.No.172 of 2011 and I.D.Nos.174 to 178 of 2011 by the second respondent.

2. For the sake of convenience, the parties would be referred to as per their nomenclature in the Labour Court as "the Management" (petitioner herein) and "the Sangam" (R1 herein).

3. The case of the Management is that since the Workmen of the Sangam were engaged orally without any written order to that effect, they have not been maintaining any records in respect of them and they maintain records of permanent employees. It is stated that as the documents sought for by them were related to the period of more than a decade, they are not in a position to produce the same. However, the labour Court, without considering all those aspects, had simply directed the Management to produce seven documents as found mentioned in the petitions in (d) to (j) and rejected the request of Workmen in respect of other 13 documents. It is further stated that since the Sangam had not specifically mentioned the exact date, month and year of documents, the Management is unable to trace out the records for the purpose of production.

4. On the contrary, it is contended by the Sangam appearing on behalf of Workmen that all the Workmen have been working under the Management from 26.01.1991 till the date of their disengagement, namely, 06.09.2009 and challenging their termination, they already raised an Industrial Dispute, during pendency of which, several Interlocutory Applications have been filed by them, seeking certain documents from the Management in order to establish that they were in employment with the Management as Sweepers and Scavengers.

5. It is pertinent to mention here that the burden is certainly on the Management to disprove the claim of the Workmen that the members of the petitioner were on the pay roll of the Management. It was the contention of the Management that the documents, which were age old cannot be traceable, thereby leading to an inference that certain documents are available with the Management. If it is so, they have to produce the documents available with them in order to disprove the case of the workers. The Management cannot hold the documents close to their chest and contend in the air that the Workmen are daily rated workers and they would not be entitled to any relief.

6. Of course, they may be daily rated workers and it has to be mainly seen as to whether they have completed 240 days in a year preceding the date of termination or not. The Hon'ble Supreme Court, in the case of Mohan Lal vs Bharat Electronics Ltd., reported in (1981) II LLJ 70 (SC), had categorically held that termination of service of a workman for any reason other than those excepted in Section 2(oo) amounts to retrenchment and if prerequisite for a valid retrenchment have not been complied

with, the termination of service would be void ab initio. Therefore, the workman would be entitled to a declaration that the workman continued to be in service with all consequential benefits. It was further added that the Workman cannot be retrenched without any notice or notice pay in view of provisions of Section 25F of Industrial Dispute Act.

7. From the above, it is apparent that the Management at the first blush should see whether the Workmen have completed 240 days in the year preceding his termination or not and it should also be seen whether the workman has been paid at the time of retrenchment, compensation, which shall be equivalent to fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months, failing which, it can easily be presumed that there is a violation of Section 25F of I.D.Act and therefore, the consequential order needs to be followed, which is nothing else than reinstatement and continuity of service and other benefits. It is a well settled law that if the facts require, instead of reinstatement etc., one time lump sum compensation can be granted in the light of the decision in *Motors Ltd. vs. T.K.Bhattacharya*, reported in 2002 SC 2676.

8. The present case has to be analyzed on being looked into the above perspective. The workmen have shifted the burden on the Management and the Labour Court, finding no justification on the part of the Management, had directed them to produce the seven set of documents. I find that there is no perversity in the order of the Labour Court in accepting the plea of the Workmen. The Management itself in the counter to the Interlocutory Applications, filed before the Labour Court, had duly stated that they are willing to produce the documents, viz., "D" to "J" and that being the case, the act of the Management in dragging the issue for a period of about six years (the Writ Petition is of the year 2013) is highly depreciable. Initial burden alone to establish the case is on the workmen; once it is properly pleaded and the documents identified are with the Management, the burden shifts on the Management.

9. Hence as stated supra, the order of the Labour Court does not warrant any interference by this Court and the Writ Petition filed by the Management stands dismissed. The Management shall produce the documents within 15 days from the date of receipt of a copy of this order and the respective parties are directed to appear before the Labour Court on 14.10.2019 for production / receipt of documents.

10. It is made very clear that there is no need for the Labour Court to issue a separate order or intimation letter in view of the observation made supra. In case of non production of

documents, it is for the Labour Court to draw adverse inference against the Management. Labour Court is further expected to take up the matter in respect of the main I.D.No.172 of 2011 and I.D.No.174 of 2011 to 178 of 2011 and proceed with the same on day to today basis without adjourning the same beyond seven working days at any point of time, taking note of Rule 39 of the Tamil Nadu Industrial Dispute Rules, 1958. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

dpq

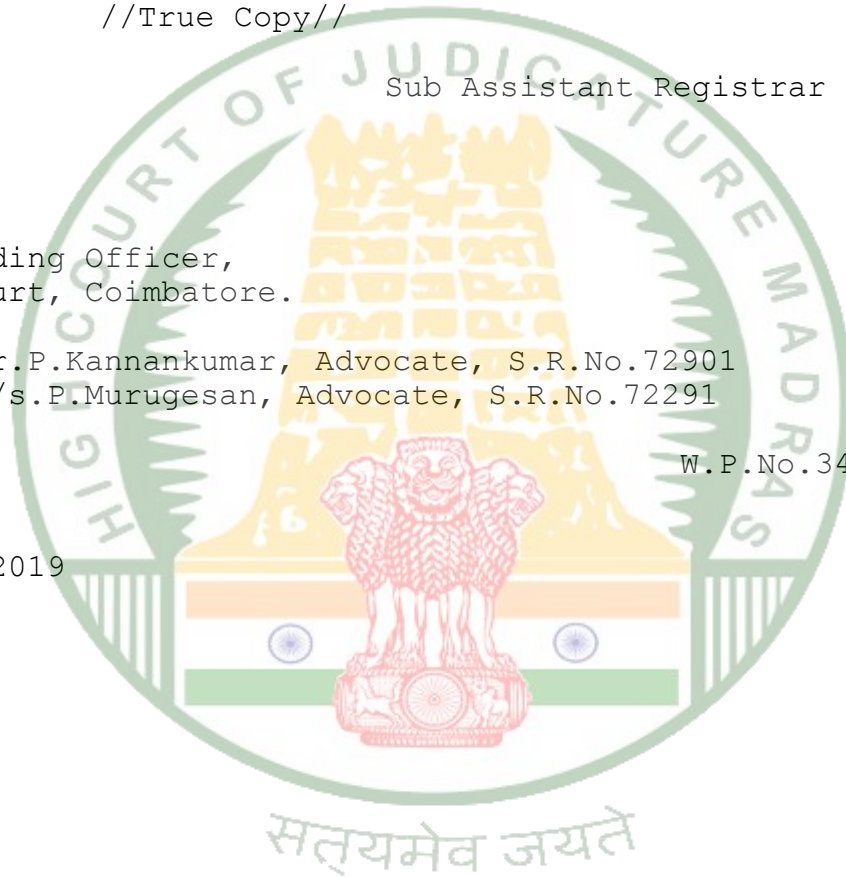
To:

The Presiding Officer,
Labour Court, Coimbatore.

+1cc to Mr.P.Kannankumar, Advocate, S.R.No.72901
+1cc to M/s.P.Murugesan, Advocate, S.R.No.72291

W.P.No.34800 of 2013

MR(CO)
CS/24/09/2019



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