



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 20.11.2019
CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P(MD)No.3626 of 2010
and
M.P(MD) No.1 of 2010

M.S.Arabi ... Petitioner
vs

1. The Presiding Officer
Labour Court, Madurai
2. The President
R.S.837, Sivagangai District Consumer's
Co-operative Wholesale Stores Ltd
Sivagangai ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records in pursuant to the order dated 22.10.2009 passed in IDOP No.107 of 1999 on the file of the Labour Court, Madurai and quash the same and consequently direct the second respondent to reinstate the petitioner into service with backwages and all monetary benefits and continuation of service from the date of ouster i.e., 02.01.1999.

For Petitioner : Mr.M.Karthikeya VenkitaChalapathi

For Respondents : Mr.P.Athimoola Pandian
No.2

ORDER

The petitioner has filed this writ petition challenging the award of labour court, dated 22.10.2009 in ID. No.107 of 2009 and to direct the second respondent to reinstate the petitioner into service with backwages and other monetary benefits.

2. The petitioner states that he was employed as salesman in the Super Market at Kallukatti, Karaikudi run by the second respondent. It is contended that the job of the petitioner is a permanent and continuous one. Due to bifurcation of Ramanathapuram District and commission of a new district Sivagangai it is stated by the petitioner that the second respondent super market also continued to start functioning separately from the year 1992. It is



further stated that the employees working under the Ramanathapuram District Consumer's Co-operative Wholesale stores Limited were allowed to continue their service in the second respondent stores. Accordingly the petitioner states that he was allowed to continue in the service in the second respondent stores.

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3. In the Writ petition, it is contended that the second respondent orally terminated the petitioner from service without any show cause notice or charge memo. He further submitted that no enquiry was conducted by the second respondent/Management. It is stated that only to prevent the petitioner from entering into the super market the oral order was conveyed. The petitioner also challenged the order of oral termination by filing an Industrial Dispute in ID No.107 of 1999 before the Labour Court. The second respondent/Management contended that there was no relationship between the petitioner and the second respondent as " employer and employee". The Labour Court accepting the plea of the second respondent dismissed the petition holding that the petitioner has not proved that he is a workman under the Industrial Dispute Act.

4. It is seen from the Labour Court award that for want of records, the petition filed by the second respondent was rejected. The contention of the petitioner that he was employed by the second respondent in the super market was rejected on the ground that the petitioner has not produced any record to show that he was working under the second respondent at the time of bifurcation of Ramanathapuram District Consumer's Co-operative Wholesale stores Limited. Aggrieved by the order dismissing the petition filed before the Labour Court, the petitioner has come before this Court by this Writ Petition.

5. The learned counsel for the petitioner has filed a typed set of papers with several documents like cash bills and credit invoices as well as statements to show that the petitioner was engaged by the second respondent after bifurcation of Ramanathapuram District Consumer's Co-operative Wholesale stores Limited. He further submitted that the petitioner never thought of a dispute of this nature by disputing the petitioner's employment under the second respondent at any point of time. The documents produced before this Court would certainly indicate that the petitioner was working under the second respondent from 1996 to 1999. The documents filed by the second respondent before the Labour court are all the list of employees and other non statutory records. If the genuineness and validity of documents are proved in the manner known to law these documents would be relevant. The salary register , various books of accounts and bills prepared during relevant period were not produced by the second respondent. However, the documents now relied upon by the petitioner would be relevant to prove the petitioner was working under the second respondent between 1995 and 1997.



6. Despite having possession of the records, the second respondent has not produced any relevant records. This Court cannot rule out the possibility of petitioner proving the genuineness and relevancy of their documents to prove his case. For giving a fair opportunity to the petitioner this Court is inclined to allow the writ petition with the following terms:

7. The impugned order passed in ID.No.107 of 1999, on the file of the Labour Court, Madurai dated 22.10.2019 is set aside and the matter is remitted back to the first respondent for fresh consideration. It is open to the petitioner to file all the documents to establish his case that he is a workman under the second respondent during the relevant period and entitled to raise a dispute challenging the order of oral termination. Since the documents produced by the petitioner are only xerox copies, the initial burden cast upon the petitioner to prove the genuineness and admissibility by examining any independent evidence or by calling for original records available with the second respondent. Further the first respondent shall decide the industrial dispute after considering the validity and genuineness of the documents which were filed now after giving sufficient opportunity to the petitioner and the second respondent. The Labour Court is directed to dispose of the Industrial Dispute within a period of four months from the date of receipt of records. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (crl.side)

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Presiding Officer
Labour Court, Madurai

+1 CC to Mr.M.KARTHIKEYA VENTITACHALAPATHY, Advocate (SR-100444[F]
dated 22/11/2019)

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MK (30.12.2019) 3P 3C