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IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 26.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.37242 of 2005
(Through Video Conference)

Tamil Nadu State Transport Corporation
(Villupuram) Limited
Villupuram, rep. by its
Managing Director

... Petitioner

Vs

1) The Presiding Officer,
Labour Court,
Cuddalore.

2) K.Bharathidasan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the 1st respondent in I.D.No.103/2001 dated 28.02.2005 and quash the same.

For Petitioner : M/s.Kala Ramesh

For Respondent-2 : Mr.R.Muralidharan

O R D E R

The petitioner Corporation has come forward to challenge the award of the labour Court in I.D.No.103/2001 dated 28.02.2005.

2. Heard the learned counsel on either side and perused the materials available on record.

3. According to the employee, he has been working from 1988 and he has rendered more than 242 days in a year prior to his discharge and the termination itself is illegal for non compliance of the provisions of the Industrial Disputes Act, 1947. The employee has produced diesel consumption cards to show that he was given the said card for the purpose of fueling the vehicle and that the employee has accepted that the card will be with the Driver.



4. Much reliance has been placed with regard to Exs.W4, 6 to 9 and the labour Court proceeded on the basis that those documents cannot be disputed. The employer has also not disputed those documents. The initial burden is on the employee to prove that he has rendered 240 days in a period of 12 calendar months. For that purpose, he has filed a petition to call for the documents from the employer and the employer has filed a counter stating that those documents have been destroyed in terms of the Rules, which has been accepted by the labour Court and the petition for production of the documents has been rejected. Hence, when the employee wanted to shift the burden on the employer and the employer has discharged his obligation by stating that the records are not at all liable, which has also been accepted by the labour Court, still drawing adverse inference against the Management may not be correct. Even Ex.W4 would make it very clear that the fuel consumption charges is only for a few months, which is a sporadic one and he has not been asked to work regularly. He has also caused accident by causing death. He was not a regular employee and has not completed 240 days in a year. The employer has chosen to not to engage him. Under the wrong premise that the documents available with the Management, the employee filed a petition and obtained adverse findings against him.

5. During the pendency of the writ petition, the employee was given wages under Section 17(B) of the Industrial Disputes Act, 1947. The exhibits are seen now in original produced before the labour Court would make it very clear that the employee had not completed the required number of days.

6. When the finding is contrary to the documentary evidence on record, this Court is empowered to interfere with the said finding. Hence, I am of the view that the award of the labour Court suffers from perversity and hence, the writ petition filed by the Management is allowed. However, this Court makes it very clear that wages paid by way of interim order under Section 17 (B) of the Industrial Disputes Act, 1947 shall not be recovered from the employee, as the wages payable under the said provision is nothing but subsistence allowance.

7. Accordingly, the writ petition is allowed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

RR



To

The Presiding Officer,
Labour Court,
Cuddalore.

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+1cc to Mr.R.Muralidharan, Advocate, S.R.No.35995

W.P.No.37242 of 2005

VSN-II (CO)
HS (25/08/2021)