



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.12.2021

Pronounced on : 23.12.2021

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CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY

W.P(MD) No.9558 of 2012 and
M.P(MD).Nos.1 and 2 of 2012 and
M.P(MD).No.1 of 2014

N. Ramkumar :Petitioner

..VS..

1. The Presiding Officer,
Labour Court,
Tirunelveli.

2.P. Narayanan : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Certiorari calling for the records of the award, dated 20.03.2012 in I.D.No.46 of 2010 on the file of the first respondent and quash the same as illegal, arbitrary and erroneous exercise.

For Petitioner : Mr. H. Lakshmi Shankar

For 2nd respondent : Mr. K.R. Laxman

For R1 : Court

O R D E R

The petitioner has challenged the Award passed by the first respondent in I.D.No.46 of 2010, dated 23.12.2012.

2. The brief facts of the case, as claimed by the second respondent are that the second respondent is an employee under the petitioner herein, has raised an industrial dispute before the first respondent under Section 2(A) of the Industrial Disputes Act, 1947 claiming that he has been working as Conductor continuously for the past two decades in Jayaram Transport from 13.11.1989. The said Transport Business was bifurcated into two business in the year 2000 and thereafter, he continued to work in both the businesses from

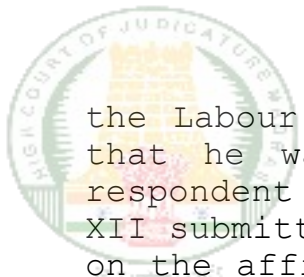


24.06.2009 onwards. The petitioner, the employer had refused to give work and thereafter petitioner was terminated from service.

3. The petitioner contested before the Labour Court stating that the petitioner purchased only one bus along with a permit from one T. Jebakani, who was running various buses under the name and style of Jayaraman Transports. The said Jebkani had been selling the buses one after another and the petitioner happened to purchase one such bus with a permit. Thereafter, the petitioner was running that single bus in the name and style of "Jayaram Roadways". The claim of the petitioner is that he has not employed the second respondent permanently and there is no continuity of employment for those persons who had worked under the erstwhile Jeyaram Transports. The petitioner also denies the said Jeyaram Transports was bifurcated. The petitioner claims he has employed drivers and conductors only on temporary basis as and when necessary and on many occasions had given an opportunity to the second respondent to work under the petitioner on daily basis. The second respondent has not completed 240 days in one year and the petitioner also denies the allegation that the second respondent was terminated orally.

4. The petitioner states the second respondent introduced some new facts claiming that the driving license was given to the petitioner when he joined the employment and the petitioner refuses the same. The petitioner states that the second respondent who claims to be a permanent employee did not produce any evidence or document to show that he was appointed by the petitioner as permanent employee. The second respondent has produced only documents which will show that he has worked as Conductor in the erstwhile Jayaram Transports during the year 1998 and 1999 and he has not produced any evidence to show that the second respondent has worked under the petitioner and he has admitted in cross examination that he has no evidence to state that he joined the employment under the petitioner. The second respondent claimed to be an employee of the erstwhile Jayaram Transports has also claimed that his license has been mistakenly handed over to the petitioner with other papers. When this fact was stated before the authorities during conciliation proceedings, the petitioner has stated, if it is mixed up with the papers then the petitioner would search and if available the same would be handed over to the second respondent. If not the petitioner would facilitate to get fresh license. The petitioner's contention is that the first respondent has simply allowed the dispute raised by the second respondent and granted the relief of reinstatement with back wages, when the oral and documentary evidence are against the second respondent. Hence, the petitioner has challenged the impugned order passed by the Labour Court.

5. The second respondent filed a counter wherein it is stated that the allegations made by the petitioner are false and baseless and has relied on



the Labour Court Award. The contention of the second respondent is that he was employed permanently by the petitioner. The second respondent relied on Exs.13 and 14, which are salary slips and Form XII submitted by the Jayaram Transport. The second respondent relied on the affidavit of the petitioner filed in W.P(MD).No.6060 of 2011 and states that the petitioner is "Jayaram Transports" and not "Jayaram Roadways". The 2nd respondent preferred a complaint dated 23.05.2010 which was marked as Ex.11 before the Labour Court. During conciliation the petitioner has accepted the license is with the petitioner and the petitioner has agreed that he would search and give the conductor license, if not the petitioner would facilitate to get new conductor license for the second respondent. The petitioner preferred this petition beyond the period of 30 days and therefore, it is hit by the Limitation under Sections 17(1) and 17(2) of the Industrial Disputes Act. The Award was published / notified on 09.05.2012 and this petition is preferred on 25.06.2012 which is beyond 30 days. The Labour Court has gone into all the facts and has granted relief. Therefore, there is nothing to interfere with the Award of the Labour Court.

6. Heard the counsel appearing on either side and perused the materials available on record.

7. The Labour Court has taken the following point for consideration:

(i) Whether the second respondent was working as a Conductor in the first respondent / Transport prior to the 24.06.2009 and has completed 240 days on 24.06.2009?

(ii) Whether the second respondent was terminated from service orally?

8. The petitioner has submitted that he had purchased TCT 4794 bus from the Jayaram Transport on 06.06.2000. The second respondent was granted occasionally to do the job of Conductor and he has not completed 240 days in the year. The Labour Court has stated based on the original document of the Transport Authorities has held the said bus belonging to the petitioner. As rightly pointed out by the petitioner Counsel, the petitioner has not denied that the document of Transport Authorities, the claim of the petitioner is that he had purchased only one bus from the erstwhile owner and was running the bus under the name and style of "Jayaram Roadways" and the 2nd respondent had worked in the Jayaram Roadways, occasionally / temporarily whenever the occasion arises. Therefore this Court holds the reasoning of the Labour is erroneous.

9. The claim of the petitioner that he is running transport in the name and style of "Jayaram Roadways" and the same was rejected by the Labour Court. The Labour Court has stated the



reasoning as under:

“ ஆனால் உயர்நீதிமன்றத்தில் நீதிப்பேராணை மனுவில் அவர் தாக்கல் செய்த பிரமாண பத்திரத்தின் நகல் தொ.த.சா.ஆ.19 ஆக உள்ளது. அதில் தான் ஜெயராம் டிரான்ஸ்போர்ட் என்று இருந்த தற்போது NRK மற்றும் ராம்சன் என்று உள்ள நிறுவனத்தின் உரிமையாளர் என்று குறிப்பிட்டுள்ளார். மனுதாரர் தரப்பிலும் மனுவிலும் அதுபோன்று தான் சொல்லப்பட்டிருக்கிறது. ஏனவே எதிர்மனுதாரர் நிறுவனம் என்று ஒன்று உள்ளது என்பதும் அதன் உரிமையாளர் எதிர்மனுதாரர் என்பதும் நன்கு தெரியவருகிறது.”

10. For this the petitioner submitted that he has filed the Writ Petition before this Court against the Award passed by the Labour Court and then he has to follow the same cause title as averred before the Labour Court. Therefore, based on the said cause title alone, the Labour Court has come to the conclusion that the petitioner is running the Jayaram Transport. The explanation stated by the petitioner is acceptable, if the cause title is different, then the writ petition would not be numbered. Therefore, this Court holds that the reasoning of the Labour is erroneous and this Court holds that the statement of the petitioner that he is running only Jayaram Roadways and not running Jayaram Transport is acceptable.

11. The Labour Court has stated the petitioner has given two different versions stating that the second respondent is not working under the petitioner, on the other side the petitioner states he was working as daily wages employee and hence the Labour Court rejected the version of the petitioner. On perusal of the documents, it is seen that the petitioner has stated that the second respondent is working with him that too occasionally and has given daily wages. The specific contention of the petitioner is that the second respondent is not a permanent employee under the petitioner. Therefore, the finding of the Labour Court that the petitioner is stating inconsistent statement is not correct.

12. The other issue raised before the Labour Court is the petitioner's address, wherein the petitioner has filed an affidavit in the writ petition by mentioning in the cause title the address as Door No. 106 / 07. For this also the petitioner has given an explanation the address stated in the petition filed before the Labour Court ought to be mentioned while filing the Writ Petition. If it is different then, the Writ Petition would not be numbered. This explanation is acceptable and the Court held that the Labour Court has erred in coming to such conclusion only by relying on the cause title. The second respondent has filed the petition before the Labour Court by mentioning the address as Door No. 106 / 07 and has mentioned as "Jayaram Transport" and therefore the petitioner herein is forced to follow the same cause title and this cannot be taken as an evidence to come to the conclusion that the petitioner is running "Jayaram Transport" and is running the office at Door No. 106 / 07. Therefore this Court holds that the Labour Court has terribly erred in coming to the conclusion that the petitioner is running "Jayaram



Transport" and is running the office at Door No. 106 / 07.

13. The next finding that was rendered by the Labour Court is that the second respondent has issued notice to the address Door No. 106 / 07 and the petitioner has received one letter and rejected another and therefore the address is Door No. 106 / 07. The explanation of the petitioner for this finding is that, the second respondent has mentioned the address as Door.No.106 / 07 it has been stated as "Jayaram Transport", therefore the petitioner has not received the letter. However, for the subsequent notice the second respondent has deliberately given the correct address i.e. "Near Maharani Hotel, near Market, next to Police Quarters". Therefore, it was received by the petitioner. As rightly pointed by the petitioner the second respondent with malicious attitude has issued notice to wrong address previously. Therefore this Court is of the view that the explanation of the petitioner is acceptable.

14. The Labour Court has stated that the license is with the petitioner and he is refusing to give the license to the second respondent. The claim of the petitioner is that he never received license. It is an admitted fact that the second respondent has handed over the license to the erstwhile owner. The erstwhile owner sold the bus and permit alone and he has not handed over any license belonging to the employees. In fact the second respondent has preferred a complaint that his license is with the petitioner and the police while enquiring, the petitioner has submitted that it has not been handed over to the petitioner. However, if it is there it will be handed over to the second respondent. But the Labour Court disbelieving the statement, has come to the conclusion that the license is with the petitioner. This Court is of the view that the license is with the erstwhile owner and the same is not handed over while selling the bus. Generally the bus will be sold along with the permit and not with any other document, especially the license of the employees. In deposition the second respondent had stated that while driving the vehicle, if the checking is carried out whether the second respondent has produced the original license? The second respondent has replied that xerox copy would be shown. This claim is not acceptable, for all these years i.e. from 2000 (which year the petitioner has purchased the bus) onwards until 2009 (which year the second respondent claims he was orally terminated) the second respondent had managed without original is unbelievable. Moreover, any license ought to be renewed periodically and the claim of the second respondent that it has not been renewed for more than 9 years is unbelievable. Therefore, this Court is of the considered opinion that the Labour Court has come to an erroneous conclusion.

15. For the reasons stated above, this Court is of the considered opinion the second respondent is not entitled to reinstatement and also not entitled to consequential relief of continuity of service and backwages. Therefore the impugned order of the Labour Court is set aside and the writ petition filed



by the petitioner is allowed. No Costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

trp

To

1. The Presiding Officer,
Labour Court,
Tirunelveli.

2.The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai. (2 COPIES)

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-40171[F] dated
23/12/2021)

+1 CC to M/s.K.R.LAXMAN, Advocate (SR-40305[F] dated 23/12/2021)

W.P(MD) No.9558 of 2012 and
M.P(MD) .Nos.1 and 2 of 2012 and
M.P(MD) .No.1 of 2014

23.12.2021

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