



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:26.04.2022
CORAM :

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD).No.22588 of 2015

T.Selvam

... Petitioner

Vs

1. The Management,
Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Dindigul Region,
Bye Pass Road,
Dindigul.

2. The Presiding Officer,
Labour Court, Trichy.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records from the second respondent Labour Court relating to the impugned award dated 06.02.2015 in I.D. No. 166 of 2006 of the second respondent, quash the same as illegal and consequently direct the first respondent to reinstate the petitioner in service with back wages and continuity of service and all other attendant benefits and award cost.

For Petitioner : Ms. D.Geetha

For Respondents : Mr.J.Senthil Kumaraiah (R1)
Labour Court (R2)

O R D E R

This Writ Petition has been filed in the nature of Certiorarified Mandamus, to quash the impugned award, dated 06.02.2015 in I.D. No. 166 of 2006 of the second respondent and consequently to direct the first respondent to reinstate the petitioner in service with back-wages and with continuity of service and all other attendant benefits.

2. The brief facts of the case is that the petitioner was employed as a Helper in the first respondent's Corporation from 01.06.1993 and thereafter the petitioner was rendering service



without any break. The first respondent is a State Transport Corporation having its Head Office at Dindigul and the Corporation is having canteen for its employees. The petitioner was allotted to do the work, such as, cutting vegetables, preparing tea and coffee, supplying food items, to provide tea to the employees and office staff of the first respondent. The petitioner was paid daily wages, disbursed once in a month. Originally, he was paid Rs.150/-, thereafter, it was increased to Rs.300/-, then to Rs.450/- and then to Rs.750/-. The first respondent obtained the petitioner's signature in the salary register, whenever salary was disbursed. The first respondent also maintained a bonus register. The petitioner has completed 240 days in 12 calendar months all the remaining years of the service.

3. The contention of the petitioner is that since the first respondent ought to have regularized the petitioner's service and made him permanent, after completion of 480 days. The petitioner was regularly demanding the first respondent to regularize his services. The first respondent agreed to regularize, but has not granted any regularization. Instead of regularising his service, the petitioner was orally terminated from service by the first respondent with effect from 03.02.2003. The first respondent did not issue any notice to the petitioner stating the reason for termination and hence the retrenchment is illegal. The request of the petitioner to reinstate was denied. Therefore, the petitioner has raised I.D.No.166 of 2006 before the second respondent.

4. In I.D.No.166 of 2006, the petitioner has examined himself as a witness and marked 9 documents on his side. The first respondent has disputed the fact that the petitioner has rendered continuous service from the date of joining. Hence, the burden of proof lies on the petitioner. But all the documents to prove the continuous service were in the possession of the first respondent. Therefore, the petitioner has filed a petition in I.A.No.403 of 2009 in I.D.No.166 of 2006, with a prayer to direct the first respondent to produce the documents viz., attendance register, wage register, night time bun supply register from the year 1993. The first respondent contested the I.A.No.403 of 2009. The second respondent after hearing both sides, allowed the I.A.No.403 of 2009 and directed the first respondent to produce the documents viz., attendance register, wage register, night time bun supply register from the year 1993. But the first respondent did not produce the documents before the second respondent. In the meanwhile, after hearing both sides, the second respondent has passed an impugned award dated 06.02.2015 in I.D.No.166 of 2006, thereby dismissing the petition. Aggrieved over the same, the present writ petition is filed.



5. The second respondent has not filed any counter, but relied on the counter filed before the Labour Court. The contention of the Management is that the second respondent has no *locus standi* to raise any industrial dispute, since he was not appointed as a full-time regular employee. The learned counsel for the petitioner has relied on a Judgment rendered in ***The President, Srirangam vs The Presiding Officer, Labour*** reported in ***1996(2) IILLJ 216 Mad.***

6. In the impugned order, the Labour Court has held that the initial burden of proof that the employee has completed 240 days is on the employee. In the present case, since the petitioner has not proved that he has completed 240 days, he is not entitled for claim. Aggrieved over the said reason, the present writ petition has been filed by the individual. The claim of the petitioner is that even the petitioner has preferred I.A.No.403 of 2009 before the Labour Court, directing the Management to submit the registers, in order to prove that he has rendered 240 days in the first respondent's Management. In spite of Court's order, the first respondent has not produced any records before the Court, to substantiate that the petitioner has worked for 240 days.

7. The contention of the Management is that the petitioner was working as a daily wage employee and he was engaged to cut vegetables and bring tea and coffee to the employees. Since it is not considered as a sanctioned vacant post and the petitioner was appointed in a daily wage employment, the petitioner is not entitled to seek permanency and regularization of service. Moreover, presently, the canteen is let out for lease and in such circumstances, the petitioner is not entitled to seek permanency. As on date the Management is not running any canteen on its own, but let out the canteen on out sourcing basis and hence, the claim against the Management cannot be substantiated.

8. Hence, this Court is of the considered view that since the petitioner was working as a daily wage employee in an unsanctioned post, the petitioner is not entitled to get permanency.

9. The learned Counsel for the petitioner submitted that atleast the respondents shall allow the petitioner to continue the service. For which the respondent submitted that the canteen was let out on outsourcing basis and the first respondent cannot demand the person who is running the canteen to allow the petitioner to continue in service.

10. Therefore, the petitioner is directed to submit a petition to the person who has taken the canteen on lease / out sourcing basis seeking to continue the service or fresh appointment and the said person shall consider the petition. However, it is made clear that the petitioner cannot seek for any permanency.



11. With the above observations, this Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar (P&A)

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/ /2022

Sub Assistant Registrar(CS)

PNM

To

- 1.The Collector,
Kanyakumari District,
Nagercoil.
- 2.The Sub Collector,
Padmanabapuram,
Kanyakumari District.
- 3.The Tashildar,
Vilavankode, Kanyakumari District.

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MGJ(10.06.2022) 4P 4C