



WEB COPY



W.P. No. 9845 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2023

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

W.P. No. 9845 of 2018

N.Vivekanand

... Petitioner

-VS-

1. The Central Government Industrial Tribunal cum Labour Court,
Rep. by its Presiding Officer,
No. 26, Haddows Road,
Chennai – 600 006.

2. The Chief General Manager,
Telecom, Bharath Sanchar Nigam Limited,
29, Eldams Road,
Chennai – 600 018,
Now at No. 89, Millers Road,
Chennai – 600 010.

3. The General Manager,
Bharat Sanchar Nigam Limited,
States Man Building,
New Delhi.

4. The Chief General Manager, Telecom BSNL,
Tamil Nadu Circle,
Anna Salai, Chennai – 2,
Now at No. 78,
Purashawalkam High Road,
Chennai – 600 010.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the



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concerned records from the 1st respondent, quash the Award passed by the 1st respondent Labour Court in I.D. No. 383 of 2004 dt 22.3.2017 as illegal, arbitrary and contrary to law and consequently direct the second to fourth respondents to reinstate the petitioner with full back wages, continuity of service and all other attendant benefits.

For Petitioner : Mr. Balan Haridas

For R1 : Labour Court

For R2 to R4 : Mr. B.Mohan

ORDER

The petition has been filed seeking to quash the order of the 1st respondent in I.D. No. 383 of 2004, dt 22.3.2017 and consequently direct the second to fourth respondents to reinstate the petitioner with full back wages, continuity of service and all other attendant benefits.

2. It is the case of the petitioner that the petitioner had been working in the BSNL sub division offices in Kancheepuram from August 1998. However, he was termed to be a contract employee though he had been discharging permanent nature of work under the direct control and supervision of the official respondent. The petitioner and other similar persons have not regularised and



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therefore, the petitioner and other employees have filed OA.No.156 of 2012 before the Central Administrative Tribunal, Madras and the Tribunal had issued direction to the official respondent to regularize the services by passing a common order dated 22.06.2012. Even thereafter, the petitioner has not regularised on the ground that the petitioner had not worked for 480 days and he will not be entitled for absorption. Therefore, the petitioner filed a petition before the Labour Court and the same was taken on file in ID No.383 of 2004 and the Labour Court vide its order dated 23.03.2017, dismissed as against the petitioner herein. Challenging the said award, the present petition has been filed.

3. The learned counsel for the petitioner submitted that in order to prove the continuous employment of 240 days, the petitioner examined himself as WW1 and marked Ex.W4 to 7, 9 to 12. Ex.W3 and 4 is the experience certificate issued by the Sub-Divisional Engineer. Other exhibits are the documents which prove the continuous employment of the petitioner. The petitioner has proved his employment through the documentary evidence and by oral evidence. In such circumstances, based on the employment certificate and experience certificate issued by the officials, the first respondent ought to have held that the petitioner is no a contract employee and that the petitioner is



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continuously working with the official respondents. Without appreciating the documentary evidences, the Tribunal dismissed the petition, which is unsustainable one and the same is perverse. Accordingly, he pray for allowing the writ petition.

4. The learned counsel for the respondents 2 to 4 submitted that the petitioner is not a recognized union. The subject matter of the claim does not relate to the service conditions of any of the employees of BSNL. As such the claim is not maintainable. The contractors have not been impleaded as parties. Though the petitioner has admitted that the workmen are contract labourer and they are doing the work of class-iv employees. They are mutually inconsistent pleas. In the case of contract labourers there is no supervision of control by the principle employers. The petitioner has admitted himself as contract labour, the question of his absorption or regularization does not arise. The Labour Court has properly adjudicated the issue and passed award, which cannot be interfered with.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record.



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6. The facts of the case are not dispute. Admittedly, the petitioner claimed that he was employed as contract employee in Kancheepuram BSNL Sub-Division from August 1998. Further he claimed that the petitioner had been doing the work of Telecom Mechanic, Line Plant modules, repair of electrical appliances etc., Though the petitioner claimed that he has done several nature of work at Kancheepuram. However, the petitioner has not produced any document before the Labour Court with regard to his employment at Kancheepuram BSNL Sub-Division Office.

7. This Court perused the service certificate which was produced by the petitioner before the Labour Court as Ex.3 to 12. On perusal of the same, the respective certificate issued by the different staff and sub divisional engineers. However, the petitioner has not examined those staff, who gave service certificate, before the Labour Court to substantiate his claim. Further the petitioner has to establish that the sub divisional engineers are authorised person to issue an experience certificate as per the BSNL Standing orders. Further, except service certificate, experience certificate, no document was produced before the Labour Court to establish that the petitioner has been continuously working for more than 240 days. In the absence of the proof, the Labour Court has rightly rejected the claim petition made by the petitioner



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which cannot be interfered with and the prayer sought for by the petitioner is

liable to be rejected.

8. For the above said discussion, the writ petition is dismissed. No costs.

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Rli

Index: Yes/No

NCS : Yes/No

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M.DHANDAPANI, J.

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