



W.P.Nos.1765 & 19135 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2023

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.Nos.1765 & 19135 of 2009

W.P.No.1765 of 2009

J.Thulasiraman

... Petitioner

Vs.

1.The Presiding Officer,
Central Government Industrial Tribunal-cum-Labour Court,
1st Floor, 'B' Wing, Shasthri Bhavan,
26, Haddows Road,
Chennai – 600 006.

2.BSNL Rep. by its General Manager,
Telecom Vellore SSA,
Vellore District – 632 001.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records from first respondent relating to its Award dated 24.03.2008 in I.D.No.74 of 2005, that is published in the Gazette of India, Part II, Section 3 [ii] dated 02.08.2008, page 4324, quash the same and consequently direct the 2nd respondent management to reinstate the petitioner in service with effect from 1st January 1998 together with backwages, continuity of service, consequential and other attendant benefits, award costs.



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W.P.No.19135 of 2009

V.Gunalan

... Petitioner

Vs.

1.The Presiding Officer,
Central Government Industrial Tribunal-cum-Labour Court,
1st Floor, 'B' Wing, Shasthri Bhavan,
26, Haddows Road,
Chennai – 600 006.

2.BSNL Rep. by its General Manager,
Telecom Vellore SSA,
Vellore District – 632 001.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records from first respondent relating to its Award dated 24.03.2008 in I.D.No.75 of 2005, quash the same and consequently direct the 2nd respondent management to reinstate the petitioner in service with effect from 1st February 1998 together with backwages, continuity of service, consequential and other attendant benefits, award costs and render justice.

For Petitioner : Mr.K.M.Ramesh, Senior Counsel for S.Apunu
(in both cases)

For R1 : Tribunal
(in both cases)

For R2 : Mr.K.V.Shanmuganathan
(in both cases)

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COMMON ORDER

W.P.No.1765 of 2009 is filed to call for the records from first respondent/Labour Court relating to its Award dated 24.03.2008 in I.D.No.74 of 2005, that is published in the Gazette of India, Part II, Section 3 [ii] dated 02.08.2008, page 4324, quash the same and consequently direct the 2nd respondent management to reinstate the petitioner in service with effect from 1st January 1998 together with back wages, continuity of service, consequential and other attendant benefits, award costs, for the records of the first respondent in connection with the impugned order dated 19.02.2009 and quash the same and direct the first respondent to refer the dispute for adjudication under Section 12(5) of the Industrial Disputes Act, 1947.

2. W.P.No.19135 of 2009 is filed to call for the records from first respondent relating to its Award dated 24.03.2008 in I.D.No.75 of 2005, quash the same and consequently direct the 2nd respondent management to reinstate the petitioner in service with effect from 1st February 1998 together with back wages, continuity of service, consequential and other attendant benefits, award costs and render justice.

3. The case of the petitioner in W.P.No.1765 of 2009 is that he was employed as



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a part-time delivery messenger in the second respondent company from June 1998 to November 1998 and thereafter he worked at Vellore as part- time caterer from 01.11.1993 to 15.09.1996. From 16.01.1996 to 31.12.1997, the petitioner was made to work for 8 hours per day. Between January 1996 and December 1997, the petitioner completed 480 days of continuous service for a period of 24 calendar months. The petitioner was terminated from service on 01.01.1998. Challenging the same, the petitioner filed an O.A.No.347 of 1998, before the CAT, Madras Bench. By order dated 16.02.2000, CAT, Madras Bench, disposed the O.A., confirming the action of the management. The petitioner thereafter filed a writ petition in W.P.No.5216 of 2000, before the Division Bench of this Court. This Court, vide order dated 24.4.2000, permitted the petitioner to avail the alternative remedy. The petitioner therefore raised the dispute before the Labour Court challenging the dismissal order on the ground of violation of 25 F of the Industrial Dispute Act. The Labour Court dismissed the claim petition and therefore the petitioner has filed the above writ petition.

4. The case of the petitioner in W.P.No.19135 of 2009 is that he was employed as a part-time delivery messenger in the second respondent company from July 1992 to February 1998 and thereafter he was asked to work through the contractor from



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02.02.1998. Between January 1995 and December 1996, the petitioner has completed 480 days of continuous service in a period of 24 calendar months. The petitioner was terminated from service on 01.02.1998. Challenging the same, the petitioner filed an O.A. No.346 of 1998, before the CAT, Madras Bench. By order dated 16.02.2000, the CAT, Madras Bench, disposed the O.A., confirming the action of the management. The petitioner thereafter filed a writ petition in W.P.No.5217 of 2000 before the Division Bench of this Court. This Court vide order dated 24.4.2000 permitted the petitioner to avail the alternative remedy. The petitioner therefore raised the dispute before the Labour Court challenging the dismissal order on the ground of violation of 25 F of the Industrial Dispute Act. The Labour Court dismissed the claim petition and therefore the petitioner has filed the above writ petition.

5. The 2nd respondent filed its counter to the claim petitions submitted that the petitioners were only part-time employees and were engaged on a needy basis. The petitioners and the similarly placed persons were terminated from service from 01.01.1998 and the workers have worked on the contract basis. The petitioners joined under the contractor and worked for him. According to the 2nd respondent, the casual labourers who were engaged in full-time basis in the year 1992 were regularized under a scheme framed for regularization. However the petitioner were only a



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contract labourers and they were excluded from the above-mentioned scheme. The 2nd respondent therefore prayed for dismissal of the Industrial Dispute stating that there is no violation of provisions of the Industrial Dispute Act.

6. Before the Labour Court, the petitioners examined himself and one Srinivasan, Treasurer of the Unit, and the petitioner in W.P.No.1765 of 2009 marked 20 documents and the petitioner in W.P.No.19135 of 2009 marked 17 documents. On the side of the 2nd respondent, the Deputy Engineer, Administration, Vellore was examined and Ex.M1 and Ex.M12 were marked in both the cases. The Labour Court found that the petitioners were employed only as part-time employees and that on the basis of the documents produced by the petitioners, they cannot be said to have worked for 240 days in a continuous period of 12 months. Holding so the Labour Court dismissed the Industrial Dispute.

7. The learned counsel appearing for the petitioners submitted that the findings of the Labour Court is adverse, as it failed to taking into consideration of the documents filed by the petitioners under Ex.W6 to Ex.W9, Ex.W15 and Ex.W16. The learned counsel submitted that though the above Ex.W15 and Ex.W16 had been filed as evidence, the Labour Court failed to discuss the same and concluded that the



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petitioners had not worked for more than 240 days in the continuous period of 12 months. As the burden of proof to show that they have worked for 240 days, the petitioners filed evidence and the learned counsel relying on the Judgment of the Hon'ble Supreme Court in the case of R.M. Yellatti v. Assistant Executive Engineer reported in 2006 (1) SCC 106. The learned counsel also stated that the petitioners marked Ex.W15 and Ex.W16 and they worked for more than 240 days. Therefore, the petitioners were entitled to regularization along with other benefits.

8. The learned counsel appearing for the 2nd respondent on the other hand submitted that there was absolutely no perversity on the finding of the Labour Court. The learned counsel further submitted that the petitioners were employed only as a part-time employees and therefore they were not entitled to the relief of reinstatement and other reliefs. The respondent relied on several judgments in support of his case and the citations were filed in the typed set of papers.

9. I have heard both the learned counsels and have perused the materials placed on record.

10. It is seen that both the petitioner were appointed at Vellore as part-time



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delivery messengers vide Ex.W8 dated 27.10.1993 and 12.11.1993 respectively. The learned counsel appearing for the petitioners produced Ex.W9 dated 16.01.1996, which establishes that the petitioners were asked to work there from 6 to 8 hours per day. From Ex.W9, it is clear that the petitioners cannot be said to be a part-time employee because the working hours of the petitioners were fixed from 6 to 8 hours, which was the working hours of the regular employees. The petitioner in W.P.No.1765 of 2009 produced Ex.W15, payment of wages at Ranipet from June 1988 to November 1989 and Ex.W16, payment of wages at Vellore from November 1993 to November 1996. From a perusal of the said Ex.W16, it is crystal clear that the petitioners had worked for more than 240 days in a continuous period of 12 months. The Labour Court though referred to the said documents in the award, failed to discuss the same and, without even discussing the said documents, concluded that from the documents no inference could be drawn.

11. In my view, the said finding of the Labour Court is perverse, as it is against the documentary evidence filed under Ex.W15 and Ex.W16. The learned counsel appearing for the petitioners rightly relied on the Judgment of the Hon'ble Supreme Court reported in 2006 (1) SCC 106. The burden is on the workmen to establish that they had worked for more than 240 days in a continuous period of 12 months. The



relevant paragraph No.17 of the above said Judgment is extracted hereunder.

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“17. Analysing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the afore-stated judgments, we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of dailywaged earners, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (the claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case. The above decisions however



12. In the above said Judgment the Hon'ble Supreme Court gave a finding that the burden is on the workmen to establish that they had worked for more than 240 days. To establish the said facts, they must step into the witness box and adduce cogent evidence, both oral and documentary, in support of his claim. As rightly contended by the learned counsel for the petitioners, the petitioners in the present cases have adduced cogent evidence, both oral and documentary, and established that



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they were employed for more than 240 days. Therefore, the petitioners have discharged the burden cast on them and hence, in my view, the petitioners are entitled to the relief of reinstatement with back wages and other attendant benefits. The judgment produced by the learned counsel for the 2nd respondent are more to the legal position. Some of the judgments produced by the learned counsel for the 2nd respondent related to the question of burden of proof as regards the continuous employment for more than 240 days in a continuous period of 12 months. There is no dispute about the said position and it is rightly held by the Hon'ble Supreme Court in 2006 (1) SCC 106 that once the workmen enter the witness box and adduce cogent evidence both oral and documentary, in support of their claim, the burden was discharged. On the facts of the present cases, I am of the view that the Labour Court award is unsustainable. The Labour Court finding is perverse, as it is failed to consider the oral and documentary evidence of the petitioners in the proper prospective while giving a finding against the petitioners. On reiterating that Ex.W8, Ex.W9, Ex.W15 and Ex.W16 clearly support the petitioners' cases, I am of the view that the termination of the petitioners without following the procedure under Section 25-F (2) of the I.D Act is illegal and unsustainable. The petitioners are therefore entitled to the relief of reinstatement along with back wages and other attendant benefits.



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13. Accordingly, these Writ petitions are allowed. The 2nd respondent/Management is directed to reinstate the petitioners along with backwages and other attendant benefits within three months from the date of receipt of a copy of this order. However, there shall be no order as to costs.

22.11.2023

Index : Yes / No

Internet : Yes / No

Speaking Order/Non-speaking order
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To

1. The Presiding Officer,
Central Government Industrial Tribunal-cum-Labour Court,
1st Floor, 'B' Wing, Shastri Bhavan,
26, Haddows Road,
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2. The General Manager, BSNL,
Telecom Vellore SSA,
Vellore District – 632 001.



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N.MALA, J.

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