



DATED: 09.02.2023

THE HON'BLE MR. JUSTICE S.S.SUNDAR

The Management of Tirupur Transport,
No.9, Sowripalayam Road,
Ramanathapuram,
Coimbatore. Rep. By its
Authorised Signatory A.P.Paramanantham ... Petitioner

VS.

1.The Presiding Officer,
The Labour Court,
Coimbatore.

2.P.Rajan .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the 1st respondent made in I.D.No.153/2000 dated 01.12.2005 and quash the same.

For Petitioner : M/s.M.Rakshita

For Respondents : Mr.A.Deivasigamani,
for G.B.Saravana Bhavan for R2

R1- Labour Court.



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ORDER

This writ petition is filed against the order of the Labour Court dated 01.12.2005 made in I.D.No.153/2000, directing the petitioner Management to reinstate the second respondent / workman with continuity of service with 25% backwages and all other attendant benefits.

2. The brief facts that are necessary for the disposal of the writ petition are as follows:

2.1. The petitioner is the Management/employer, who is carrying on business in transport operation as a proprietary concern. The second respondent was working as a driver in the petitioner transport company. It is the case of the petitioner that the second respondent was temporarily employed in the year 1997 and thereafter, he was employed in different periods, not more than 2 or 3 days in a week. It is also stated that the second respondent was just a casual labour and he was never engaged on permanent basis in the petitioner establishment.

2.2. Though the petitioner Management had cautioned the second respondent on every occasions of misconduct, it is stated by the petitioner that no action was taken against the second respondent with due regard to the



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temporary nature of employment. It is stated that the second respondent left the petitioner management as he got employment as a driver in a school bus.

However, the second respondent raised an industrial dispute in I.D.No.153/2000, stating that he was illegally terminated from service without holding any enquiry, after failure of conciliation.

2.3. The said petition was contested by the petitioner Management mainly on the ground that the second respondent was not a workman who have served for 240 days continuously in a year and that he was just a temporary casual labour engaged occasionally depending upon requirement. Before the Labour Court, no document like Attendance Register, Wages Register were produced by the petitioner Management. However, the second respondent / workman has filed an application in I.A.No.128/2005, seeking production of Attendance and Wage Registers from the petitioner Management.

2.4. The petitioner Management however took a definite stand that no such registers were maintained by the petitioner during the course of their business. Since the documents like Attendance and Wages Register are



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crucial and as per Rule 35 of the Tamil Nadu Motor Transport Workers Rules, 1965, every employer shall maintain a muster roll of the workers employed in the undertaking in Form XV, the Labour Court found that the petitioner Management has wilfully abstained from producing such essential documents. Hence, the Labour Court has drawn adverse inference against the petitioner Management for non-production of such essential documents and held that the second respondent/workman was illegally terminated from service.

2.5. The other submission of the petitioner Management was that the second respondent/workman was gainfully employed as a driver in a neighbouring school. Since the contention of the petitioner Management was not proved by any acceptable material, the Labour Court held that the case of the petitioner Management that the second respondent / workman was gainfully employed in some other organization was not proved and therefore, held further that the petitioner Management is liable to reinstate the second respondent/workman with continuity of service with 25% backwages along with all other attendant benefits. Aggrieved by the award of the Labour Court, the petitioner Management has filed the present writ petition.



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3. The learned counsel for the petitioner vehemently argued and reiterated the same grounds raised by the petitioner before the Labour Court. The first submission was that the Labour Court has erroneously drawn adverse inference against the petitioner Management for non-production of Attendance Register and Wage Registers. The learned counsel for the petitioner submitted that the second respondent workman has admitted during his cross examination that the proof affidavit signed by the second respondent in I.A.No.128/2005 was not signed by him. Since the petition filed by the employee for production of Attendance and Wage Register is not authorised, it is submitted by the counsel that the decision of the Labour Court in drawing adverse inference against the petitioner /Management is unsustainable. The learned counsel for the petitioner Management further submitted that the second respondent/workman has not produced any acceptable material to prove his employment and wrongful termination.

4. The case of the petitioner Management before the Labour Court was not believed by labour Court by assigning reasons. The contention of the petitioner Management that the Labour Court has erroneously drawn adverse



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inference against the petitioner Management for non-production of Attendance and Salary Registers and the finding is perverse cannot be countenanced on the admitted facts.

5. The fact that the petition in I.A.No.128/2005 was filed by the second respondent/workman for production of records is not disputed. The fact that the Labour Court has passed the order directing the petitioner Management to produce the Attendance and Wage Registers for the period between 1995 and 1999 is also not in dispute. The fact that the petitioner Management did not produce those documents is also admitted. In such circumstances, the Labour Court has rightly drawn adverse inference against the petitioner Management after pointing out the mandatory requirement of maintaining attendance register. The other contention raised by the petitioner Management before the Labour Court that the respondent/workman was gainfully employed in some other organization is not supported by any evidence. The findings of the labour Court that the termination of the second respondent /workman is wrongful is supported by proper reasons. This Court finds no valid reason or cause to interfere with the findings of the Labour Court and to entertain the writ petition on merits.



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6. Having regard to the admitted facts and the nature of order passed by the Labour Court, which are supported by proper reasons, this Court is unable to find any merit in the writ petition. Accordingly, the writ petition stand dismissed, confirming the order of the Labour Court, Coimbatore dated 01.12.2005 in I.D.No.153/2000. No costs. Consequently, connected miscellaneous petition is also dismissed.

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Index : Yes / No
Internet : Yes / No
Jvm

To
The Presiding Officer,
The Labour Court,
Coimbatore.



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