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W.P.No.26759 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.26759 of 2014

Suresh Babu

...Petitioner

-Vs-

1. The Management,
The Regional Manager,
Tamil Nadu Civil Supplies
Corporation Ltd.,
Thiruvannamalai Region at
Thiruvannamalai.

2. The Presiding Officer
Principal Labour Court,
Vellore.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned award passed in I.D.No.53 of 2013 dated 01.04.2014 on the file of the Presiding Officer/Principal Labour Court at Vellore and quash the same insofar as it relates to denial of reinstatement with back wages and consequently direct the first respondent to reinstate the petitioner into service with back wages and all attendant benefits from the date of termination till date of reinstatement.

For Petitioner : Mr.R.Premkumar



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For Respondents

For R1 : Mr.C.Selvaraj

R2 : Court.

ORDER

This writ petition has been filed challenging the award dated 01.04.2014, passed by the second respondent in I.D.No.53 of 2013, thereby denying the reinstatement into service and other benefits except one month wages along with compensation at the rate of 15 days last drawn wages for every completed year of service.

2. The petitioner was appointed as driver by the first respondent on 08.03.2011. However he was orally terminated by the first respondent on 07.09.2012. Therefore, the petitioner raised dispute before the Labour Officer No.II, Vellore. It was not settled as such on the strength of the failure report, the petitioner raised industrial dispute in I.D.No.53 of 2013 on the file of the second respondent. Since the second respondent denied the reinstatement of the petitioner into service, the petitioner filed this present writ petition.

3. The learned counsel appearing for the petitioner would



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submit that the petitioner had completed 545 days of continued service and his last drawn salary was Rs.4888/- per month. However, the first respondent without any notice and without any reason suddenly stopped his service for no fault committed by the petitioner. When the Labour Court hold that termination of service is illegal and violation of Section 25(F) of the Industrial Dispute Act, ought to have ordered the reinstatement into service with all attended benefits. The action of the first respondent is nothing but unfair labour practice and as such, the workman entitled for reinstatement.

3.1. He further submitted that in fact, the Labour Court concluded that the petitioner was not a contract employee and received daily wages. The petitioner had completed 240 days of continuity of service as contemplated under Section 25 (B) of the Industrial Dispute Act and as such non-compliance of Section 25-F (a) and (b) of Industrial Dispute Act warrants the conferment of permanent status to the petitioner and he is entitled for reinstatement with all attended benefits. In support of his contention, he relied upon the following reported judgments:-

(i) 1998-Writ-LR-514 - Tamilnadu Civil Supplies Corporation

Modern Rice Mill Engineering Section Employees Union Vs. Tamil



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Nadu Civil Supplies Corporation and ors.

WEB COPY (ii)2012 (3) LLN 735 (Mad) – The Principal General Manager

***Vs. the Central Government Industrial Tribunal-cum-Labour Court
and ors.***

***(iii)2016 II LLJ 9 (Mad) – Commissioner, Thiruvallur
Municipality Vs. K.Sampath***

***(iv) 2016 (3) LLN 425 (MP) – Water Resources Department
Engineer Vs. Manharan***

4. The learned counsel appearing for the respondent management filed counter and it revealed that in order to tackle the deficiency in the permanent driver post, a temporary arrangement was made in the department by hiring the service of the private drivers on the basis of daily wages. The petitioner was engaged from out sourcing agent who supplied drivers every now and then and received wages on behalf of the persons who are engaged by the agent. Accordingly, the workman was engaged to the post of driver for the period from 08.03.2011 to 06.09.2012. He was not appointed through any employment exchange or any permanent vacancies. He was engaged only to make up the time gap



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till appointment of the permanent driver.

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4.1. On the permanent vacancy, a driver was appointed as such the management stopped the engagement of the petitioner as driver. Therefor, he is entitled for the relief as contemplated under Section 25-F (a) & (b) of the Industrial Dispute Act. After the award, the petitioner was offered with one month salary and compensation, however, the petitioner refused to receive the same. Further revealed that the driver post was vacant, since the driver was appointed as Junior Assistant and as such there was vacancy for the post of driver. Therefore, it was proposed to engage daily wages driver and engaged the petitioner as Driver.

4.2. Further, the petitioner used to park his car opposite to the office of the first respondent and he approached to permit to supply drivers on the basis of outsourcing agent. Since the appointment of permanent driver got delayed, the petitioner was asked to supply drivers on the basis of the daily wages. In fact, same driver was not driving the car continuously and the petitioner used to supply different drivers through his agency. Therefore, the petitioner never appointed as driver by



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the first respondent.

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5. Heard the learned counsel appearing on either side and also perused the materials available on records.

6. On perusal of the exhibit Ex.W.3, the wage details of the petitioner from 07.04.2011 to 11.09.2012 revealed that while receiving salary at the end of the month, there was endorsement that the car was driven by the driver who engaged by the petitioner. Therefore, no drivers were in continuous service with the first respondent as stated by the petitioner. Though the petitioner received wages every month end, it was categorical statement of the petitioner that he received wages for the engagement of driver by him.

7. That apart, it is seen from the evidence of the petitioner in chief that, he categorical stated that when he was fell ill, he engaged other friends as drivers. He also admitted that he was working as driver for third persons located in front of the office of the first respondent. He was also not appointed by any appointment order and he was orally engaged to drive the vehicle of the first respondent. Therefore, the judgments cited



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by the learned counsel appearing for the petitioner are not applicable to the case on hand, and the second respondent rightly denied the petitioner's reinstatement and other reliefs except one month salary and compensation as contemplated under Section 25-F (a) & (b) of the Industrial Dispute Act.

8. In view of the above discussion, the prayer sought for in this writ petition is devoid of merits and liable to be dismissed. Accordingly, the Writ Petition stands dismissed. There shall be no order as to cost.

19.07.2023

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

rts



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G.K.ILANTHIRAIYAN. J.

rts

To

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Principal Labour Court,
Vellore.
2. The Management,
The Regional Manager,
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Thiruvannamalai Region at
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