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W.P.No.8125 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 01.08.2023**

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

**W.P.No.8125 of 2017**

**and**

**W.M.P.Nos.8898, 15492 & 15493 of 2017**

Namakkal Taluk Lorry Owners' Association,  
No.87, Salem Road,  
Namakkal – 637 001,  
Namakkal District.

... Petitioner

Vs.

1.The Presiding Officer,  
Labour Court,  
Salem.

2.C.Lakshmanan

... Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the award of the 1<sup>st</sup> respondent Labour Court made in I.D.No.131 of 2013 dated 25.04.2016 and quash the same.

For Petitioner : Ms.Kaavya Silambanan

For Respondents : Mr.K.M.Ramesh  
Senior Counsel  
for M/s.V.Sivaraman [R2]

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### **ORDER**

This Writ Petition has been filed seeking for a Writ of Certiorari, to call for the award of the first respondent Labour Court made in I.D.No.131 of 2013 dated 25.04.2016 and quash the same.

2. The Namakkal Taluk Lorry Owners Association is the petitioner herein, which is having 4000 members and it has one petrol bunk and five oil shops and runs three tankers for short distances for the purpose of assisting its members. The second respondent was employed as a driver from 2001 for the petitioner Association. He absented himself from duty from 23.04.2013 without prior permission or prior intimation. In spite of being informed to report for duty, he did not report for duty for his personal reasons. Thereafter, he raised an industrial dispute under Section 2A of the Industrial Disputes Act, 1947 (in short 'the Act') before the Labour Court, Salem seeking for reinstatement with back wages. The petitioner Association submitted a reply before the Labour Officer on 08.07.2013. Thereafter, the Labour Officer advised the second respondent to immediately join duty and advised the Management to take him back in service with continuity of service without any condition.



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However, the second respondent did not report for duty. Therefore, the matter was referred to the first respondent under Section 2A(2) of the Act for reinstatement and back wages and continuity of service and numbered as I.D.No.131 of 2013. On behalf of the petitioner Management, one Thangadurai was examined as witness and Ex.M1 was marked and on behalf of the second respondent/workman, he himself was examined as witness and Ex.W1 to Ex.W7 was marked. Thereafter, award was passed in favour of the second respondent/workman for reinstatement with 75% back wages and continuity of service. Challenging the same, the present writ petition is filed.

3. The learned counsel for the petitioner submits that, there is no termination order as against the second respondent. In fact, the petitioner Association is a voluntary association and they are providing services to the general public as well as to the members of the petitioner Association, for which, they are running ambulance service as well as tanker lorry service. The second respondent has worked as ambulance driver, however, he has not reported duty at the relevant point of time and raised a dispute. Even today, the petitioner Association is ready to reinstate the



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second respondent without any back wages. Further, the second respondent has not pleaded anything in his claim petition for claiming back wages and not established that he was not gainfully employed anywhere during the non-employment period. In the absence of any pleadings and averments, the first respondent/Labour Court passed order granting 75% back wages to the second respondent/workman is not sustainable. Accordingly, he prays for allowing the writ petition.

4. The learned counsel appearing for the second respondent submitted that, there was an oral termination as against the second respondent, which was adjudicated before the Labour Officer as well as the Labour Court. The Labour Court in categorical findings held that there was an oral termination and there was an employee and employer relationship, thereby, the Labour Court ordered for reinstatement, which cannot be interfered with. Though the second respondent/workman not averred with regard to payment of back wages in his claim petition, however, by exercising power under Section 11(a) of the Act, the Labour Court passed an award awarding 75% back wages to the second respondent/workman, which is just and reasonable and the same cannot



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be interfered with. Accordingly, he prays for dismissal of the writ petition.

5. Heard the learned counsel for the petitioner as well as the second respondent and perused the materials available on record.

6. Admittedly, the second respondent/workman was employed as ambulance driver in the petitioner Association. Though the petitioner claims that the second respondent has not reported duty at the relevant point of time and raised a dispute and the learned counsel for the petitioner Association fairly conceded that, even today, they are ready to reinstate the second respondent in service, however, he strongly objected for awarding back wages in favour of the second respondent in the absence of averments in the claim petition. There was a force in the arguments made by the learned counsel for the petitioner as well as the second respondent. It is very clear that, there is no averments in the claim petition for the non-gainful employment of the second respondent anywhere. However, the Labour Court on its own arrived a conclusion that as if the second respondent not employed anywhere, which is not



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sustainable. When there is no pleadings or documents with regard to non-gainful employment of the second respondent, the Labour Court on its own awarded 75% back wages, which is not sustainable. Therefore, the impugned award passed by the Labour Court is liable to be interfered with.

7. This Court is inclined to dispose of this writ petition with the following order:

(i) The petitioner Association is directed to reinstate the second respondent/workman into service with continuity of service within a period of six (6) weeks from the date of receipt of a copy of this order, however, the second respondent/workman is not entitled for any back wages.

8. With the above terms, the writ petition is disposed of. No costs.



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Consequently, the connected miscellaneous petitions are closed.

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**01.08.2023**

Index : Yes / No  
Speaking order / Non-speaking order  
Neutral Citation Case : Yes / No  
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To

The Presiding Officer,  
Labour Court,  
Salem.



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**M.DHANDAPANI, J.**

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