



W.P.No.11460 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.11460 of 2017
and
WMP.No.12442 of 2017

The Management,
Tamil Nadu State Transport Corporation
(Kumbakonam Division – I) Ltd.,
Kumbakonam.

...Petitioner

Vs

1. B.Annadurai
2. The Presiding Officer,
Labour Court,
Cuddalore.

...Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the second respondent in the award passed in I.D.No.145 of 2007 dated 23.1.2014 and quash the same as illegal.

For Petitioner : Mr.C.Senapathi

For Respondents : No appearance, for R1



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ORDER

WEB COPY This Writ petition has been filed seeking quashment of the award of the 2nd respondent dated 23.01.2014 made in I.D.No.145 of 2007.

2. The case of the petitioner is that, the petitioner management appointed the 1st respondent as a casual driver in the year 2000. However, as he was not proper in attending duty, a charge memo dated 20.11.2003 came to be issued, for which, the 1st respondent did not send any reply. Thereby, pursuant to appointment of the Enquiry Officer, an inquiry was conducted, even to which, the 1st respondent did not turn up. Hence, he was set ex parte and as the charges levelled against the 1st respondent were proved, the dismissal order was passed on 21.06.2004. Challenging the said order of dismissal, the 1st respondent raised the industrial dispute in I.D.No.145 of 2007 before the 2nd respondent and after contest, by the impugned award, the above said dismissal order passed by the petitioner management was set aside thereby further directing the petitioner to reinstate the 1st respondent with attendant benefits, continuity of service and back wages. Challenging the same, the petitioner is before this Court.



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3. Though very many grounds have been raised, the major contention of the learned counsel for the petitioner is that, the 1st respondent is a casual labour and he is not a permanent employee of the petitioner and there exists no employer-employee relationship in between the petitioner and 1st respondent and only on the days when the 1st respondent was engaged by the petitioner corporation, wages were paid. While so, it is not mandatory on the part of the petitioner to obtain approval for dismissal of the services of the 1st respondent. Hence, the present impugned award passed solely on the ground that, subsequent to passing of the order of dismissal, the petitioner corporation did not obtain approval as mandated under Section 33(2)(b) of the Industrial Disputes Act, 1947 is wholly sustainable, since such approval under Section 33(2)(b) is not mandatory in the case of casual labour and accordingly, he prayed for appropriate orders.

4. Heard the learned counsel for the petitioner. Though notice was served on the 1st respondent and his name is printed in the cause list, none appeared on behalf of the 1st respondent. However, since the petition is of the year 2017, considering the long pendency of this Writ petition, this



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Court is inclined to dispose of the present petition based on the materials available on record.

5. A perusal of the material documents placed on record reveals that, the 1st respondent joined the service of the petitioner corporation in the year 2000 and for unauthorised absence, he was subsequently dismissed from service, vide order dated 21.06.2004, challenging which, the 1st respondent raised an industrial dispute in I.D.No.145 of 2007, in which, the present impugned award dated 23.01.2014 came to be passed setting aside the dismissal order passed by the petitioner management as against the 1st respondent and further directing the petitioner to reinstate the 1st respondent with attendant benefits, continuity of service and back wages.

6. The major issue arises in the present Writ petition is whether it is mandatory on the part of the petitioner management to obtain necessary approval from the authority as prescribed under Section 33(2)(b) of the Industrial Disputes Act, 1947.



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7. Though, it is the claim of the petitioner management that, the 1st respondent being a casual labour, the approval under Section 33(2)(b) is not necessary, however, in terms of Section 2 (s) of the ID Act, any person if they fall within the definition of workmen, it is mandatory on the part of the employer to obtain necessary approval from the Labour Officer, before terminating any workmen from service. For better appreciation, the relevant section is extracted hereunder:-

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(s) “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or



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(iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

8. In the present case, without obtaining necessary approval as per Section 33(2)(b) of the ID Act, the petitioner management dismissed the 1st respondent from service, which cannot be acceded to, as there was an Industrial Dispute pending before the Commissioner of Labour at the time of dismissal, in which case, it is mandatory on the part of the petitioner management to obtain necessary approval and it is for the Labour Court to find out whether the 1st respondent would fall within the definition of workman as provided for under section 2(s) of the ID Act. Therefore, the non-obtainment of approval is fatal to the order of dismissal and, therefore, on above said facts, the Labour court passed the present impugned award, setting aside the order of dismissal, which does not warrant interference.

9. Insofar as awarding of back wages is concerned, though the 1st respondent did not specifically aver whether he is gainfully employed during the non-employment period, the Labour Court awarded back wages, and in



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the absence of any material evidence or pleadings with regard to not being gainfully employed during the non-employment, awarding back wages is not sustainable. Hence, to that extent, this Court is inclined to modify the impugned award.

10. Accordingly, this Writ petition is disposed of by modifying the award passed by the Labour Court with the following directions :-

(i) The petitioner management is directed to reinstate the 1st respondent back into service without any back wages within a period of two weeks from the date of receipt of a copy of this order.

(ii) The 1st respondent is entitled for continuity of services and other attendant and terminal benefits.

(iii) No costs. Consequently, the connected Miscellaneous petition stands closed.

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Index : Yes (or) No

Neutral Citation : Yes (or) No

Speaking Order : Yes (or) No



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M.DHANDAPANI., J.

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To

The Presiding Officer,
Labour Court,
Cuddalore.

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and
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