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W.P.No.13724 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.13724 of 2017

And

W.M.P.Nos.14912 of 2017 and 826 of 2021

1.The Branch Manager
Metropolitan Transport Corporation,
Perambur Depot,
Perambur,
Chennai – 600 011.

2.The Managing Director
Metropolitan Transport Corporation,
Pallavan Salai,
Chennai – 600 002.

... Petitioner

Vs.

1.The Presiding Officer
I Additional Labour Court,
City Civil Court Annexure Buildings,
High Court Compound,
Chennai – 600 104.

2.Thiru.K.S.Nirmal Raj

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records pertaining to the order passed in I.D.No.298 of 2010 dated 15.03.2016 on the file of the first



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respondent herein and quash the same.

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For Petitioner : Mr.M.Chidambaram
For Respondents : Mr.S.T.Varadarajulu for R2
R1 – Labour Court

ORDER

The petitioners have filed this writ petition seeking issuance of Writ of Certiorari calling for the records pertaining to the order passed in I.D.No.298 of 2010 dated 15.03.2016 on the file of the first respondent herein and quash the same.

2.The case of the petitioners is that the second respondent was employed as conductor and was in service from 28.05.1995 to 12.07.1996 and thereafter, he was orally retrenched and challenging the retrenchment, the second respondent raised industrial dispute in I.D.No.298 of 2010 before the first respondent seeking reinstatement in service with continuity of service, backwages and other benefits. The first respondent passed Award dated 15.03.2016 directing the petitioners to appoint the second respondent as a regular Conductor. Challenging the same, the petitioners have filed this writ petition.

3.The learned counsel appearing for the petitioners submitted that the second respondent neither examined himself nor marked any



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document before the first respondent to show that he was employed in the petitioners Corporation, however, the first respondent without any evidence or material passed award in favour of the second respondent, which is not sustainable one.

4.The learned counsel appearing for the second respondent submitted that the second respondent entered the petitioners Corporation as conductor and was in service from 28.05.1995 to 12.07.1996 continuously for a period of 14 months and all of a sudden he was retrenched from service in violation of Section 25 F of the Industrial Disputes Act and the said fact was elaborately considered by the first respondent. Even the petitioners admit that the second respondent was employed on casual basis of day to day wages and that itself show the employer and employee relationship between the petitioners and the second respondent. The employment of the second respondent was also admitted by M.W.1, who was examined on the side of the Management, before the Labour Court. In support of his contention, the learned counsel relied upon the decision of this Court reported in 2006 – (002) – LLJ – 0258 – Mad [Sekaran M Vs. G.M., T.N. State Transport Corporation, Coimbatore Division – II].



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5. Heard the arguments advanced on either side and perused the materials available on record.

6. The facts in the present case is not in dispute. Admittedly, the second respondent raised industrial dispute before the first respondent as if he was retrenched from service in violation of Sections 25F, 25G and 25N of the Industrial Disputes Act. Perusal of the impugned award reveal that the second respondent neither examined himself nor marked any document before the Labour Court. The Management has examined one witness and has not marked any document before the Labour Court. Though M.W.1 has admitted before the Labour Court that the second respondent was engaged by one of the Branch Managers to work as a conductor for wages on trip basis as there was need for such conductors, based on which, the Labour Court arrived at a conclusion that there was employer and employee relationship between the petitioners and the second respondent, the second respondent has not established before the Labour Court that he was in continuous employment for 240 days in a calender year. However, the Labour Court has passed award in favour of the second respondent, which is not sustainable one and is liable to be set aside.



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7.The decision relied upon by the learned counsel appearing for the second respondent is not applicable to the present case on hand because the case therein was that the Transport Corporation recruited 75 drivers through employment exchange and they underwent the selection process and got selected and on selection, they were sent for training at Chithode Training School and on completion of training, orders were issued appointing them on consolidated wages for two years describing them as trainee drivers, however, in the present case on hand, the second respondent has not even produced a single document to show that he was appointed by the petitioners Corporation.

8.In view of the above, the impugned order dated 15.03.2016 in I.D.No.298 of 2010 passed by the first respondent is set aside. The writ petition is allowed. No costs. Consequently, connected miscellaneous petition are closed.

01.08.2023

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

M.DHANDAPANI,J.

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To

- 1.The Presiding Officer
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