



WP.No.27844 of 2018

In the High Court of Judicature at Madras

Dated : 22.9.2023

Coram :

The Honourable Mr.Justice M.DHANDAPANI

Writ Petition No.27844 of 2018
& WMP.No.32372 of 2018

The Management of Christian
Mission Charitable Trust rep.
by Secretary M.M.Philip

...Petitioner

Vs

N.Jayavelu, rep.by Socialist
Labourers Union

...Respondent

Prayer: This petition is filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records dated 21.2.2018 passed by the Third Additional Labour Court, Chennai in I.D.No.89 of 2014 and quash the same.

For Petitioner : Mr.L.Prabahar
For Respondent : Mrs.M.N.Sumathy

ORDER

This is a petition filed by the petitioner seeking to quash the award dated 21.2.2018 in I.D.No.89 of 2014 on the file of the Third Additional Labour Court, Chennai.



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2. The facts leading to filing of this case are as follows :

(i) The respondent was appointed as a driver in the petitioner management on 10.7.2011. When the respondent expressed his grievance as to the grant of incentive and leave salary, without notice and conduct of domestic inquiry, he was terminated vide letter dated 22.7.2013. Thereafter, the respondent initiated conciliation proceedings before the Labour Officer concerned and it ended in failure.

(ii) Pursuant to that, the respondent filed the industrial dispute before the Third Additional Labour Court, Chennai seeking to direct the petitioner to reinstate him into the services with back wages, continuity of service and other attendant benefits. In that, the petitioner filed a counter. The Third Additional Labour Court found that the respondent joined in the services of the petitioner after retirement from the Metropolitan Transport Corporation, Chennai at the age of 58 years and has been receiving pension. Ultimately, after contest, by the impugned award, the Third Additional Labour Court, Chennai set aside the termination letter dated 22.7.2013 and directed the petitioner to pay a total sum of Rs.1,40,600/- towards (i) compensation in



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lieu of reinstatement and for all his other claims and (iii) lump sum compensation for the unfair labour practice adopted by the petitioner. Challenging the same, the petitioner is before this Court.

3. On 25.1.2019, this Court granted an order of interim stay for a period of four weeks.

4. The learned counsel for the petitioner submits that the respondent / workman is not a regular employee of the petitioner management and that he is only a casual contract labour. Due to the misconduct committed by the respondent, the petitioner management issued a show cause notice, however, the Labour Court without considering the above said facts, had mechanically passed the impugned award, which is *per se* unsustainable. He further submits that though the respondent is a retired employee who is not entitled for regular appointment, the Labour Court mechanically allowed the petition filed by the respondent on assumption that the respondent is a regular employee which in violation of the Standing Orders. He further submits that as per Ex.M1 which is a copy of the driving licence marked before the



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Labour Court, the date of birth of the respondent is shown as 01.05.1953, whereas Ex.M2 is the resume submitted by the respondent, which shows the date of birth of the respondent as 05.08.1956. Hence, without considering the suppression of age by the respondent, the Labour Court has passed the award stating that petitioner has appointed the respondent after his age of superannuation which is wholly unsustainable.

5. He further submits that though the Standing Orders does not contemplate domestic enquiry for a casual and contract labour, the Labour Court arrived at a conclusion that domestic enquiry was not conducted in a fair and proper manner and awarded a sum of Rs.50,000/- towards compensation for Unfair Labour Practice, which is wholly unsustainable. Accordingly, he prayed to allow this writ petition.

6. The learned counsel for the respondent submits that admittedly the respondent was appointed as a Driver in the petitioner management with a monthly salary of Rs.7,550/-. When the respondent demanded the management to give incentive, weekly off and overtime wages, the



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management refused the claim of the respondent and dismissed him from service without adopting the standing orders and without conducting any domestic enquiry, which is *per se* unsustainable. Hence, the award passed by the Labour Court needs no interference of this Court and the writ petition is liable to be dismissed.

7. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent and perused the materials placed on record.

8. Admittedly the respondent was appointed as a Driver in the petitioner management on 10.07.2011. Thereafter, he was terminated from service on 22.07.2013. It is evident from the driving license marked as Ex.M.1 produced by the respondent before the management at the time of joining that the date of birth of the respondent has been mentioned as 01.05.1953, and it cannot be said that the management has no knowledge about his correct age. However, the management appointed the respondent only after having the knowledge of the age of the respondent and all those facts were properly adjudicated by the Labour Court. Hence the Award



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passed by the Labour Court cannot be interfered with. Therefore, the petitioner management is directed to pay a sum of Rs.1,40,600/- to the respondent in full quit within a period of four (4) weeks from the date of receipt of a copy of this order.

9. With the above observation and direction, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes (or) No

Neutral Citation : Yes (or) No

Speaking Order : Yes (or) No

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