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W.P.No.1919 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2024

CORAM :

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

W.P.No.1919 of 2015

and

M.P.No.1 of 2015

The Management of Tamil Nadu State Transport Corporation,
(Coimbatore Division) Ltd.,
38, Mettupalayam Road,
Coimbatore – 641 043.

... Petitioner

Vs.

1. The Presiding Officer,
Labour Court,
Coimbatore.
2. B.Mohan

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records of the Labour Court, Coimbatore, made in I.D.No.137 of 2006 dated 20.01.2014 and quash the same.

For petitioner	:	Mr.A.Sundaravadanan
For R1	:	Labour Court
For R2	:	No appearance

ORDER

This writ petition is filed seeking to quash the order dated 20.01.2014 passed in I.D.No.137 of 2006.



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2. The facts in brief as per the affidavit enclosed in this writ petition are as follows:

2.1. The second respondent has worked under a contractor by name Sivagaminathan at Rubber Division work, Mettupalayam. After working for a period of 13 days, on 09.06.1997 the second respondent while attending his job at the rubber milling machine met with an accident and sustained crush injuries, thereby his three fingers got separated and one finger sustained serious injuries. The petitioner was hospitalized and after completion of the treatment the second respondent made an attempt to get re-instated in the petitioner's Corporation but there was no response and hence, approached the authority under the Workmen's Compensation Act on which the Deputy Commissioner of Labour has passed an award for an amount of Rs.84,605/- was awarded as compensation. He was also paid an amount of Rs.465.24 for period he had worked, through the said contractor. The second respondent was not appointed by the petitioner Corporation and the Corporation never paid any wages or salary to the second respondent directly. The second respondent absented himself from attending duty. The second respondent filed I.D.No.137 of 2006 before the



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first respondent seeking re-instatement with continuity of service with back wages.

2.2. According to the Common Service Rules of the petitioner Corporation, the person whose name has been sponsored through employment exchange should possess qualification of pass in SSLC and pass in ITI in relevant trade and must have completed apprenticeship under Apprentice Act, 1961, however, the second respondent did not possess the above mentioned qualifications. Further, in order to join the petitioner Corporation a person must be within the age limit of 30 years for OC, 35 years for BC and MBC, and 40 years for SC. The petitioner, who belongs to OC category is aged 36 years thereby, he is over aged. The first respondent without considering the above criterion has directed the petitioner's Corporation to employ the second respondent in any suitable post with continuity of service without back wages and hence, this writ petition.

3. Heard both sides and perused the materials available on record.



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4. The second respondent has approached the Labour Court and filed an I.D.No.137 of 2015 and after full fledged enquiry the said petition was disposed of directing the petitioner to re instate the second respondent in a suitable post with continuity of service and that the second respondent is not entitled for back wages. Aggrieved by the same, the present writ petition is filed by the Corporation.

5. According to the learned counsel for the petitioner the Labour Court has come to an erroneous conclusion that the second respondent was working in the petitioner's Corporation and in fact the second respondent had worked only for 11 days and after that the accident has taken place. It is further submitted that the second respondent was working as a casual laborer and therefore, he cannot be re-instated. The Labour Court, as per the impugned award, has considered the counter statement filed by the transport Corporation, before the Commissioner for Workmen Compensation, Coimbatore, wherein it is allegedly stated that the second respondent/workman was working as an employee and passed the award. The relevant portion of the counter statement filed by the petitioner herein in W.C.No.36 of 1998 is extracted below:



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“2. The petitioner is not entitled to any compensation under the provisions of the Workmen's Compensation Act, 1923 for the reasons set out hereunder. The petitioner was taken as a casual worker to work in the Tread Rubber and Flap unit of the respondent Corporation situated at Mettupalayam. He joined on 07.05.1997 and worked for just 11 days until 09.06.1997 when the accident in question happened”.

6. On going through the above, it is clear that the transport Corporation mentioned in the counter statement that before the authorities under Workman Compensation Act that the second respondent/workman has worked as a casual laborer in the petitioner's Corporation for 11 days. However, there is nothing to interpret that the petitioner Corporation has admitted that the second respondent worked as an employee of the petitioner Corporation. But it is mentioned in the counter statement that he was working as a casual laborer and not mentioned that he worked under a contractor.

7. After going through the impugned orders of the Labour Court meticulously, it is clear that the Labour Court in its order has observed that during the course of enquiry the second respondent appeared and



deposed that he has worked in the petitioner's Corporation for more than 240 days. It is also observed that contradicting to the said contention of the second respondent/workman, the petitioner's Corporation has not examined any witnesses and also has not produced any documents to that effect. Though, initial burden lies on the workman/second respondent to prove that he worked for 240 days. Once burden is discharged by the workman, it is the Corporation who has to prove that the second respondent has not worked for 240 days. However, no relevant documents *viz.*, attendance register was produced before the Labour Court to prove that the second respondent worked in the petitioner's Corporation only for 11 days.

8. Considering the counter statement filed by the petitioner Corporation before the Commissioner for Workmen Compensation, W.C.No.36 of 1998, that the second respondent worked in the petitioner's Corporation, as a casual worker and considering that no evidence is placed before the Corporation to rebut the evidence of the second respondent that he worked for more than 240 days and the only interference the Labour Court could draw is that the second respondent worked in the petitioner's Corporation for 240 days as stated by the second respondent in his



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evidence and here the Labour Court has rightly rejected the claim of the petitioner herein.

9. On considering the reasons and facts as analyzed by the Labour Court, this Court is of the opinion that the conclusion of the Labour Court in the impugned order is not perverse and is reasonable. Once the orders of the Labour Court are not perverse and does not shocks the conscience of this Court, this Court cannot intervene the impugned award under article 226 of the Constitution of India.

10. With the above observations, this writ petition is dismissed, Connected M.P.is closed. Costs made easy.

13.02.2024

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Internet	:	Yes/No
Index	:	Yes/No
Citation	:	Yes/No



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Dr.D.NAGARJUN,J.

vca

To:
The Presiding Officer,
Labour Court, Cuddalore.

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and
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