



W.P.No.33185 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.01.2024

Coram:

THE HONOURABLE Mr. JUSTICE N. SENTHIL KUMAR

W.P.No.33185 of 2013

M.Kathirvel.

... Petitioner

/versus/

1. The Presiding Officer,
Labour Court, Salem.

2. The Management,
Tamil Nadu State Transport Corporation,
(Division – 1) Limited, Salem.
12, Ramakrishna Road,
Salem.

...Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to I.D.No.649 of 2001 on the file of the 1st respondent herein and quash the award dated 18.03.2013 passed thereon and further direct the 2nd respondent to reinstate the petitioner in service with back wages, continuity of service and all other attendant benefits and pass orders.

For Petitioner : Mr.K.V.Shanmuganathan

For R1 : Court

For R2 : Mr.M.Aswin



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ORDER

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The writ petition was filed challenging the award passed by the 1st respondent.

2. The case of the petitioner is that the petitioner has joined the service with the 2nd respondent as Conductor on 25.03.1995 without any interruption. The continuous service was terminated on 20.06.2001 by oral order and he was drawing a sum of Rs.2,160/- per month. The 2nd respondent being a Government Undertakings, involved in the business of public transport, with huge establishment running more than 1000 buses and engages more than 7000 workmen.

3. According to the petitioner, the 2nd respondent orally refused to give any employment from 20.06.2001 and given the oral termination which was not followed by any enquiry or notice which is in gross violation of fundamental of natural justice, but also in contravention of 25-F of the Industrial Disputes Act, 1947.



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4. Though the petitioner contends that he has worked continuously 240 days in a year prior to the termination, 2nd respondent ought not to have terminated his service.

5. The petitioner submits that the conciliation proceedings ended in failure and therefore, for continuity of service and for reinstatement, the petitioner filed the claim in I.D.No.649 of 2001 before the 1st respondent.

6. The 2nd respondent has filed detailed counter before the Tribunal wherein the petition itself is not maintainable under Section 2A (2) of the Act.

7. The Learned Counsel for the 2nd respondent also contends that the petitioner was never employed with the 2nd respondent even on temporary basis and therefore, the application itself has to be dismissed as frivolous.

8. The Tribunal has examined Kathirvel and V.P.Rajamani as petitioner's side witnesses and 11 documents were marked on the side of the petitioner herein. The 2nd respondent has also examined one Venkatesan.



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9. The Tribunal has dismissed the petition contending that the petitioner was only working as a daily wages and he was not employed with the 2nd respondent.

10. The petitioner has not proved to establish that he has worked continuously for 240 days as workmen under the 2nd respondent.

11. The Tribunal has also examined the documents filed on the side of the petitioner to ascertain, the petitioner was employed with the 2nd respondent even on temporary basis. However, there is no material to show that the petitioner was appointed with the 2nd respondent or there is any material to show that the petitioner has served continuously for a period of 240 days. On these two grounds, the petition was dismissed by the Tribunal. Challenge the same, the Writ Petition is filed.

12. The Learned Counsel for the petitioner submits that the oral termination is *per se* illegal and the 2nd respondent ought to have conducted oral enquiry as he was working with the 2nd respondent and drawing wages.



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13. Per contra, the Learned Counsel for the respondent would show that none of the documents which was filed by the petitioner before the Tribunal do not disclose that there is any appointment order or that the petitioner has served continuously for a period of 240 days to claim any benefit under Section 25 B or 25 C or 25 F of the Industrial Disputes Act 1947.

14. In the absence of any material by the petitioner to warrant and interference by this court, the respondent authoritative stand that the petitioner claim cannot be accepted. Therefore, this Court is of the view that the claim of the petitioner cannot be accepted in the absence of any substantial material, without the oral statement that he was orally terminated. The Writ Petition is dismissed as devoid of merits. The order passed by the Tribunal is confirmed. No costs.

08.01.2024

Index :Yes/No.

bsm

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N.SENTHIL KUMAR, J.

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