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W.P.No.10179 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2024

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.No.10179 of 2014 and
M.P.No.1 of 2014 and
M.P.No.1 of 2015

The Management
Saraswathi Meeankshi Transports
New Police Station Street
Dharapuram
Erode District
Represented by its Partner

.. Petitioner

Vs.

1.The Presiding Officer
Labour Court,
Salem.
2.C.Subramanian

.. Respondents

PRAYER: Writ petition is filed under Article 226 of Constitution of India, pleased to issue a Writ of Certiorari, calling for the records of the 1st respondent in I.D.No.49 of 2008 and quash its award dated 07.11.2013.

For Petitioner	: M/s.P.Raghunathan for M/s.T.S.Gopalan and Co.
For Respondent 1	: Labour Court
For Respondent 2	: Mr.S.V.Navin Prabhu for Mr.K.V.Shanmuganathan



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ORDER

The respondent management before the Tribunal who have suffered an award against them is the petitioner herein.

2. It is necessary to briefly allude the facts which has given rise to the dispute for appreciating the grievance of the petitioner herein. The petitioner management owns transport buses plying between Tiruppur and Palani. It employs 10 persons consisting of Drivers, Conductor, cleaner etc., The 2nd respondent was employed as a Driver by the petitioner management on a casual basis. From January 2005, the 2nd respondent was not reporting duty for even his casual employment. Thereafter, the petitioner management came to know that the 2nd respondent was assisting his son to set up a garment factory at Tiruppur which was the reason for his not attending work. On 16.02.2006, nearly after a year, the 2nd respondent had sent a letter to the petitioner management stating that he has been prevented from reporting to work from 02.04.2005 and therefore, there is a deemed oral termination. The 2nd respondent also sought for compensation for the 22 years of services



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rendered by him in the event of not providing the work. The petitioner management sent a reply dated 27.02.2006 informing the 2nd respondent that he had only been engaged as casual labourer and not been employed from 1984 and from 2005 onwards he has not reported for work and the allegation of termination of employment on 02.04.2005 was absolutely false. However, despite receiving this response, the 2nd respondent continued to correspond with the petitioner and reiterated that he did not want to work with the petitioner management and therefore, his legal dues should be settled immediately. The petitioner management also informed the 2nd respondent that if he does not report to work, it would be presumed that he had resigned from the services of the petitioner management and he could report to the office and collect legal dues if any, after settling his account.

3. Subsequently, the 2nd respondent raised an industrial dispute in I.D.No.49 of 2007 alleging non-employment. In the claim statement filed by him, he alleged oral termination and claimed reinstatement or settlement of his legal dues. The petitioner management had filed a counter denying the



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allegations of the 2nd respondent and contending that since there was no denial of employment, there is no question of granting reinstatement, backwages etc.,

4. Before the Tribunal, the 2nd respondent was examined as W.W.1 and documents were marked as Ex.P1 to Ex.P11 and one Lakshmanapathy was examined as M.W.1 on behalf of the petitioner management and documents were marked as Ex.M1 to Ex.M5. Thereafter, the 1st respondent/Labour Court had passed an award dated 07.11.2013 stating that the petitioner had not let in evidence to show that the 2nd respondent had voluntarily abstained from working and therefore, it could be presumed that the petitioner management had orally terminated the services of the 2nd respondent and directing the reinstatement with 50% back wages or incase, if the 2nd respondent was not interested in the aforesaid relief, he should be given his legal dues payable for the services rendered by him from 1984 to 2005. Thereafter, by letter dated 04.02.2014, the 2nd respondent who was nearly 64 years stated that he was ready to report to work without prejudice to his



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contentions to claim arrears of backwages of 50% and the petitioner also had issued a letter dated 08.02.2014 calling upon the 2nd respondent to report for work without prejudice to their contention in the writ petition.

5. The learned counsel for the petitioner submitted that the Tribunal has clearly erred in casting the onus upon the petitioner to prove that the 2nd respondent had abandoned his services. The learned counsel for the petitioner submitted that it is the petitioner who has pleaded that he was orally terminated from service. To prove the same, he submitted that despite the petitioner being 64 years old, in compliance with the award, the petitioner had issued a letter dated 08.02.2014 calling upon the 2nd respondent to report for duty. However, 2nd respondent had not reported for work. He further submitted that the Tribunal has totally overlooked the various admissions made by the 2nd respondent in the evidence as W.W.1 which would go to show that it is the 2nd respondent, who abandoned the employment.

6. Per contra, the learned counsel for the 2nd respondent submitted that the Tribunal has rightly cast the onus upon the petitioner to prove the



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abandonment of service. He further submits that the fact that no notice has been issued to the 2nd respondent calling him to report for work is itself prove to show that the petitioner has terminated the service of the 2nd respondent and the Tribunal has clearly considered these factors.

7. Heard the learned counsel for the petitioner and the learned counsel for the 2nd respondent and perused the materials available on record.

8. The petitioner management would contend that the 2nd respondent had abandoned his employment and his allegation that he has been terminated from service was totally false whereas the 2nd respondent would contend that he has been terminated from service and after 02.04.2005, he was not allowed to report for work. If really the 2nd respondent had abandoned his work, the petitioner herein would have immediately issued notice to him calling him to report for duty. In this regard, reference may be made to Ex.P4 which is the reply notice sent by the petitioner's counsel to the counsel for the 2nd respondent dated 25.12.2006. In the reply notice, the petitioner has



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contended that the 2nd respondent had resigned from the service of the petitioner and his resignation was duly accepted by the claimant. However, there is no iota of proof to show that the 2nd respondent had submitted his resignation and such resignation has been accepted by the petitioner herein. This defense has not been taken in the counter to the claim statement. It is also to be taken note that it is the 2nd respondent who have issued the 1st letter contending that he has not been permitted to work with effect from 02.04.2005 and he also contended that he has put in 22 years of service and the same should be taken into account for calculating retiral dues payable to the 2nd respondent.

9. The Tribunal had also observed that from perusal of Ex.M3, income tax statement for the year 2004 to 2005, it is clear that the petitioner was in employment for a continuous period of one year between 2004-2005 and he has been receiving salary on par with other Drivers which would go to show that he was not a temporary employee. The learned Judge also relied upon the judgment of the Hon'ble Supreme Court reported in **2003(2) LLN 136** to



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substantiate the fact that it is for the Labour Court to examine whether the workmen has left his job or not or whether it is a termination where the Hon'ble Supreme Court has observed that it is for the management to prove issue of abandonment where the management failed to read such evidence, there cannot be a presumption that there has been an abandonment of employment by the employee.

10. In the light of the above observations, this Court is of the view that the Tribunal has extensively considered the evidence on record and passed the award. Therefore, this Court does not find any reason to interfere with the well considered award. Accordingly, this writ petition stands dismissed. Consequently, the connected miscellaneous petitions are closed. No costs.

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Index : Yes / No
Speaking/Non-speaking Order
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To

The Presiding Officer
Labour Court,
Salem.



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P.T.ASHA, J.

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