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WP.No.14297 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.10.2024

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

WP.No.14297 of 2014

and

MP.No.1 of 2014

The Managing Direction,
Metropolitan Transport Corporation Limited
Pallavan Salai,
Chennai -2.

...

Petitioner

/vs/

1.S.Thirumaran

2.The Presiding Officer,
II Additional Labour Court,
City Civil Annexure Buildings,
High Court Compound,
Chennai 600 014.

...

Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for records pertaining to the order dated 5.09.2012 made in I.D.No.568/2005 on the file of the 2nd respondent herein and quash the same and pass such further or other orders.

For Petitioner : Mr.C.Gowthamraj
For Respondents : Mr.S.Ayyadurai for R1
: R2- Court.



ORDER

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This writ petition has been filed to challenge the award of the II Additional Labour Court, Chennai, dated 05.09.2012, in I.D. No. 568/2005.

2. Mr.C.Gowthamraj, learned counsel for the petitioner submitted that the 1st respondent/workmen, who was working as a driver in the petitioner's corporation, has caused a fatal accident in which two persons died and two persons sustained grievous injuries. Despite the respondent being a daily wage temporary worker for 60 days, the Labour Court has proceeded to place reliance on the personal diary produced by the 1st respondent and concluded that the 1st respondent had produced material to show that he has worked for more than 240 days in a year and thereby given him the benefit of the permanent employee.

3. Mr.C.Gowthamraj further contended that the Labour Court concluded that the dismissal of the 1st respondent falls under Section 25F, and that the 1st respondent was not provided with the compensation mandated under Section 25F of the Act and held that the dismissal is illegal; even in the event of coming to the conclusion that the 1st respondent termination would fall under Section 25F of Industrial Dispute Act 1947, the appropriate remedy that can be available to the 1st respondent is only compensation; the Labour Court erred in granting the relief



of reinstatement with full back wages and continuity of service; therefore, the award is liable to be set aside.

4. The further submission of Mr.C.Gowthamraj is that the 1st respondent has filed an industrial dispute after 11 years as an afterthought and the delay and latches on the part of the 1st respondent have not been properly appreciated by the labour Court.

5. On perusal of the records, it is seen that the labour Court has relied on the personal dairy of the 1st respondent in order to believe that the 1st respondent had been in continuous employment in the petitioners corporation for more than 240 days in a year. Even though the petitioners management had denied the validity and admissibility of the above document, the respondent did not produce any document to show that the 1st respondent's services were for 60 days only.

6. So, in the absence of any document produced by the management, the Court cannot be found fault for relying on the hand diary produced by the 1st respondent in support of his contention that he has been employed for continuous service in the petitioner corporation for more than 240 days. Even the alleged accident for which the 1st respondent has been given with the criminal charges has been tried and the Criminal Court has also acquitted the first respondent.



7. Admittedly, the petitioner corporation did not initiate any disciplinary action on the allegation that the 1st respondent was grossly negligent. The 1st respondent/workman had been terminated from service without an enquiry to prove any negligence/misconduct on his part. It would have been sufficient for the Labour Court to hold that the termination of the 1st respondent is illegal, but the labour Court has gone to the extent of recording that the petitioner had violated the essential conditions under Section 25 F of the Act, and that the termination of the services of the 1st respondent would amount to retrenchment within the meaning of 2(oo) of Industrial Dispute Act 1947. Such an observation on the part of the Labour Court can only be taken up even if it is construed that the termination of the services of the 1st respondent is retrenchment. The essential conditions for retrenchment has not been complied, but the petitioner Corporation himself did not take up the plea that the 1st respondent has been retrenched. Even the submission of the petitioner Corporation before the labour Court was that the services of the 1st respondent was only on temporary basis and hence, the 1st respondent cannot claim the relief as though he was a permanent employee. The Labour Court has recorded a categorical finding that the 1st respondent was not a temporary casual labourer, but he is a regular employee as he had served for more than 240 days in a calender year. So the petitioner cannot read the observation of



WP.No.14297 of 2017

the labour Court in a piecemeal and claiming that the Labour Court ought to have awarded the 1st respondent only compensation attached to retrenchment.

8. As the 1st respondent was found to be a permanent employee, whose services cannot be terminated without following the due process, the labour Court has clearly given a finding that the dismissal of the 1st respondent was arbitrary and illegal and hence granted the relief of reinstatement by setting aside the order of dismissal.

9. So far as the argument on the point of delay is concerned, the point has not been raised before the labour Court and hence the workman cannot be expected to make an effective defense on the said point. Hence, I do not find any perversity or illegality in the findings and the award of the labour Court and it does not require any interference.

In the result, this Writ Petition stands **dismissed**. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

23.10.2024

Internet : Yes/No
Speaking: Non-Speaking
Neutral: Yes/No
jrs

R.N.MANJULA, J.



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jrs

To
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