



WEB COPY



W.P.No.267 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 23.11.2023

Pronounced On : 3.04.2024

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Writ Petition No.267 of 2014
and
M.P.No.1 of 2014

The Management,
Tamil Nadu State Transport Corporation Limited,
Villupuram ... Petitioner

Versus

1.The Presiding Officer,
Labour Court,
Cuddalore.

2.R.Solai ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari calling for the records of the order passed by the first respondent in Industrial Dispute in I.D.No.54 of 2009 dated 28.05.2013 and to quash the same as illegal.

For petitioner ... Mr.M.Aswin

ORDER



W.P.No.267 of 2014

WEB COPY

This writ petition is filed for the issuance of writ of certiorari, to quash the order passed by 1st respondent in Industrial Dispute in I.D.No.54 of 2009 dated 28.05.2013.

2. Brief facts of the case as per the affidavit of the petitioner are as follows:

The Petitioner herein is the General Manager and authorized person of the Petitioner's Tamil Nadu State Transport Corporation(hereinafter referred to as Petitioner Corporation), Villupuram. The 2nd respondent was employed as a casual conductor in Petitioner corporation on 05.04.2000. Since the 2nd respondent was irregular in attending duty, he was discharged from service on 10.11.2002. The 2nd respondent did not work for 240 days in a year or 480 days in 2 years. Therefore, he cannot be considered as a workman and shall not be entitled to permanent employment or continuity of service or any other backwages. The 2nd respondent was habitually absent without any prior intimation or sanction of leave and he never submitted leave application before the petitioner corporation.



W.P.No.267 of 2014

3. The 2nd respondent raised the Industrial dispute No.54 of 2009 after 5 and half years from the date of discharge before the 1st respondent.

The 1st respondent passed an impugned award with a direction to the petitioner corporation to reinstate the 2nd respondent with continuity of service as a conductor and if the petitioner corporation found the 2nd respondent as medically unfit, directed to provide an alternative employment to 2nd respondent and also directed to pay backwages from the date of application made to the conciliation officer. Having aggrieved by the award, this writ petition is filed by the petitioner corporation.

4. Heard Mr.Aswin, learned counsel for the petitioner. There is no representation on behalf of the second respondent.

5. The petitioner Corporation is challenging the Award passed by the labour Court on the ground that the labour Court has come to an erroneous conclusion that second respondent has worked for 240 days in a Calendar year and that the procedure contemplated under Section 25 F of the Industrial Disputes Act has not been followed.

6. It is submitted by the learned counsel for the petitioner that the



W.P.No.267 of 2014

Labour Court in Paragraph No.5 of the award, observed that the second respondent/workman has failed to produce any evidence to prove that he has worked for either 240 days in a calendar year or 480 days in 2 years. The learned counsel for the petitioner has also taken this court to the observation of the Tribunal in paragraph no. 9 of the award, wherein, it is mentioned that there is a delay of 5 years in approaching the Labour court. It is further submitted that the Labour court has not framed the issue as to whether the enquiry was conducted by following the principles of natural justice and if the Labour court found that enquiry is not proper, a direction could have been given to the petitioner Corporation to conduct the enquiry by way of producing evidence.

7. Section 25 F of the Industrial Disputes Act would apply in case if the second respondent makes out a case that he was in continuous service for a period of one year. Therefore, in order to consider as to whether the petitioner Management has followed the procedure under 25 A of the Industrial Disputes Act before discharging the second respondent, it is required to be considered whether there is a material before the labour Court to conclude that the second respondent workman has worked for 240 days in a Calendar year.



W.P.No.267 of 2014

WEB COPY

8. This Court in **THE SPECIAL OFFICER, SALEM COOPERATIVE SUGAR MILLS Vs. THE DEPUTY CHIEF INSPECTOR OF FACTORIES**, reported in 2012 (I) CLR 86, wherein it is held as follows:-

33. With reference to the second contention regarding burden of proof of establishing that the workmen had worked 480 days of continuous service within 24 calendar months, it is not as if the obligation is only with the workmen in the case of this nature. The Sugar mill is the factory and the management must have produced the statutory registers showing the number of days worked by the workmen. On the contrary, there is no denial of number of days set out in the annexure to the claim petition filed by the union. The authority also held that some of the breaks were given deliberately with a view to defeat their right of



WEB COPY



W.P.No.267 of 2014

permanency. Even on the question of burden of proof, the Supreme Court in Director, Fisheries Terminal Department's case (cited supra) in paragraphs 16 and 17 had observed as follows:

16. This Court in R.M. Yellatti v. Asstt. Executive Engineer² has observed: (SCC p. 116, para 17)

17However, applying general principles and on reading the [aforesaid] judgments, we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily-waged earners, there will be no



WEB COPY



W.P.No.267 of 2014

letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (the claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case.

17 . Applying the principles laid down in the above case by this Court, the evidence produced by the appellant has not been consistent. The appellant claims that the respondent did not work for 240 days. The respondent was a workman hired on a daily-wage basis. So it is obvious, as this Court pointed out in the above case that he would have difficulty in having access to all the official documents, muster rolls, etc. in



WEB COPY



W.P.No.267 of 2014

connection with his service. He has come forward and deposed, so in our opinion the burden of proof shifts to the appellant employer to prove that he did not complete 240 days of service in the requisite period to constitute continuous service.

34 . A mere denial without producing necessary documents will not enable the management to contend regarding the onus of proof. In the present case, the onus of proof that the workmen had worked so as to qualify under Section 3 has been completely discharged. Hence on the said finding of fact, no interference is called for.”

9. This Court in ***W.P.No.39992 of 2005 (P.PACHAMUTHU Vs. 1. THE GENERAL MANAGER, TAMIL NADU STATE TRANSPORT CORPORATION (SALEM DIVISION I) LIMITED, SALEM AND 2 OTHERS***, at paragraph Nos.16 and 17, has observed as follows:-



WEB COPY



W.P.No.267 of 2014

“16. In the case of Manager, Reserve Bank of India vs. S.Mani reported in 2005 (5) SCC 100, Three Judges of the Apex Court has held that, the initial burden is on the workmen to show that, they had completed 240 days of service and once, they have discharged the initial burden, it is for the employer to establish that, the case of the workmen is incorrect. For better appreciation, relevant portion of the said judgment is extracted hereunder:

“28. The initial burden of proof was on the workmen to show that they had completed 240 days of service. The Tribunal did not consider the question from that angle. It held that the burden of proof was upon the appellant on the premise that they have failed



WEB COPY



W.P.No.267 of 2014

to prove their plea of abandonment of service stating:

“It is admitted case of the parties that all the first parties under the references CRs Nos. 1 to 11 of 1992 have been appointed by the second party asticca mazdoors. As per the first parties, they had worked continuously from April 1980 to December 1982. But the second party had denied the above said claim of continuous service of the first parties on the ground that the first parties has not been appointed as regular workmen but they were working only as temporary part-time workers as ticca mazdoor and



WEB COPY



W.P.No.267 of 2014

their services were required whenever necessity arose that too on the leave vacancies of regular employees. But as strongly contended by the counsel for the first party, since the second party had denied the above said claim of continuous period of service, it is for the second party to prove through the records available with them as the relevant records could be available only with the second party.”

17. In yet another decision in the case of **Ranjit Sagar Dam v. Sham Lal** reported in (2006) 9 SCC 124, the Apex Court has held that, initial burden of proof that, the workman has rendered 240 days of service in a year, is on him. Once evidence is produced, the burden shifts on



WEB COPY



W.P.No.267 of 2014

the Management. Relevant portion of the said judgment reads thus:

“2. In support of the appeal, the learned counsel for the appellants submitted that the High Court has clearly lost sight of the fact that the claim was highly belated. No finding was even recorded by the Labour Court on this plea which was specifically raised. Further, the Labour Court had wrongly held that it was for the employer to prove that the workman concerned had not worked for 240 days or more in the year immediately preceding the date of termination.

4. In a large number of cases the position of law relating to the onus to be discharged has been delineated. In *Range Forest Officer v. S.T. Hadimani* [(2002) 3 SCC 25 : 2002 SCC (L&S) 367] it was held as follows: (SCC p. 26, paras 2-3)



WEB COPY



W.P.No.267 of 2014

“2. In the instant case, dispute was referred to the Labour Court that the respondent had worked for 240 days and his service had been terminated without paying him any retrenchment compensation. The appellant herein did not accept this and contended that the respondent had not worked for 240 days. The Tribunal vide its award dated 10-8-1998 came to the conclusion that the service had been terminated without giving retrenchment compensation. In arriving at the conclusion that the respondent had worked for 240 days, the Tribunal stated that the burden was on the management to show that there was justification in termination of the service and that the affidavit of the workman was sufficient to prove that he had worked for 240 days in a year.

1. For the view we are taking, it is not necessary to go into the question as to whether the appellant is an ‘industry’ or not, though reliance is placed on the



WEB COPY



W.P.No.267 of 2014

decision of this Court in *State of Gujarat v. Pratamsingh Narsinh Parmar* [(2001) 9 SCC 713 : 2002 SCC (L&S) 269] . In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in



WEB COPY



W.P.No.267 of 2014

a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. However, Mr.Hegde appearing for the Department states that the State is really interested in getting the law settled and the respondent be given an employment on compassionate grounds on the same terms as he was allegedly engaged prior to his termination, within two months from today.”

18.In a similar circumstance, the Karnataka High Court in the case of **Madura Sugars Staff Union vs. Madura Sugar Mills** reported in **2002 (3) LLN 465**, has held that, even though the burden is on the workman, it is the Management who has the muster-roll of the workman to produce the same.”



W.P.No.267 of 2014

WEB COPY

10. Admittedly, the second respondent has not filed any document to show that he has worked for 240 days. The second respondent alone was examined before the labour Court as W.W.1. Except Conciliation Report, the second respondent has not filed any supporting document to make out a case for 240 days. The second respondent in case, if he has worked for 240 days, must submit certain records like pay slip that he has taken for every month or pay slip to show that he has worked for 240 days either continuously or with brakes. It is the case of the second respondent that he filed an affidavit in lieu of his chief examination mentioning the details of the persons who worked along with him during the said period of 240 days. He has given the details of bus numbers, routes and other details.

11. The petitioner Corporation has taken a specific plea before the labour Court that the second respondent workman has not worked for 240 days. The second respondent has not examined any person to whom he worked with 240 days to show that during that period, the second respondent has worked in the petitioner Corporation along with them.



W.P.No.267 of 2014

WEB COPY

12. It is the contention of the petitioner Corporation that the second respondent has not worked for 240 days. The Corporation should have not filed the records to show that the second respondent has worked for few days but not 240 days.

13. Further, the first respondent labour Court has also rightly observed erroneously that on account of giving the details by the second respondent workman of the bus routes and names of the workers to whom he has allegedly worked with, burden of the second respondent has been discharged and shifted to the petitioner Corporation to disprove. Further, the labour Court has observed that no document was filed by the petitioner Corporation to prove that respondent workman has not worked for 240 days. The petitioner Corporation should have muster rolls of the workman.

14. On considering the above, it is clear that the labour Court has come to a proper conclusion that the second respondent has made out a case that he worked for 240 days.



W.P.No.267 of 2014

15. Section 25 F of the Industrial Disputes Act applies only in case if the second respondent found to be a workman who continuously worked for a period of one year. The Labour Court, after holding that the second respondent has worked for 240 days, has rightly observed that Section 25 F of the Industrial Disputes Act, applies and since the procedure of giving one month notice or salary in lieu of one month notice has not been followed “retrenchment of the second respondent is erroneous”.

16. Further, more importantly, the second respondent herein has approached the labour Court more than five years for his discharge. The petitioner Corporation has taken objection for considering the Industrial Dispute by the Labour Court on the ground that the second respondent has committed enormous delay, thereby, the Industrial Dispute required to be dismissed on the ground of delay and laches.

17. In the impugned order, the labour Court has observed that there is no limitation for raising Industrial Dispute thereby, the delay cannot be the basis to dismiss. It is to be noted that even though there is no limitation for raising the Industrial Dispute, it does not mean that the second respondent can approach the labour Court at any time. Law is



W.P.No.267 of 2014

very much settled in respect of this issue. In all the cases, where there is no limitation specifically mentioned, aggrieved person is expected to approach the appropriate forum within a reasonable time. What is reasonable time, depends upon the circumstances of each and every case. In the case of the second respondent that subsequent to his discharge by the petitioner from the Corporation, the second respondent was prevented by certain unavoidable circumstances thereby delay is caused, but the said explanation of the second respondent is not convincing. This Court, cannot appreciate the observation and finding of the labour Court that delay will not affect the case of the second respondent.

18. In view of the above, order passed by the labour Court is perverse on the ground of delay and laches and therefore, it is a fit case where this Court can interfere and set aside the same.

19. In the result, this writ petition is allowed and the order passed by the Labour Court, Cuddalore, in I.D.No.54 of 2009 is set aside. No costs.

3/4/2024



W.P.No.267 of 2014

Index: Yes/No

Neutral Citation: Yes/No

To

- 1.The Presiding Officer,
Labour Court,
Cuddalore.



WEB COPY



W.P.No.267 of 2014

Dr.D.NAGARJUN,J

jai/mvs.

Pre-delivery order made in
W.P.No.267 of 2014

3/4/2024