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W.P.No.32169 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2024

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THE HONOURABLE MS. JUSTICE R.N. MANJULA

W.P.No.32169 of 2023
and W.M.P.No.31767 of 2023

MBD Bus Services Management,
Represented by its Sole Proprietor,
S.Y.Anver Sheriff,
S/o. S.Yacub Sheriff,
Having office at:
Opposite to Arcot Bus Stand,
Arcot, Ranipet District - 632 503.

... Petitioner

Vs.

M. Sundaram

... Respondent

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the Additional Labour Court, Vellore, in I.D.No.20 of 2020 (CNR No.TNVL 02-000084-2020) dated 27.02.2023, and quash the same as arbitrary and illegal and direct the respondent not to be reinstated in service and reduction of back wages as the oral termination held by the management is right.



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For Petitioner : Mr.D.Ferdinand

For Respondent : Mr.S.T.Varadarajalu

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ORDER

The petitioner has filed this Writ Petition challenging the award passed by the learned Presiding Officer of the Additional Labour Court, Vellore, dated 27.02.2023 made in I.D.No.20 of 2020.

2. By virtue of the above award, the Labour Court has set aside the Oral Termination Order of the petitioner dated 18.02.2020 and directed the Management to reinstate the petitioner into service with continuity of service, backwages and all other benefits. Aggrieved over that, the Management filed this Writ Petition challenging the award on two grounds. It is submitted by the learned counsel for the petitioner that the workman did not establish the fact that he is a regular employee of the petitioner by producing the documents to show that he was continuously in service for 240 days in a given year and hence, he did not have a locus to maintain the Industrial Dispute before the Labour Court. Further, it is submitted that without any fundamental parameters, the learned Presiding Officer has proceeded to award backwages and hence, the award is liable to be set aside.



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3. The learned counsel for the respondent submitted that even according to the counter filed before the Labour Court, the respondent is admitted to be an employee of the petitioner and he was drawing around salary of Rs.9,5000/- per month and hence, the award of the Labour Court stands good. Even though in the counter before the Labour Court, it is admitted that the respondent was working as a Conductor in the Company, the learned counsel for the petitioner tried to give further explanation by stating that the respondent is not in continuous employment and he would report to the Company as and when required.

4. Reliance was placed on the judgment of the Hon'ble Supreme Court reported in **(2002) 3 SCC 25** in the case of ***Range Forest Officer Vs. S.T. Hadimani*** in support of the contention of the petitioner that the onus lies upon the workman to show that he was working for more than 240 days in the year preceding his termination and that the respondent did not discharge the above burden. On perusal of the said judgment, it appears that it is the case involving retrenchment compensation and the workman is called upon to prove before the Court that his entitlement to compensation by virtue of continuous 240 days of service preceding the year of his termination. But, in this case, the respondent has filed the Industrial Dispute for reinstatement by claiming that he is the



regular employee of the petitioner Management and that he was illegally terminated orally. When the respondent could establish the *prima facie* materials to show that he is very much an employee of the petitioner, it is for the petitioner to prove the contrary. In this regard, it is relevant to reproduce paragraph No.5 of the petitioner's counter, which reads as follows:-

5. I submit that the petitioner herein is not entitled wages as contemplated under S.17 of the Industrial Disputes Act, 1947. At the outset, I would like to submit that the averments made in the Affidavit filed by the petitioner/respondent is factually incorrect and contrary to the documents. Further, as already stated in my Writ Affidavit, there has never been an Employer - Employee relationship between the respondent and the petitioner herein. Moreover, Industrial Disputes Act, 1947 will not be applicable as there are only 6 workers working under the respondent. Moreover, the Petitioner was not an employee of the respondent herein and would work on alternate days in a month on commission basis. The respondent would work for about 10 days to 15 days maximum in a month for the petitioner and was entitled to a commission of Rs.5/- for every Rs.100/- in fares collected from the passengers in the bus for the that day. The commission paid to the petitioner herein was dependent on the collection amount and was not fixed at any point of time. The Petitioner herein on average would make about Rs.5000 to 9000 per month and the same would be proportionate to the revenue of the bus. The petitioner is not even under the control and supervision of the respondent Management.



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5. When the initial burden of the respondent is discharged by virtue of the above materials available before the Court, then the burden would shift upon the petitioner to prove that the respondent is not a regular employee, but, he is only a casual labourer as stated.

6. The very allegation against the respondent is that he did not pay the entire collection amount of the fare collected by him and thereby misappropriated the amount. The allegation on the above fact is in a generalised manner and it is not specific about the date and quantum of amount misappropriated.

7. The learned Presiding Officer has extracted the above evidence of Management, wherein he has stated that no record has been produced to show that the respondent has remitted the less amount than what he had collected and in this regard, no complaint has been given against him.

8. The contention of the petitioner Management is that the respondent was in the habit of remitting less amount of collection than what was collected and that was the reason why the petitioner had chosen to terminate the service of the respondent. In the absence of any material to



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substantiate that the respondent had remitted less amount than what was collected, the petitioner would be left without any reason for dismissing the respondent. In that juncture, the motive attributed by the respondent to terminate him can also assume significance. In the absence of any material to show that the respondent is not in the regular service of the petitioner even though he was admitted as an employee of the petitioner and also in the absence of any material to show that he was in the habit of remitting less than the amount collected, it is right on the part of the Labour Court to arrive at a conclusion that the termination of the respondent is illegal. Admittedly, the termination could not be proceeded with the charges or enquiry that will also add more strength to orders so passed by the Labour Judge.

9. Coming to the relief of awarding backwages, the arguments advanced before the Court by the learned counsel for the petitioner is that without any evidence as to the wages last drawn by the respondent, the above relief has been granted. So far as this fact is concerned, the exercise of the Court has become simple in view of the admission of the petitioner himself in his counter stating that the respondent would draw a monthly wages of around Rs.9,500/-. Though the amount of Rs.9,500/- is not a fixed wage, the above statement of the petitioner would only confirm that the above wages of



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Rs.9,500/- would be the approximate wage payable to the respondent each month. So again, it is wrong on the part of the petitioner to raise the contention that the learned trial Judge passed the award without even having any material as to last drawn wages of the respondent per month.

10. Since the materials available on record and the learned trial Judge has properly appreciated the merits of the matter and arrived at a conclusion, I do not find any discrepancy in the order passed by the learned trial Judge. Hence, this Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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R.N. MANJULA, J.

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