



WP(MD)No.8887 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 05.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.8887 of 2016
and
W.M.P.(MD)No.7092 of 2016

The Management,
Hari & Co.,
No.4/29E, Madurai Bye Pass Road,
Tuticorin – 628 006,
Tuticorin District.

... Petitioner

versus

1. The Presiding Officer,
Labour Court,
Tirunelveli.

2. R.Udayakumar

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order dated 17.03.2016 passed by the 1st respondent in I.D.No.41 of 2015, quash the same and declare that the 2nd respondent has settled the accounts and left the employment of the petitioner.

For Petitioner : Mr.S.Sethuraman
For R1 : Court
For R2 : Mr.D.Saravanan



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ORDER

The petitioner has filed this writ petition challenging the award dated 17.03.2016, passed by the Labour Court, Tirunelveli, in I.D.No. 41 of 2015.

2. The petitioner is the Management, running a Transport Company under the name and style of “Hari & Co.” dealing with heavy vehicles, containers and lorries from Tuticorin port to different places.

3. The second respondent/workman claims that he was working in the petitioner Management from the month of October 1992 and he was paid a salary of Rs.8000/-p.m., upto 17.07.2013. According to the second respondent, he served in the petitioner Company for 21 years, however, he was terminated from service without any notice. Therefore, the second respondent/workman has raised an Industrial Dispute under Section 2(A)(2) of the Industrial Disputes Act, before the Labour Court, Tuticorin, in I.D.No.41 of 2015.



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4. The petitioner has contested the industrial dispute that the second respondent/workman was working as a temporary employee.

The petitioner has also taken another ground that the second respondent/workman has picked up a quarrel with the superior officer at Chennai and he has also misappropriated diesel from the vehicles. However, the petitioner Management has not conducted any enquiry on the same as against the second respondent/workman.

5. The Presiding Officer, Labour Court, Tirunelveli, has discussed the issue in detail and passed an award on 17.03.2016, directing the Management to reinstate the second respondent/workman and also to pay Rs.8000/- p.m. as his salary from the date of denial of employment till the second respondent is reinstated with continuity of service and attended benefits. Challenging the same, the petitioner Management has filed this writ petition before this Court and the same is pending for the past eight years. Pending this writ petition, at the request of the petitioner Management and the second respondent/workman, the matter was also referred to the Mediation Centre, however, the mediation failed.



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WEB COPY 6. The petitioner Management has filed this writ petition on the grounds that the second respondent/workman was working as a temporary employee; the documents produced by the second respondent are the documents while he was working as a temporary employee; he has not reported for duty regularly and he was not terminated as claimed by him.

7. The learned counsel appearing for the petitioner submits that the question of reinstatement would arise only when the employee had continuously worked in the establishment. But, in this case, the second respondent/workman has not reported for duty regularly and therefore, he is not entitled for backwages. The learned counsel has also pointed out that admittedly, the second respondent is a Driver having a heavy vehicle licence and there is a huge demand for drivers. Therefore, he was gainfully employed elsewhere. However, the Presiding Officer of the Labour Court, without considering the same and also the fact that the second respondent/workman was not regular, has passed the award directing the petitioner Management, to reinstate the second



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respondent/workman into service with backwages from the year 2013.

WEB COPY The learned counsel further submits that the second respondent/workman has attained the age of superannuation and therefore, he is not entitled for reinstatement. The learned counsel, by relying on a letter written by the second respondent dated 07.04.2024, submits that the second respondent was working as a driver for the vehicle bearing Reg.No.TN04K 1247 and he has also paid a sum of Rs.500/- as fine amount, for damaging the pumper of the vehicle. It shows that the second respondent is working as a driver in another transport company and he is in gainful employment.

8. The learned counsel appearing for the second respondent/workman submits that the second respondent was working in the petitioner Management, from the year 1992 to 2013 continuously, however, he was terminated from service without any notice and without assigning any valid reasons. Therefore, it is a clear violation of principles of natural justice. The Labour Court, after discussing the matter in detail, passed the award. Therefore, there is no reason to interfere with the award.



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WEB COPY 9. This Court considered the rival submissions made.

10. The petitioner management has taken a stand that the second respondent/workman was only a temporary employee. They have also taken other grounds that the second respondent/workman has picked up quarrel with the superior officer at Chennai and he has misappropriated diesel from the vehicles. The fact remains that for the alleged insubordination and misappropriation of diesel from the vehicles, the petitioner Management has not initiated any proceedings against the second respondent/workman. Both the reasons assigned by the petitioner Management are contrary to each other. Even if he is a temporary employee, when he was terminated on certain allegation, the Management ought to have conducted an enquiry and provided an opportunity before terminating the second respondent. Therefore, this Court is not inclined to interfere with the impugned award.

11. The learned counsel for the petitioner Management claims that the petitioner has attained the age of superannuation and now, he is



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working as a driver in another transport company and he is in gainful employment. However, the petitioner Management has not filed any proof to substantiate the same.

12. Accordingly, this writ petition is dismissed with a direction to the petitioner Management to pay the backwages and all other monetary benefits to the second respondent from the date of denial of employment till the date of his superannuation. The backwages and all other monetary benefits shall be paid in five equal monthly installments, commencing from September 2024. No costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No
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