

WP.(MD)No.17660 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.09.2025

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CORAM :

THE HON`BLE MR.JUSTICE B.PUGALENDHI

WP.(MD)No.17660 of 2018
and
WMP.(MD)No.15542 of 2018

K.Ratheesh

... Petitioner

Vs.

1.The General Manager
State Express Transport Corporation,
Pallavan Salai, Chennai-600 002.

2.The Branch Manger,
State Express Transport Corporation,
Nagercoil-629 001.
Kanyakumari District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned award passed by the Labour Court, Tirunelveli, Tirunelveli District in ID.No.9 of 2017 dated 31.05.2017, quash the same and further direct the respondents herein to forthwith reinstate the petitioner in the second respondent Corporation with back wages from the date of retrenchment viz., 09.02.2016.

For Petitioner

: Mr.P.Muthuvel,
for M/S.Isaac Chambers



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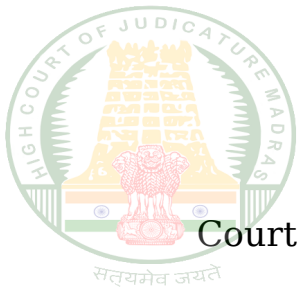
For Respondents : Mr.K.Sathiya Singh

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ORDER

The petitioner herein raised an industrial dispute that he was engaged as daily wage worker in the second respondent Corporation, on 28.03.2015 and he was permitted to work as Electrician and also as Liner. He has continuously worked for more than 240 days and therefore, he has filed necessary application before the concerned Officer under Section 2(A) of the Industrial Dispute Act seeking employment in the second respondent Corporation. The Officer referred the matter to the Tribunal, but the Tribunal has rejected the request of the petitioner in ID.No.9 of 2017 dated 31.05.2017 and the same is challenged in this writ petition.

2.The learned counsel appearing for the petitioner submits that the petitioner was engaged as Liner in the second respondent Corporation, on 28.03.2015 and he has continuously worked for more than 240 days. The petitioner has also produced seven documents. However, without considering the same, the Labour



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Court has rejected the claim of the petitioner. The learned counsel for the petitioner by relying on the award passed by the Labour Court submits that the Labour Court has rejected the claim of the petitioner that he has failed to produce sufficient materials before the Court to substantiate that he has continuously worked for more than 240 days. He further submits that onus is on the Department and the second respondent has to prove that the petitioner has not continuously worked for more than 240 days. However, the Labour Court has rejected the claim of the petitioner by shifting the onus on the petitioner that he has to prove that he has continuously worked for more than 240 days. In this regard, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court reported in (2010) 1 SCC 47, Director, Fisheries Terminal Department Vs. Bhikubhai Meghajibhai Chavda.

3.The learned counsel appearing for the respondents submits that the petitioner was never engaged as a daily wager. Payments if any from the second respondent Corporation are paid only through Bank. There is no proof that the petitioner received salary from the second respondent Corporation. There is no appointment order and there is no material that he has



continuously worked for more than 240 days. Further, he submits that the petitioner was engaged as Liner on contract basis along with another and they executed work for some time on contract basis and also on agreement. Therefore, the petitioner is not entitled for the relief under the Conferment of Permanent Status Act.

4.This Court has considered the submissions made on either side and perused the available records.

5.The petitioner claims that he was initially appointed as Liner in the Depot of the second respondent Corporation, on 28.03.2015 and thereafter, he was engaged as Electrician with effect from 09.11.2015. The Electrician and Liner posts were fell vacant on 04.02.2016 and therefore, the petitioner has made a request to regularize his service in the existing vacancy and has also filed an application before the concerned Officer/Assistant Commissioner, Labour Court, Nagercoil under Section 2(A) of the Industrial Dispute Act seeking employment in the second respondent corporation. The matter was referred to the Industrial Tribunal. The Industrial Tribunal has accepted the case of the respondent Corporation that the petitioner was engaged as a



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contract worker as Liner. The respondent Corporation has taken a stand that a tender has been floated for repairing the seat covers and three persons have been engaged on contract basis, namely Arul Stephen, Ratheesh and Anish. According to the learned counsel for the respondents the petitioner herein is the brother of Arul Stephen.

6. Admittedly, the petitioner has been engaged by the second respondent Corporation as Liner. The petitioner has marked Ex.P. 7/daily work report, which reveals that he has worked from 28.03.2015 and certain works have been carried out in Nagercoil Depot and the Management failed to substantiate that the petitioner has been engaged on contract basis. Neither invitation for tender nor agreement was placed before the Labour Court. The Hon'ble Supreme Court, in **(2010) 1 SCC 47, Director, Fisheries Terminal Department Vs. Bhikubhai Meghajibhai Chavda** has held as under:-

16. This court in the case of R.M. Yellatty vs. Assistant Executive Engineer [(2006) 1 SCC 106], has observed :

"17. However, 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



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show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping up 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 letter of appointment of termination. There will also be no receipt of 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 of 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 appellants has not been consistent. The appellants claim 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 connection with his service. He has come forward and deposed, so in our opinion the burden of proof shifts to the employer/appellants to prove that he did not complete 240 days of service in the requisite period to constitute continuous service.



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7. In view of the above decision of the Hon'ble Supreme Court, the impugned award passed by the Labour Court, Tirunelveli, Tirunelveli District in ID.No.9 of 2017 dated 31.05.2017 is set aside. The respondents are directed to reinstate the petitioner in the second respondent Corporation with back wages from the date of retrenchment viz., 09.02.2016. Accordingly, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

18.09.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes
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To

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