

(2000) 08 MAD CK 0072

In the Madras High Court

Case No : Writ Petition No. 9328 of 1993

Nazir Ahmed

APPELLANT

Vs

A. Ramachandran and Another

RESPONDENT

Date of Decision : 28-08-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 17B, 2

Citation : (2000) 3 LLJ 331

Hon'ble Judges : Y. Venkatachalam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Y. Venkatachalam, J.—Invoking Article 226 of the Constitution of India, the petitioner herein has filed the present writ petition, seeking for a writ of Certiorari to call for the records relating to I.D.No. 46 of 1986 on the file of the Principal Labour Court, Madurai dated March 12, 1992 and to quash the same.

2. In support of the writ petition, the petitioner herein has filed an affidavit wherein he has narrated all the facts and circumstances that forced him to file the present writ petition and requested this Court to allow the writ petition as prayed for, per contra, on behalf of the respondents a counter affidavit has been filed by the first respondent and inter alia contended that the order impugned herein is in accordance with law and that there is no merit in the writ petition and that therefore the same has to be dismissed.

3. Heard the arguments of the learned counsel appearing for the respective parties during the course of their arguments. I have perused the contents of the affidavit and the counter affidavit together with all other relevant material documents available on record in the form of typed set of papers. I have also taken into consideration the various points raised by the learned counsel appearing for the respective parties during the course of their arguments.

4. In the above facts and circumstances of the case, the only point that arises for consideration is as to whether there are any valid grounds to allow this writ petition or not.

5. The brief facts of the case of the petitioner as seen from the affidavit are as follows: The petitioner herein is the partner of M. Nellai Motor Works and the first respondent raised an industrial dispute which was referred to by the Government. The 1st respondent contended that he was working as a Mechanic under the petitioner, that he was earning Rs. 350 per month, that he was working for 6 years 4 months and 25 days, that he was removed from service on and from May 16, 1985 and that he was entitled to reinstatement with back wages. The petitioner contended that the 1st respondent was never a workman under the petitioner, that he was not removed from service since he never worked under the petitioner and that the 1st respondent is not entitled either to reinstatement or back wage and that he was not entitled to any relief. The 2nd respondent framed 3 points for discussion and had erroneously held that the 1st respondent was a workman under the petitioner, that he is entitled to be reinstated with back wages. Against this erroneous judgment and order, the petitioner is filing this writ since the petitioner has no effective or efficacious remedy except under Article 226 of the Constitution of India.

6. Challenging the impugned order, the petitioner herein contends that the 2nd respondent has not properly appreciated the question of law and facts in the case, that the 1st respondent relied upon Ex.W-1 which is a certificate. This certificate says that the 1st respondent was working as a mechanic from January 1, 1979 to December 31, 1983, and if the 1st respondent was continuing to work after January 31, 1983, there is no necessity for him to obtain such a certificate. Further according to them, the 2nd respondent did not properly construe the documents produced by the petitioner, that the said certificate was issued to the 1st respondent when he wanted to go abroad for a job, and since he was the friend of the father of the petitioner, the certificate now relied upon by the first respondent was never made mention of in the petition. The certificate given to help the 1st respondent has been sought to be misused by the first respondent. This petitioner produced the wage register and the attendance register which have been scrutinised by Government Officials, the name of the first respondent does not find a place in those registers. The 2nd respondent ought to have given some weight to these documents and ought to have held that the first respondent is not a workman under the petitioner. These Government records cannot be created for the purpose of this case and that therefore these documents ought to have been relied upon to reject the claim of the 1st respondent. Further according to them the 2nd respondent ought not to have relied upon the W.W.2 because he was removed from service by the petitioner. His evidence is a motivated one and ought to have been rejected. Further according to them, there had been no proper appreciation of evidence by the 2nd respondent and even minor contradiction and conclusions have been arrived at, and also that the documents produced by the petitioners were kept in the

ordinary course of business and in discharge of the duties contemplated under relevant labour law. Hence these documents are very relevant documents whose genuineness and bona fide cannot be suspected and questioned. The 2nd respondent had drawn unnecessary adverse inference against the petitioner because of non-sending of reply notice to Exs.A-1 and A-4. The 2nd respondent ought to have held that the first respondent who is the petitioner in the main O.P. is bound to prove his case and then succeed. He cannot rely upon the weakness if any on the part of the petitioner. They also contend that it is settled law that the weakness in the case of the petitioner even if, cannot be taken advantage of by the 1st respondent. He ought to have proved his case and not take advantage of such weakness even if true.

7. Per contra, in the counter affidavit inter alia it is contended by the respondents that the first respondent herein joined the services of the petitioner management on January 1, 1979 as mechanic on a monthly salary of Rs. 350 per month. But all of a sudden he was removed from service of the writ petitioner by its order dated May 26, 1985 without any prior notice or enquiry. The petitioner herein being workman u/s 2(s) of the Industrial Disputes Act, filed an industrial dispute challenging his termination order dated May 26, 1985 and claiming reinstatement with back wages and all attendant benefits from May 26, 1985 and the same was taken on the file of the second respondent as I.D.No. 46 of 1986. According to the 1st respondent the second respondent after holding fair and reasonable enquiry set aside the dismissal order dated May 26, 1985 of the writ petitioner and awarded reinstatement with back wages. According to the 1st respondent, according to Section 17B of the Industrial Disputes Act, 1947, "where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance that the 1st respondent was working as a mechanic from January 1, 1979 to December 31, 1983. That being so it is the case of the management that if the 1st respondent was continuing to work after December 31, 1983, there is no necessity for him to obtain such a certificate. It is also the categoric contention of the management that the 2nd respondent Labour Court did not properly construe the documents produced by the petitioner. It is their case that the said certificate was issued to the 1st respondent workman when he wanted to go abroad for a job and since he was the friend of the father of the petitioner, the certificate was given to help the 1st respondent and that has been misused by the first respondent. It is also significant to note that the petitioner management produced the wage register and the attendance registers which have been scrutinised by Government Officials and the name of the first respondent workman does not find a place in those registers. It is the strong contention of the petitioner herein the 2nd respondent ought to have given some weight to these documents and ought to have held that the first respondent is

not a workman under the petitioner. It is significant to note that these Government records cannot be created for the purpose of this case. Therefore it is rightly contended by the petitioner that these documents ought to have been relied upon to reject the claim of the 1st respondent. So also it is contended by the petitioner management that the 2nd respondent ought not to have relied upon the W.W.2 because he was removed from service by the petitioner and that therefore his evidence is a motivated one and ought to have been rejected. I see every force in the said contention also. It is also contended by the petitioner that thus there had been no proper appreciation of evidence by the 2nd respondent and that the documents produced by the petitioners were kept in the ordinary course of business and in discharge of the duties contemplated under relevant labour law. Therefore, it is strongly contended by the petitioner that these documents are very relevant documents whose genuineness and bona fide cannot be suspected and questioned. I see every force in the above contention also. It is also their case that it is settled law that the weakness in the case of the petitioner even if, cannot be taken advantage of by the 1st respondent. But all these things have not been considered by the Labour Court in the impugned order herein. A perusal of the impugned order clearly establishes the above facts. Therefore it is very clear in this case that the 2nd respondent has not properly appreciated the question of law and facts in this case.

8. Therefore, for all the aforesaid reasons and in the facts and circumstances of the case and also in view of my above discussions with regard to the various aspects of this case, I am of the clear view that the petitioner herein has clearly made out a case in his favour that the Labour Court, the 2nd respondent herein has not properly appreciated the question of law and facts in this case and that therefore the order impugned herein has to be quashed as prayed for. Thus the writ petition succeeds and the same has to be allowed as prayed for.

9. In the result, the writ petition is allowed as prayed for. No costs.