

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 11.04.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.353 of 2010 & 34302 of 2012
and
WMP No.6150 of 2016
in
W.P.No.34302 of 2012

Tamil Nadu State Transport
Corporation (Salem) Ltd.,
rep. by its Managing Director
No.12, Ramakrishna Road
Salem - 636 007.

...Petitioner in W.P.353/2010

Versus

The Presiding Officer
Labour Court, Salem.

...1st respondent in both W.Ps.

M.Soundirarajan

...Petitioner in W.P.34302/2012 &
2nd respondent in W.P.No.353/2010

The Management,
Tamilnadu State Transport Corporation(Salem) Ltd.,
12, Ramakrishna Salai, Salem 636 007.

...2nd respondent in W.P.34302/2012

Prayer in W.P.No.353 of 2010: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records of the first respondent relating to award dated 16.09.2008 in I.D.No.262/2005 and quash the same.

Prayer in W.P.No.34302 of 2012: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records connected with the award dated 16.09.2008, passed by the first respondent in I.D.No.262 of 2005, in so far as it relates to the award of "break of service from the date of dismissal till the petitioner is reinstated and the petitioner is not entitled for backwages, promotion and other monetary benefits. His future increment will be accrued after completion of one year in service after reinstatement in the regular due date connecting the previous increment before 12.05.2000", quash the same and also direct the second respondent to grant the petitioner continuity of service, back wages, promotion and all other attendant incidental benefits.

For Petitioner : Mr.P.Paramasivadoss
(in W.P.No.353/2010 &
2nd respondent (in
W.P.No.34302/2012)

For Petitioner : Mrs.S.Girija
(in W.P.No.34302/2012 &
2nd respondent (in
W.P.No.353/2010)

C O M M O N O R D E R

Heard Mr.P.Paramasivadoss, learned counsel appearing for the Tamil Nadu State Transport Corporation and Mrs.S.Girija, learned counsel appearing for the workman and with the consent of the learned counsel on either side, the Writ Petitions are taken up for final disposal.

2.Both these Writ Petitions have been filed, challenging the Award passed by the Labour Court, Salem in I.D.No. 262 of 2005, dated 16.09.2008. W.P.No.353 of 2010, has been filed by the Management, challenging the Award in its entirety and W.P.No. 34302 of 2012, has been filed by the workman challenging that portion of the Award which denies continuity of service, back wages, promotion, monetary benefits, future increments, etc.

3.The Labour Court by the impugned Award set aside the order of dismissal passed against the workman dated 12.05.2000, directed reinstatement with break of service from the date of dismissal till the workman is reinstated, with a further direction that the workman is not entitled for back wages, promotion and other monetary benefits and his future increment will accrue, after completion of one year in service, after reinstatement in the regular due date connecting the previous increment before 12.05.2000.

4.Thus, in effect, the Labour Court set aside the order of dismissal, directed the workman to be absorbed as a fresh entrant. In the facts and circumstances of the case and considering the evidence placed before the Labour Court, it has to be seen as to whether the approach of the Labour Court was justified and whether the Award was proper and legal.

5.The respondent-workman was appointed as a Driver in the petitioner - Management and had remained absent for two spells i.e. from 28.09.1999 to 30.09.1999 and from 06.10.1999 to 27.10.1999. He was issued with two charge memos on the ground that his absence were unauthorised as he had absented himself from duty without prior permission. The charge memos were sent to the workman by Registered Post, but it was returned unserved. In order to give an opportunity to the workman,

domestic enquiry was ordered and a notice in that regard sent to the respondent-workman was returned unserved. Therefore, the enquiry was adjourned and the date of adjournment was informed to the respondent-workman through post, which was received by the workman on 22.01.2000, but he did not turn for the enquiry. Therefore, the enquiry officer proceeded exparte and held that the charges are proved.

6. Copy of the enquiry report along with the second show cause notice was forwarded to the workman along with the proposed punishment of dismissal from service. Though the second show cause notice was received by the workman on 12.04.2000, yet he did not submit any explanation. Ultimately, the workman was dismissed from service with effect from 12.05.2000. The workman did not challenge the order of dismissal immediately, but after more than five years, he raised the Dispute before the Labour Court, which was taken on file as I.D.No.262 of 2005.

7. Before the Labour Court, though the workman was granted opportunity to lead oral and documentary evidence, he did not get into the Box and no documents were marked on his side. On the side of the Management, they marked 24 documents as Exs.R1 to R24, but there were no oral evidence on the side of the Management. The Labour Court framed only one issue for consideration, viz., as to whether the workman is entitled to be reinstated, by setting aside the order of dismissal dated 12.05.2000.

8. On appreciation of the documents placed by the Management, the Labour Court held that the domestic enquiry was vitiated and the workman was not afforded with proper opportunity. Thus, the Labour Court held that the workman is entitled for reinstatement. While moulding the relief to be granted, the Labour Court took into consideration the delay in raising the Dispute, which was about five years and held that for the said period, the workman will not be entitled to any monetary benefits by applying the principle 'no work no pay'. Further, the Labour Court observed that if the workman is found to be incorrigible and entitled to be reinstated, he can be imposed with the lesser punishments of reduction in rank / grade; he can be issued with the punishment of 'censure' or some other lesser punishments. Ultimately, the Award came to be passed, which, as observed earlier was virtually is not an award of reinstatement, but in effect, it is an award directing the workman to be appointed as a fresh entrant.

9. After hearing the learned counsels for the parties, and perusing the materials placed on record, this Court is of the view that the approach of the Labour Court in so far as the findings it has recorded with regard to the domestic enquiry is valid and proper. In other words, the view of the Labour

Court that the domestic enquiry was vitiated on the ground of serious violation of principles of natural justice, is proper and does not call for any interference. The only matter to be considered in the instant case is with regard to the relief, the workman is entitled to.

10. As rightly pointed out by the learned counsel for the Management that though the workman was granted an opportunity by the Labour Court to lead evidence, he did not choose to lead either oral or documentary evidence and therefore, he cannot now contest the matter before this Court stating that on account of ill-health, he did not report for duty. The workman having not utilised the opportunity before the Labour Court cannot seek to advance a case which was not placed before the Labour Court. That apart, the delay of five years in approaching the Labour Court has not been explained by the workman. Therefore, even if there is an Award of reinstatement, then obviously, the workman cannot claim wages for the period from 12.05.2000 till 29.09.2005, when the Dispute was raised before the Labour Court. Therefore, denial of backwages by the Labour Court for the said period is justified.

11. The next point to be considered is the period during which the matter was pending before the Labour Court i.e. from 29.09.2005 to 16.09.2008. This three year period cannot be put against the workman, as for no fault on him, the matter was pending before the Labour Court. Therefore, once the Labour Court has come to a conclusion that the workman has to be reinstated, then the Labour Court should have considered granting the relief for the period between 2005 to 2008. However, considering the past conduct of the workman, as he is a habitual absentee, he has also been imposed with punishments for the similar delinquency on earlier occasions, the Labour Court had to take a strong stand in the matter to enforce discipline. Therefore, this Court is of the considered view that from October 2005, till the date of Award i.e. on 16.09.2008, the workman is entitled to 50% of the back wages, as denial of entire backwages would be a very harsh punishment in the given facts and circumstances.

12. Though the Award was passed on 16.09.2008, the Management filed this Writ Petition only during June 2010. This delay has not been explained by the Management in the Writ Petition. Only with a view to avoid payment of wages under section 17-B of the Act, the workman has been reinstated in January, 2010. Therefore, this delay having not been explained by the Management in a proper perspective, the benefit should go to the workman and accordingly from 17.09.2008, to till reinstatement, the workman is entitled to full backwages. Furthermore, the Labour Court was not justified in effacing the entire service of the petitioner on

the charges which were framed against him, especially when the Labour Court found the domestic enquiry to be vitiated and the workman was entitled to be reinstated. Therefore, the workman should be entitled to continuity of service with all attendant benefits, with monetary benefits, as has been ordered as above.

13. In the result,

(i) The findings of the Labour Court that the order of dismissal passed against the workman is bad in law, is confirmed and accordingly the order of dismissal is set aside.

(ii) The workman is entitled to be reinstated with continuity of service and all other attendant and monetary benefits, which he will get is as follows:

(a) For the period from the date of dismissal on 12.05.2000 till September 2005, the workman is not entitled for any backwages.

(b) For the period from October, 2005 till 16.09.2008, the workman is entitled for 50% of backwages and

(c) for the period from 17.09.2008, till the date of reinstatement, the workman is entitled for full backwages.

Both the Writ Petitions are partly allowed on the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

1. The Presiding Officer
Labour Court, Salem.

2. The Management,
Tamilnadu State Transport Corporation(Salem) Ltd.,
12, Ramakrishna Salai, Salem 636 007.

+1cc to Mrs.S.Girija, Advocate, S.R.No.23384

W.P.Nos.353 of 2010 & 34302 of 2012

VD(CO)

CA(26/04/2016)

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