

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-08-2016

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P.Nos.1493 of 2012
and 1952 of 2013

The Management,
Tamil Nadu Transport Corporation,
(Villupuram Division)
Thiruvannamalai Region,
Thiruvannamalai.

.... Petitioner in WP No.1493 of 2012 /
2nd Respondent in WP No.1952 of 2013

Vs

1.The Presiding Officer,
Labour Court,
Vellore.

.... 1st Respondent in both WPs

2.V.Sankar

.... 2nd Respondent in WP No.1493 of
2012 /
Petitioner in WP No.1952 of 2013

Prayer in WP No.1493 of 2012 : Petition filed under Article 226 of the Constitution of India for issue of writ of certiorari calling for the records in I.D.No.187/2009, dated 29.07.2011 on the file of Principal Labour Court, Vellore and quash the same.

Prayer in WP No.1952 of 2013 : Petition filed under Article 226 of the Constitution of India for issue of writ of certiorari mandamus calling records from the 1st respondent relating to the impugned award dated 29.07.2011 in I.D.No.187 of 2009 and quash the findings that charges against the petitioner were proved and the punishment of denial of backwages and continuity of service holding that the charges were not proved and consequently direct the 2nd respondent to reinstate the petitioner in service with full backwages, continuity of service and other attendant benefits award costs.

For Petitioner

:Mr.G.Munirathnam

in WP No.1493/2012

& R2 in WP 1952/2013

For R-2 in WP 1493/2012

& Petitioner in WP 1952/2013 :Mr.R.Rajaram

R1-Labour Court

COMMON ORDER

Writ Petition No.1493 of 2012 has been filed by the transport corporation challenging the award passed by the Labour Court in I.D.No.187/2009, dated 29.07.2011 setting aside the order of termination of the second respondent and reinstating without backwages.

2. Writ Petition No.1952 of 2013 has been filed by the workman challenging the very same award passed by the Labour Court in I.D.No.187/2009, dated 29.07.2011 regarding denial of backwages.

3. Since the issue involved in both the writ petitions is one and the same, both the writ petitions are disposed of by the following common order.

4. The Tamil Nadu Transport Corporation is hereinafter referred to as "Transport Corporation" and the workman V.Shankar is hereinafter referred to as "workman" in this order.

5. The workman was appointed as conductor in the Transport Corporation on 24.08.2007. He was terminated from service on 17.03.2008 for the charges that he has resold the tickets already sold to the passengers in the previous trips. Though memo of charges were issued and explanation was given by the workman on 30.11.2007, not satisfied with the explanation, a domestic enquiry was conducted and the enquiry officer filed a report that the charges have been proved. Thereafter, second Show Cause Notice was issued and after getting explanation from the workman, he was terminated from the services. Thereafter, he has filed I.D.No.187 of 2009 under Section 2A(2) of the Tamil Nadu Industrial Disputes Act, 1947 before the Labour Court. The Labour Court came to the conclusion that the domestic enquiry conducted by the Transport Corporation is fair and therefore permitted the workman to adduce rebuttal evidence.

6. After perusing the evidence on record, the court below found that there is no necessity to interfere with the findings of the enquiry officer. With regard to the action taken by the Transport Corporation, namely the punishment of dismissal from service, the labour court, considering the re-instatement of similarly placed persons namely Murali and Venkatesan who were charged for the very same misconduct of re-selling of tickets, took liberal view using its discretion under Section 11-A of the Industrial Disputes Act, 1947 and reinstated the workman without backwages. The said award is being challenged by the Transport Corporation as well as the workman, viz the transport corporation with regard to reinstatement and the workman with regard to full backwages, continuity of service and other attendant benefits.

7. Heard Mr.G.Munirathnam, learned counsel appearing for the Transport Corporation and Mr.R.Rajaram, learned counsel appearing for workman.

8. A perusal of the records would show that the labour court, on appreciation of evidence, came to the conclusion that the findings of the enquiry officer regarding proving of charges is justified and therefore was of the opinion that there is no necessity for interfering with the findings of the enquiry officer. Once the labour court which is the fact finding forum came to the conclusion that the charges against the petitioner was proved, this court cannot interfere with the same and hence the finding of the labour court is confirmed.

9. With regard to reinstatement is concerned, the labour court took the case of similarly placed persons namely Murali and Venkatesan who were charged for the same misconduct namely re-selling of sold tickets in the previous trips which were collected from the passengers and made corrections in the invoices. As in the case of Murali, his past conduct reflected that he committed misconduct 35 times and increments were withheld inspite of the fact that he was reinstated by the Transport Corporation. When a person who is charged with several misconducts as many as 35 times was given lenient punishment, the Labour Court, exercising its discretion under Section 11 (A) of the Industrial Disputes Act, 1947 re-instated the petitioner.

10. The discretionary exercise adopted by the Labour Court has to be upheld taking the example of similarly placed persons. Therefore, the Labour Court rightly ordered only re-instatement, as the charges against the petitioner were proved. By exercising its discretionary power only, the Labour Court liberally re-instated the petitioner and hence this court does not find any infirmity to interfere with the dismissal order passed by the Labour Court. In spite of the charges were proved against the workman, taking a lenient view and also considering the re-instatement of similarly placed persons, the Labour Court ordered re-instatement and therefore the Labour Court was right in denying the full backwages and continuity of service. In view of the above finding, the award passed by the Labour Court in I.D.No.187 of 2009 dated 29.07.2011 is confirmed. Both the writ petitions fail.

11. In the result, both the writ petitions are dismissed. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

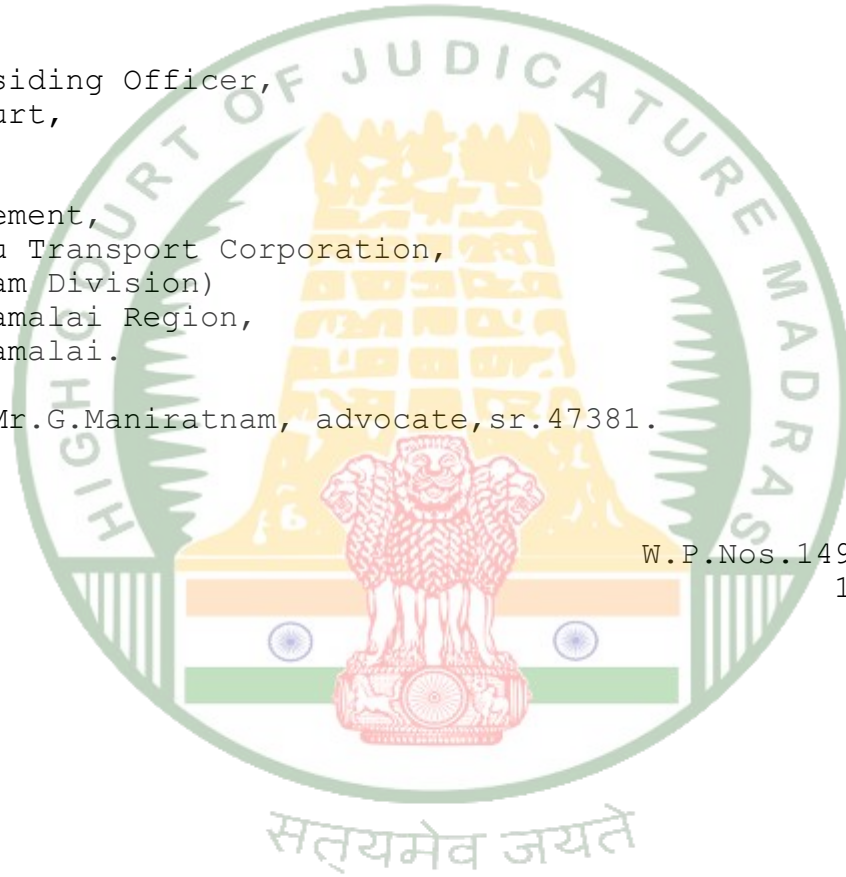
1.The Presiding Officer,
Labour Court,
Vellore.

The Management,
Tamil Nadu Transport Corporation,
(Villupuram Division)
Thiruvannamalai Region,
Thiruvannamalai.

+2 cc to Mr.G.Maniratnam, advocate,sr.47381.

scd(co)
krd 1/9

W.P.Nos.1493 of 2012 &
1952 of 2013



WEB COPY