

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2016

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE V.PARTHIBAN

Writ Appeal No.796 of 2016

A.Sundaram ..Appellant/2nd Respondants

Vs

1.The Managing Director
Tamil Nadu State Transport
Corporation (Villupuram) Ltd.,
Kancheepuram Region ..1st Respondant/Writ Petitioner

2.The Presiding Officer
II Additional Labour Court
Chennai ..2nd Respondents/1st Respondants

Prayer: Appeal under Clause 15 of the Letters Patent filed against the order in W.P.No.7327 of 2007 dated 30.08.2011. Writ Petition Presented to this court under Article 226 of the constitution of India to issue a writ of ceriorari calling call for the records relating to ID No.301 of 2001 dt 27.07.2006 on the file of the 1st respondent and quash the same.

For Appellant : Mr.N.Sundaramurthy

For Respondents : Mr.P.Paramasivadoss for R1
R2- Tribunal

JUDGMENT

(Delivered by Huluvadi G.Ramesh,J)

Heard the learned counsel appearing for the respective parties for some time.

2. This Writ Appeal is filed challenging the order of the learned Single Judge dated 30.08.2011 passed in W.P.No.7327 of 2007, wherein, the award passed by the Labour court was set aside.

3. The learned single Judge, having gone into detail the award of the Labour court and the submissions made on either

side before him, held as follows:

" In this case, the Labour court has given a finding that non-examination of the passengers during the domestic enquiry vitiated the proceedings and therefore interfered with the punishment by ordering reinstatement with backwages and other benefits. The said reasoning given by the Labour Court is contrary to the decision of the Honourable Supreme Court cited supra. Hence the findings given by the Labour Court setting aside the dismissal order is to be treated as a perverse finding. If the finding given by the Labour Court is found as perverse, this Court is entitled to declare the award as invalid. The petitioner was also previously punished for misconduct. The charges framed against the petitioner being serious in nature, namely not issuing tickets, issuing tickets already sold, etc. The second respondent having lost the confidence of the management to continue as conductor, the dismissal order passed by the management is just and proper. The Labour Court cannot order reinstatement of the second respondent. Hence the award passed by the Labour Court is liable to be set aside."

4. Challenging the said order passed by the learned single Judge, the appellant has come up with the above appeal.

5. As far as the Award passed in I.D.No.301 of 2001, in favour of the appellant herein is concerned, the Labour Court ordered reinstatement with continuity of service, backwages and all other benefits. By the order of the learned Single Judge, the award of the Labour Court was set aside. The learned Single Judge relied on the judgment of the Supreme Court reported in AIR 1959 SC 1111 (Phulbari Tea Estate Vs. Workmen), while referring to the principles of natural justice while conducting enquiry. The learned Single Judge further on a finding that non-examination of the passengers or statement of passengers not recorded was not fatal to the enquiry proceedings, held that the order of Labour Court is liable to be set aside. On the above findings, the learned Single Judge, allowed the Writ Petition filed by the Management and set aside the award passed by the Labour Court, however, permitted the management to withdraw the arrears of backwages deposited, which is yet to be released to the workman.

6. In the light of the above findings of the learned Single Judge, the settled principles of law and the fact that the appellant has already attained

the age of superannuation by June 2016, the award in respect of reinstatement with continuity of services cannot be conferred on the appellant and further in respect of backwages, awarded by the Labour court, also cannot be granted on the principle of "no work no pay". However, taking into account the amount of misappropriation involved in this case, we are inclined to treat the petitioner's dismissal from service, as one of compulsory retirement for the purpose of calculating the pensionary benefits in respect of the service already rendered by him under the Management.

7. The Writ Appeal stands allowed in part with the above observation. No costs.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

nvsri

To

1.The Managing Director
Tamil Nadu State Transport
Corporation (Villupuram) Ltd.,
Kancheepuram Region

2.The Presiding Officer
II Additional Labour Court
Chennai.

+1cc to Mr.N.Sundaramurthy, Advocate sr.69500.

+1cc to Mr.P.Paramasiva doss, Advocate sr.70023

W.A.No.796 of 2016

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