

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. No.47839 of 2006

C.Raman

... Petitioner

Vs.

- 1 The Presiding Officer
The 1st Additional Labour Court,
Chennai 600 104.
- 2 The Management of
Tamil Nadu State Transport Corporation
Villupuram (Division-III)Ltd.,
(Formerly Puratchi Thalaivar
M.G.R. Transport Corporation),
Kancheepuram.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Award dated 20.04.2005 passed in I.D.No.172 of 1998, quash the same and consequently direct the 2nd respondent to reinstate the petitioner in service with continuity of service and with back wages and other attendant benefits, Award costs.

For Petitioner : Mr.S.T.Varadarajulu

For 2nd Respondent : Mr.M.Ravi Bharathi

O R D E R

The writ petition has been filed challenging the Award dated 20.04.2005 passed in I.D.No.172 of 1998, with a prayer to quash the same and consequently, to direct the second respondent to reinstate the petitioner in service with continuity of service and with back wages and other attendant benefits.

2. The case of the petitioner is that he joined the services of the 2nd respondent / Corporation as a conductor on 03.05.1987. During such service, a charge sheet was issued against the petitioner on 16.09.1994, wherein detailed charges have been framed, according to which, during the trip between

Vandavasi and Chennai, Route No.104V, Bus No.TN.23 No.207, the petitioner is said to have collected more amounts from various passengers for various destinations; but issued tickets for lesser amount and further to some passengers, though he has received amounts and though he received amount for luggage, he had failed to issue tickets to them and further, when his cash bag was checked, there was a shortage of Rs.78.30 and hence, a charge sheet was issued.

3. Thereafter, enquiry was conducted and based on the enquiry, a show cause notice was issued and since no reply was given by the petitioner; the enquiry was conducted by the authority and ultimately, final order dated 27.08.1996 was passed by the respondent Corporation, whereby, the petitioner was dismissed from service.

4. As against the said order of removal of service of the petitioner, the petitioner raised an Industrial Dispute in ID.No.172 of 1998 and the parties were heard and consequently, an Award was passed by the first respondent on 20.04.2005 where also the order of punishment imposed on him was accepted and the order was confirmed and the ID No.172 of 1998 was dismissed.

5. As against the said order of award of the first respondent, the present Writ Petition has been filed.

6. Heard both sides. During the hearing, the learned counsel for the petitioner would submit that though a larger relief has been prayed in the Writ Petition, the learned counsel, on instructions, would submit that the petitioner would be satisfied if the respondents considers the penurious position faced by the petitioner as he was out of employment and on that score, he is ready and willing to forgo the relief sought for in the Writ Petition except the reinstatement.

7. The learned counsel for the petitioner though not in a position to suitably assails the charges framed against the petitioner as well as the orders passed by the Disciplinary Authority as well as the impugned award of the Labour Court, submits that a lenient view could be shown by the authorities towards the petitioner and only the proportionality of the punishment is prejudicial to the petitioner now. The learned counsel for the petitioner also submits that for the mistake committed by him he would forgo the entire backwages provided if he is taken for in service by way of reinstatement only for remaining period of service at the hands of the second respondent/Corporation.

8. Per Contra, the learned counsel for the second respondent would submit that the mistake committed by the petitioner have been proved beyond doubt as the petitioner being the conductor of the second respondent Government Transport Corporation is expected to be truthful to the organization as well as the general public. If he commits such kind of mistakes in issuance of tickets and enriching money which is owed to the respondent corporation, such kind of practice should not be allowed to continue and therefore, the punishment given by the department as confirmed by the first respondent/Labour Court is correct though it is detrimental to the livelihood of the petitioner. Hence he prays for the order of the Labour Court to be confirmed and the Writ Petition to be dismissed.

9. This Court considered the rival submissions made on behalf of the parties.

10. It is admitted case that the petitioner has committed mistakes as mentioned in the charge and even now on behalf of the petitioner there is no proper defence to take a contra view as against the charges. Therefore this Court feels that the order passed by the second respondent/Disciplinary Authority as confirmed by the first respondent in the ID proceedings does not suffer any material irregularity or infirmity.

11. However, in respect of the proportionality is concerned, for the said mistake committed by the petitioner he has been removed from service long back. According to the petitioner, he was out of service for very long years and he is struggling every day to meet his ends. Considering the said aspect of the issue as well as the submissions made by the learned counsel for the petitioner to the effect that the petitioner forgoes the entire backwages and other benefits which otherwise accrued or to be paid to the petitioner, if he would have been in the service in all these years, this Court is of the considered view that the punishment given to the petitioner is too harsh and therefore, the same may be modified to the extent that his service period from the date of punishment till the date of his reinstatement shall not be treated as a service period for the purpose of granting any financial benefits to the petitioner, which includes all backwages bonus if any or any financial benefits.

12. In the result the impugned order is modified to the extent indicated herein. Resultantly the second respondent is directed to reinstate the petitioner within a period of two months from the date of receipt of a copy of this order by issuing necessary proceedings to that effect. On such reinstatement, the petitioner shall not claim or not is entitled

to claim any backwages bonus or financial assistance in any form from the second respondent for the period during which he was not in service, i.e., from the date of dismissal till the date of reinstatement. The petitioner is permitted to join the services of the 2nd respondent / Corporation on receiving the proceedings and if at all any smaller error is noticed from the side of the petitioner during the remaining service period he would suffer with severe disciplinary action at the hands of the 2nd respondent / Corporation.

13. With the above observations and directions as indicated above, this Writ Petition is allowed in part strictly in accordance with the terms indicated above. With regard to the continuity of the service for the purpose of retirement benefits after completion of the service of the petitioner these non duty period also can be taken into account accordingly. The Writ Petition is disposed with the above terms. No Costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

jv
To

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- 2 The Management of
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Villupuram (Division-III)Ltd.,
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+1cc to M/S.S.T.Varadarajulu, Advocate Sr.61625

W.P. No.47839 of 2006

rsi[co]
srg 07/12/2016