

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH  
AND  
THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

W.A.No.1172 of 2017 and C.M.P.No.16229 of 2017  
Against WP.13120/04

The Management,  
Tamil Nadu State Transport Corporation  
(Kumbakonam) Limited,  
Kumbakonam. .... Appellant

Vs

1.The Presiding Officer,  
Labour Court,  
Cuddalore.

2.G.Murugayyan .... Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent  
against the order dated 18.03.2013 made in W.P.No.13120/2004 by  
a learned Single Judge.

WP.NO.13120/04: Petition Under Article 226 of the Constitution  
for the issue of a writ of Certiorari calling for the records  
pertaining to the award dated 06.01.2003 made in I.D.No.260/1992  
on the file of the first respondent herein and quash the same.

For Appellant :: Mr.P.Paramasivadoss

For Respondent :: M/s.S.Monogaran for R2

JUDGMENT

(Judgment of the Court was pronounced by HULUVADI G.RAMESH, J.)

The Writ Appeal is directed against the Order dated  
18.03.2013 made in W.P.No.13120/2004 by a learned Single Judge.

2. The Writ Petition has been filed by the petitioner  
seeking to issue a Writ of Certiorari, calling for the records  
pertaining to the award dated 06.01.2003 made in I.D.No.260/1992  
on the file of the first respondent, namely, The Presiding  
Officer, Labour Court, Cuddalore.

3. The facts of the case is as follows:

The 2<sup>nd</sup> respondent in the Writ Petition was working as a Conductor in the petitioner Corporation from 19.2.1985. On 28.11.1988, while he was on duty in the bus bearing No.TML 5036 and when the said vehicle was plying between Pattukottai and Nagapattinam, he complained about some mechanical problem in the clutch of the bus. In view of the said problem, the Assistant Engineer concerned directed the 2<sup>nd</sup> respondent to take another vehicle on the line and also directed him to halt the bus at Pattukottai. But the 2<sup>nd</sup> respondent refused to do so, which resulted in the loss of performance of the vehicle to the extent of 180 kms. and subsequent loss to the tune of Rs.630/-. Further, the 2<sup>nd</sup> respondent, in order to escape from the said misconduct, forcibly torn the records pages 172 to 180 relating to the Register that maintains the shed-in and shed-out details and tampered the records of the petitioner Management. Therefore, the 2<sup>nd</sup> respondent was served with a Charge Memo dated 30.12.1988. Not satisfied with the explanation submitted by the 2<sup>nd</sup> respondent, the petitioner Corporation ordered for domestic enquiry. The Enquiry Officer gave a finding holding that the charges framed against the 2<sup>nd</sup> respondent have been proved. Thereafter, after issued a Second Show Cause Notice, the 2<sup>nd</sup> respondent was removed from service. Aggrieved against the said order of dismissal, the 2<sup>nd</sup> respondent raised an Industrial Dispute. The 1<sup>st</sup> respondent passed an award dated 06.01.2003, ordering reinstatement of the 2<sup>nd</sup> respondent with back wages and continuity of service. Hence, the said Writ Petition has been filed.

4. After hearing the rival submissions made on either side, the Single Judge of this Court upheld the award of the 1<sup>st</sup> respondent dated 06.01.2003 and aggrieved over the same, the petitioner Management is before this Court again with this Writ Appeal.

5. Learned Counsel appearing for the appellant Management submitted that the 2<sup>nd</sup> respondent has been dismissed from service only due to his misbehaviour with his higher officials while discharging the official duties. In this regard, after serving a Show Cause Notice and conducting a detailed enquiry by an Enquiry Officer and based on his Report, a Second Show Cause Notice was issued and thereafter, not satisfied with his explanation only, the order of dismissal came to be passed by the appellant Management. The learned Counsel further submitted that apart from the above said charge, previously, charges were framed against the 2<sup>nd</sup> respondent. But without appreciating the said facts, the impugned award was passed by the 1<sup>st</sup> respondent and the same was subsequently upheld by the learned Single Judge

of this Court. Hence, he prays for allowing the present Writ Appeal.

6. Learned Counsel appearing for the 2<sup>nd</sup> respondent submitted that after carefully gone through the evidence and documentary proof, the 1<sup>st</sup> respondent Labour Court has passed the impugned award and as per the findings of the Labour Court, the 2<sup>nd</sup> respondent is entitled for reinstatement with back wages and continuity of service and the same was upheld by the learned Single Judge of this Court. Hence, prays for dismissal of the Writ Appeal.

7. Considered the submissions made on either side and We have also carefully gone through the materials placed on record.

8. At the outset, it is not in dispute that the 2<sup>nd</sup> respondent was working as a Conductor in the petitioner Corporation from 19.2.1985. While so, on 28.11.1988, due to some mechanical problem in the clutch of the bus in which he was on duty, he informed the same to the Assistant Engineer concerned, who in turn, gave some directions and the 2<sup>nd</sup> respondent disobeyed the same is the allegation levelled against the 2<sup>nd</sup> respondent. Thereafter, after following the procedure, the petitioner Management appointed an Enquiry Officer, conducted domestic enquiry and based upon the report of the Enquiry Officer, issued Second Show Cause Notice and then dismissed the 2<sup>nd</sup> respondent from service. The 2<sup>nd</sup> respondent raised an Industrial Dispute in I.D.No.260/1992 on the file of the 1<sup>st</sup> respondent herein and by award dated 06.01.2003, the 1<sup>st</sup> respondent reinstated the 2<sup>nd</sup> respondent with back wages and continuity of service. Aggrieved over the same, the 2<sup>nd</sup> respondent filed W.P.No.13120/2004 before this Court and the learned Single Judge of this Court upheld the award of the 1<sup>st</sup> respondent by order dated 18.03.2013. Challenging the same, the Petitioner Management has preferred the present appeal.

9. Though it is contended by the learned Counsel for the appellant Management that the misconduct of the 2<sup>nd</sup> respondent with his higher officials which resulted in the loss of performance to the vehicle to the extent of 180 kms. has to be taken note of. Apart from that, though it is contended that the 2<sup>nd</sup> respondent in order to escape from the said misconduct, forcibly torn the record pages 172 to 180 that maintains the shed-in and shed-out details and thus, tampered the records of the petitioner Management, it is to be noted that the driver who has been dismissed from service along with the 2<sup>nd</sup> respondent has been reinstated within a year i.e. in the year 1990 whereas the case of the 2<sup>nd</sup> respondent has not been considered.

10. Under such circumstances, we are of the view that the 2<sup>nd</sup> respondent has already suffered a major punishment of dismissal from service for the alleged misconduct for the past more than 15 years without any monetary benefits, even after the award passed by the Labour Court for reinstatement with continuity of service with back wages on 06.01.2003 and further, it appears that the 2<sup>nd</sup> respondent is now at the age of superannuation. So, he may be superannuated with continuity of service from the date of his reinstatement with ant back wages.

11. With the above observation, the Writ Appeal fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-  
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To  
The Presiding Officer,  
Labour Court,  
Cuddalore.

+1cc to Mr.P.PRAMASIVADOSS, Advocate, S.R.No. 81867  
+1cc to Mr.V.AJAY KHOSE Advocate, S.R.No. 81962

W.A.No.1172/2017

TR(06/12/2017)

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