

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2017

CORAM

THE HON'BLE Mr. JUSTICE M.M.SUNDRESH

W.P.Nos.4073 & 4085 of 2014 &
M.P.No.1 of 2014
in W.P.No.4085 of 2014

A.Jamshed Petitioner in WP.4073 of 2014

The Management
Tamil Nadu State Transport Corporation Ltd.,
(Villupuram Division - II),
Vellore - 632 009.
Rep.by its General Manager.

.... Petitioner in WP.4085 of 2014

Vs.

1. The Management
Tamilnadu State Transport Corporation Ltd.,
Villupuram Division - II, Vellore - 632 009.

2. The Presiding Officer
2nd Additional Labour Court,
Chennai. Respondents in WP.4073 of 2014

1. The Presiding Officer
The 2nd Additional Labour Court,
Chennai.

2. A.Jamshed ... Respondents in WP.4085 of 2014

Prayer in WP No.4073 of 2014: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus, call for the records on the file of the 2nd respondent and quash the portion of order in respect of "without backwages and other benefits" passed by the 2nd respondent in I.D.No.277 of 2004 dated 31.05.2013 and direct the 1st respondent to pay the back-wages and other benefits to the petitioner.

Prayer in WP No.4085 of 2014: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records of the order passed by the 1st respondent in Industrial Dispute in I.D.No.277 of 2004 dated 31.05.2013 and to quash the same as illegal.

In W.P.No.4073 of 2014 :

For Petitioner : M/S M.Ravi
Ms.Priya Ravi

For Respondents : Mr.P.Paramasivadosh for R1
R2 - Court

In W.P.No.4085 of 2014 :

For Petitioner : Mr.P.Paramasivadosh

For Respondents : Mr.M.Ravi for R2

COMMON ORDER

This is a second round of litigation, in which, both the parties have challenged the very same award passed in I.D.No.277/2004 dated 31.05.2013. Earlier an Award was passed in Complaint No.2 of 94 in I.D.No.62 of 1982 under Section 33 (a) of the Industrial Disputes Act, 1947. The said complaint was dismissed on 15.10.1996 holding that I.D.No.62 of 1982 was pertaining to bonus payment for the year April 1981-March 1982 and the workman is not concerned with I.D.No.62 of 1982 and hence, the complaint is not maintainable in law and inspite of various opportunities granted, the workman has refused to avail the same. Thereafter, the petitioner in WP.No.4073 of 2014 has filed W.P.No.6538 of 1997 seeking to quash the order passed in Complaint No.2 of 94 in I.D.No.62 of 1982 and consequential direction to the management to reinstate him with backwages and such other attendant benefits applicable under the rules. This Court, by an order dated 15.10.2003, dismissed the writ petition filed by the workman.

2. Thereafter, the petitioner in WP.No.4073 of 2014 raised a dispute in I.D.No.277 of 2004, under Section 2 (a) of the Industrial Disputes Act, 1947, seeking to set aside the order of dismissal passed. This was allowed on 31.05.2013 on the premise that two other delinquents, who were allegedly involved along with the petitioner have not been proceeded with departmentally nor shown as the witness on behalf of the department. Therefore on the ground of fair play, the Labour Court set aside the order of dismissal, but declined to grant back wages. Seeking back wages, WP.No.4073 of 2014 has been filed by the workman and seeking to quash the award passed in I.D.No.277 of 2004 dated 31.05.2013, the Management has filed WP.No.4085 of 2014.

3. Learned counsel for the petitioner in WP.No.4073 of 2014 submits that the finding rendered by the Labour Court that two other delinquents have not been examined, is not

denied on facts. Once the order of dismissal is set aside, the consequence would follow.

4. The learned counsel appearing for the petitioner in W.P.No.4085 of 2014 would submit that the question arises for consideration is whether the charge leveled against the delinquent is proved or not. Merely because two other persons have not been examined or proceeded with, such charge would not get abated. Incidentally, it is submitted that in any case, the question of back wages is one which has been considered based upon the fact situation and therefore, W.P.No.4085 of 2014 has to be allowed and consequently, W.P.No.4073 of 2014 has to be dismissed.

5. Incidentally, it is submitted that the findings rendered on the earlier occasion would be binding on the petitioner in W.P.No.4073 of 2014 as well as the Tribunal.

6. Coming to the submissions made on the finding rendered on the earlier occasion, both by the Tribunal and thereafter by this Court, this Court is of the view that such a finding is arbitrary as once it has been held that the complaint is not maintainable. Then the paramount question would become factors of issue. Therefore, the consequent findings, if any, would not prevent the Tribunal on the latter occasion to go into the issues on merit. On a perusal of the finding rendered by the Tribunal, this Court is of the view that there is no perversity involved therein. It is not disputed that there are two other persons by name Kumar and Vargees, who are in connivance with the petitioner and involved in the alleged misconduct.

7. Therefore, there is no basis for proceeding against the above said two persons whom were allowed to continue their work. There is no explanation forthcoming for the selective proceedings initiated against the petitioner in W.P.No.4073 of 2014 nor they have been examined as Management witnesses.

8. The Tribunal has rightly taken into consideration the above said factor, while passing the award. In such view of the matter, the award passed by the Tribunal does not warrant interference. Coming to the back wages, it is not a matter of right. The award was passed on a technical premise. The Tribunal, in its wisdom, felt that there is no necessity for reinstatement. Therefore, this Court is of the view that there is no perversity in the said decision rendered. Accordingly, both the writ petitions stand dismissed.

9. The learned counsel for the petitioner in WP.No.4073 of 2014 would submit that the writ petitioner has reached the age of superannuation. Therefore the attendant benefits will have to be given to him within a reasonable time. Considering the above said facts, a direction is issued to the

petitioner/Management in W.P.No.4085 of 2014 to settle the attendant benefits due to the petitioner in W.P.No.4073 of 2014, in tune with the award passed, within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

jer/raa

To

1. The General Manager,
Tamil Nadu State Transport Corporation Ltd.,
(Villupuram Division - II),
Vellore - 632 009.
2. The Presiding Officer,
II Additional Labour Court,
Chennai.
3. The Management
Tamil Nadu State Transport Corporation Ltd.,
(Villupuram Division - II),
Vellore - 632 009.

+1cc to Mr.M.Ravi, Advocate, S.R.No.44318

W.P.Nos.4073 & 4085 of 2014

&

M.P.No.1 of 2014

VD(CO)
CA(19/07/2017)

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