

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.128 of 2014 & 16957 of 2013
& MP.No.1 in W.P.No.16957 of 2013

A.Vijaya Gandhi .. Petitioner in WP.No.128 of 2014 and
2nd respondent in W.P.No.16957 of 2013

Vs.

1.The Management,
Tamil Nadu State Express Transport
Corporation (Division-I) Ltd.,
Pallavan Salai,
Chennai-600 002.

..1st Respondent in WP.No.128/2014

1. The Management,
Tamil Nadu State Express Transport
Corporation (Division-I) Ltd.,
Rep. by its Manager,
R.Devaraj,
Pallavan Salai,
Chennai-600 002.

... Petitioner in W.P.No.16957 of 2013

2. The Presiding Officer,
Principal Labour Court,
High Court Compound,
Chennai - 600104

....2st respondent in WP.No.128 of 2014
and the 1st respondent in W.P.No.16957
of 2013

Petitions have been filed under Article 226 of The Constitution of India praying (i) for issuance of a writ of Certiorarified Mandamus, to call for the records from the files of the second respondent in I.D.No.460 of 1999 and quash its impugned Award made therein dated 07.08.2012 insofar as it has denied to the petitioner the relief of continuity of service, back wages and the other attendant benefits(W.P.No.128 of 2014).

(ii)for issuance of a writ of Certiorari, to call for the records in order dated 07.08.2012 in Industrial Dispute No.460 of 1999 on the file the Principal Labour Court, Chennai and to quash the same(W.P.No16957 of 2013).

W.P.No.16957 of 2013

For Petitioner .. Mr.K.Venkatramani
Additional Advocate General
Assisted by
Mr.R.P.Prathapsingh
For R2 .. Mr.K.M.Ramesh

W.P.No.128 of 2014

For Petitioner .. Mr.K.M.Ramesh
For Respondents .. R2 Court
Mr.K.Venkatramani
Additional Advocate General
Assisted by
Mr.R.P.Prathapsingh (for R1)

COMMON ORDER

Writ Petition in W.P.No.128 of 2014 has been filed by the petitioner/management, seeking the following relief:

"To issue a Writ of Certiorari, to call for the records in order dated 07.08.2012 in Industrial Dispute No.460 of 1999 on the file the Principal Labour Court, Chennai and to quash the same."

2. Writ Petition in W.P.16957 of 2013 has been filed by the petitioner/workman, seeking the following relief:

"To issue writ of Certiorarified Mandamus, to call for the records from the files of the second respondent in I.D.No.460 of 1999 and quash its impugned Award made therein dated 07.08.2012 insofar as it has denied to the petitioner the relief of continuity of service, back wages and the other attendant benefits."

3. Since common facts and issues involved in these two writ petitions, the same are taken up together and being disposed of by this common order. For the sake of convenience, the parties as narrated in the writ petition in W.P.No.128 of 2014, are referred to hereafter in this order.

4. The petitioner/workman joined in the first respondent Corporation as Driver on 15.07.1991. While discharging his duties as such, the petitioner was held responsible for causing a fatal accident that had occurred on 07.12.1991 and accordingly, an disciplinary action was taken against the petitioner and the first respondent/Corporation terminated him from service on 14.02.1992. A criminal case was also filed against the petitioner, which however, ended in acquittal by judgment dated 17.06.1996. In regard to the termination of service, the petitioner raised an Industrial Dispute in I.D.No.460 of 1999. The Labour Court passed an award dismissing I.D. No.460 of 1999 on 06.12.2005, affirming the action taken by the first respondent/management.

5. The said award was challenged before this Court in W.P.No.8651 of 2007 and this Court by order dated 04.01.2012, disposed of the writ petition, remitting the matter back to the Labour Court for fresh consideration. Thereafter, the Labour Court passed an award on 07.08.2012 holding that the petitioner was entitled to reinstatement in service, but without continuity of service, back wages and the other attendant benefits.

6. The Labour Court has given its reasons for granting the claim of the petitioner only as reinstatement and denying him continuity of service and back wages as found in paragraph No.13 of Award, which is extracted as under:

"13.The workman also prayed for backwages and other attendant benefits from the date of dismissal from service. Admittedly, the workman was employed only on daily wage basis as per Ex.W1 at the rate of Rs.45/- per day. There is no evidence available that the workman has worked all the days from the date of his entry into service till the date of the accident. Further, it is already held above that the workman is only a temporary employee. Therefore, the temporary employee would not have worked continuously all the days during his employment period. In view of such a conclusion it is held that the workman worked only at the call of the management and therefore, he is not entitled for back wages, continuity of service and all other attendant benefits as prayed for by him and the points are answered accordingly."

7. The workmen has challenged the above award in the present writ petition in WP.No.128 of 2014 in respect of denial of continuity of service, back wages etc. The Corporation has also filed other writ petition in W.P.No.16957 of 2013, challenging the award in respect of reinstatement of the petitioner concerned.

8. The reasons given by the Labour Court cannot be faulted with for the simple reason that when admittedly the petitioner was appointed as temporary workman and within a period of six months of his employment, he caused a fatal accident and thereafter, he was terminated from service. That being the case, the Labour Court also rightly denied the continuity of service and back wages since the petitioner/workman admittedly did not work during the period when the litigations were pending before the Labour Court as well as before this Court. At the same time, the Labour Court has found that the termination of service without following due process of law, was invalid and therefore, ordered reinstatement which cannot also be faulted with at the instance of the first respondent/Corporation.

5. In the above said circumstances, the award passed by the Labour Court in I.D.No.460 of 1999 dated 07.08.2012 does not suffer from any infirmity and therefore the same is confirmed. Since the award passed by the Labour Court is confirmed, both the writ petitions filed by the workman and the Corporation have no merits and substance and therefore the same are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

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To

1. The Management,
Tamil Nadu State Express Transport
Corporation (Division-I) Ltd.,
Pallavan Salai,
Chennai-600 002.

2. The Presiding Officer,
Principal Labour Court,
High Court Compound,
Chennai - 600104

+1cc to Mr.Ramesh, Advocate sr.64179

W.P.No.128 of 2014 & 16957 of 2013

mg(co)
ss(23/10/2017)