

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2017

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.21758 of 2011

Abdul Azeez.A

... Petitioner

Vs

1.The Management,
Tamil Nadu State Transport Corporation,
Kumbakonam.

2.The Presiding Officer,
The Labour Court,
Cuddalore.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records relating to the order passed by the second respondent in I.D.No.73/2001 dated 23.09.2010 and quash the same to the extent of denial of continuity of service, back wages and other attendant benefits consequently direct the 1st respondent to grant the aforesaid benefits in pursuance of reinstatement that has been ordered by the 2nd respondent.

For Petitioner : Mr.R.Sivakumar

For Respondents : Mr.P.Paramasivadoss for R1

O R D E R

Heard Mr.R.Sivakumar, learned counsel for the petitioner and Mr.P.Paramasivadoss, learned counsel appearing for the first respondent.

2. The petitioner has approached this Court, seeking the following relief,

"To issue a writ of Certiorarified Mandamus, to call for the records relating to the order passed by the second respondent in I.D.No.73/2001 dated 23.09.2010 and quash the same to the extent of denial of continuity of service, back wages and other attendant benefits consequently direct the 1st respondent to grant the aforesaid benefits in pursuance

of reinstatement that has been ordered by the 2nd respondent."

3. The case of the petitioner is as follows:-

The petitioner was working as a Driver in the first respondent Corporation. While he was working as Driver, he was absent on few occasions from 16.11.1994 to 22.02.1995, for which he had applied leave as he was sick. According to him, the leave application was sent through registered post with acknowledgement due. According to the petitioner, he was staying in Thennamarakudi Village, his home town and taking treatment for his ailment.

4. The respondent, however, not sanctioning the leave as sought by the petitioner, had initiated departmental action against him. A charge was framed against the petitioner and thereafter, he was dismissed from service. Against the dismissal order, the petitioner raised Industrial Dispute in I.D.No.73 of 2001. After adjudication of the Industrial Dispute, the second respondent passed an award on 23.09.2010, ordering reinstatement in service of the petitioner but without continuity of service and back wages and other attendant benefits. The said award of the second respondent is put to challenge in the present writ petition by the petitioner, insofar as the Labour Court award denying continuity of service, back wages and other attendant benefits.

5. The learned counsel for the petitioner would submit that the second respondent - Labour Court, after a detailed analysis on the materials and pleadings placed on record, had come to the conclusion that the domestic enquiry conducted by the Management against the petitioner was not fair and proper. While holding so, the Labour Court finally granted an award of only reinstatement without continuity of services, back wages and other attendant benefits.

6. According to the learned counsel for the petitioner, the petitioner was due for retirement on 30.06.2012 and therefore, ordering of reinstatement alone by an award dated 23.09.2010, did not mean anything to the petitioner workman as his entire past service had not been taken into consideration. He would further submit that the second respondent - Labour Court had rendered almost all the findings in favour of the petitioner workman. It also found that the factum of receipt of petitioner's leave letter had been admitted by the Management and also the factum, the petitioner was regularly attending duty from March 1995 onwards. A detailed award has been passed in which all the findings are in favour of the petitioner. The operative portion of the findings of the second respondent-Labour Court, relied on by the learned counsel for the

petitioner are reproduced below:-

"In this case, the petitioner has stated in his petition and in his evidence that he was not doing well from 26.11.1994, he was taking treatment, he was staying at Thennamarakudi Village, was taking treatment there, since he was not able to attend duty, he submitted letter through post and marked Ex.W1 to W4, the receipt of the leave letter submitted by the petitioner was admitted by M.W1 and also admitted that there is no sanction of leave by the respondent/Management.

"In M.Malaikannu Vs. Managing Director, Marudhu Pandiar Transport Corporation Limited and another 2001 L.L.R.736 (Mad.H.C.)" it was held that "Dismissal of an employee for unauthorized absence will not be justified when his plea for suffering from heart problem is not controverted by the employer."

"In State of Uttar Pradesh Vs. Presiding Officer, Labour Court, Agra and another 2002 L.L.R. 1076 (All.H.C.)" It was held that "No presumption can be drawn that by absenting the employee has abandoned the job."

"In K.I.Kondappa Vs. Presiding Officer, Labour Court and another 2003 L.L.R.202 (AP.H.C.)" it was held that "removal of a workman for overstaying beyond sanctioned leave will be violative of Section 25F of I.D.Act."

On perusal of Ex.W5 to W9 it is understood that the petitioner was regularly attending duty from March 1995 to July 1995. So it cannot be presumed that the petitioner was not interested in his duty and he was abandoned in his duty.

"In Shri Rajendra B.Oza Vs. Air India 2003 L.L.R. 6 (Bom.H.C.)" it was held that "Punishment of dismissal for remaining absent for 38 days will be disproportionate to the misconduct."

In the dismissal order dated 09.08.1995, 17 previous misconducts were stated and minor punishments were imposed to the petitioner for his previous misconducts.

"In Arun Industries Vs. Presiding Officer, Labour Court, Delhi and others 2004 L.L.R.1094 (Del.H.C.)", it has held that "The abandonment of a workmen from his employment depends upon his intention."

In this case the petitioner submitted Ex.W1 Leave

application and the submission of leave application by the petitioner was admitted by M.W.1, so there was no intention on the part of the petitioner to be absent from duty or there was no abandonment of duty on the part of the petitioner. Considering the above facts and circumstances of this case and considering the above decisions, the punishment of dismissal passed by the respondent/Management on the basis of the exparte domestic enquiry report for the alleged absence of the petitioner is not proportionate to the misconducts of alleged absent on the part of the petitioner. Hence the dismissal order dated 09.08.1995 is set aside and the petitioner is ordered to be reinstated in the respondent/Management without continuity of service, without back wages and without other attendant benefits. This point is decided accordingly."

7. The learned counsel for the petitioner would submit that once the Labour Court had found the enquiry was not fair and proper and rendered findings in favour of the workman, there was no justification for denying the petitioner continuity of service, back wages and other attendant benefits. According to him, a mere order of reinstatement in the present case literally amounted to upholding the order of dismissal from service, since the petitioner was left with just little over one year service before he was due for retirement on 30.06.2012.

8. Upon notice, learned counsel appearing for the respondents entered appearance and stoutly resisted the claim of the petitioner. According to the learned counsel for the respondent Corporation, the petitioner having absent without sanctioning of leave, was rightly imposed with a punishment of dismissal from service, as he was in the habit of absenting without proper sanction of leave in the past. The conduct of the petitioner workman was therefore, subversive of discipline of the work force and therefore, the same cannot be condoned merely because the leave application had been forwarded by the petitioner workman to the Management.

9. According to the learned counsel for the respondents that the same tactics has been used by the petitioner workman in the past for being absent and therefore, the Management thought fit to take deterrent action against the petitioner workman. He would further submit that the Corporation has not challenged the award of reinstatement, yet the award as such need not be interfered with. The learned counsel for the respondents attempted to argue that the findings of the second respondent-Labour Court was not in order, but such argument was not entertained by this Court, in view of the reason that the Corporation has not chosen to challenge the award. Therefore,

it was not open to the respondent Corporation to argue the correctness of the findings of the Labour Court.

10. Be that as it may, learned counsel for the petitioner would submit that after the award was passed, a number of representations have been submitted by the petitioner on various dates on 08.12.2010, 16.12.2010, 19.08.2011 and 19.09.2011, seeking for reinstatement of service as per the award of the Labour Court. However, according to the learned counsel, the corporation was not willing to reinstate unless the petitioner was willing to give an undertaking that he would not pursue any remedy against the award. Ultimately, without being reinstated, the petitioner was retired from service on 30.06.2012, on attaining the age of superannuation. In order to claim the wages during the period of operation of the award, the petitioner also filed a computation petition before the Labour Court. But, However, the same has been withdrawn subsequently.

11. The learned counsel for the petitioner would draw the attention of this Court in the case of Kuldeep Singh Vs. Presiding Officer, Labour Court, Panipat and others, reported in 2017-II-LLJ-747 (P&H), particularly, to paragraph no.12, in regard to back wages payable to the workman reinstated in service. The said paragraph is reproduced below:-

"12. Ordinarily, an illegal termination is visited with reinstatement and back wages. See Hindustan Tin Works Pvt. Ltd. V. Employees of Hindustan Tin Works Pvt. Ltd. AIR 1979 SC 75 : (1979) 2 SCC 80 : LNIND 1978 SC 227 : 1978-II-LLJ-474, Harjinder Singh V. Punjab State Warehousing Corporation AIR 2010 SC 1116 : (2010) 3 SCC 192 : LNIND 2010 SC 16 : (2010) 3 MLJ 127 : 2010-II-LLJ-277, Anoop Sharma V. Executive Engineer, Public Health Division No.1, Panipat (Haryana) (2010) 3 SLR 663 : (2010) 5 SCC 497 : LNIND 2010 SC 3 : 2010-III-LLJ-1, Devinder Singh V. Municipal Council, Sanaur AIR 2011 SC 2532 : (2011) 6 SCC 584 : LNIND 2011 SC 406 : 2011-III-LLJ-1 and Deepali Gundu Surwase V. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and others (2013) 10 SCC 324 : LNIND 2013 SC 800, Jasmer Singh V. State of Haryana (2015) 4 SCC 458 : LNINDU 2015 SC 5 and Tapash Kumar Paul V. BSNL and Another (2014) 3 SCT 106 (SC) : AIR 2015 SC 357 : (2014) 3 SCT 106 (SC) : AIR 2015 SC 357 : (2014) 15 SCC 313 : LNINDORD 2014 SC 5562 and the full bench judgment of this Court handed down in Hari Palace V. Presiding Officer, Labour Court, Ambala (1979) 2 ILR (Punjab) 243 : LNIND 1979 PNH 162 : 1980-II-LLJ-294 holding that back wages will follow illegal termination unless there are reasons necessitating departure."

12. The learned counsel for the petitioner would also rely on other decision of this Court, in the case of Management of Tamil Nadu, State Transport Corporation (Madurai Division V) Ltd., Vs. K.Sundar and others, reported in 2016-I-LLJ-521 (Mad), wherein, he would draw the attention of this Court to paragraph no.5, which is reproduced hereunder:-

"5. It is found by the Labour Court as well as the learned Single Judge that there was no negligence on the part of the first respondent/workman. When such is the position, the non-employment of the first respondent/workman cannot be employed against the first respondent/workman and therefore the submission made by the learned counsel for the appellant in this regard is not acceptable. With regard to non-payment of contribution towards pension fund during the period of non-employment, the first respondent/workman was not paid salary and therefore there could be no deduction towards contribution to pension fund. In any case, the amount of contribution towards pension fund that the first respondent / workman would have paid during the non-employment period can be recovered from the amount payable to the first respondent/workman or adjusted from his present salary."

13. At this, the learned counsel for the respondent Corporation would rely on the decision of the Hon'ble Supreme Court of India, in the case of J.K.Synthetics Ltd Vs.K.P.Agrawal and another, reported in (2007) 2 SCC 433, learned counsel would lay emphasis of the order passed by the Hon'ble Supreme Court of India that in case of proved misconduct award of reinstatement, the Court is merely exercising its discretion to award lesser punishment and in such context there is no order of reinstatement from the date of termination.

14. The above decisions relied on by the learned counsels for both parties are concerned, the same cannot be applied in toto on the factual matrix of the present case.

15. This Court has considered the rival submissions of the counsel for both parties and perused the materials and pleadings placed on record. From the findings of the Labour Court, it is clear that in all fours, the Labour Court has found in favour of the petitioner's claim that he had taken leave during the subject period on medical grounds. Moreover, once the Labour Court found that the exparte enquiry against the petitioner was not fair and proper, this Court does not find any justification in the award of the Labour Court denying the petitioner workman continuity of service, back wages and other attendant benefits.

16. As rightly contended by the learned counsel for the petitioner that when once the Labour Court comes to a conclusion in favour of the workman, in all aspects, the final award ordering only reinstatement without continuity of service, back wages etc., is preposterous and cannot be countenanced both in law and on facts. This Court is entirely in agreement with the submission made on behalf of the learned counsel for the petitioner. This Court also finds that the award of reinstatement mean nothing to the petitioner since the petitioner had to retire on 30.06.2012. The award as such did not confer any benefits on the petitioner workman, which was otherwise admissible to him.

17. Though the absence of the petitioner was found to be justified and the domestic enquiry conducted against the petitioner was found to be not fair and proper, moreover, the findings of the Labour Court that the Management was in receipt of the leave application as admitted by the Management witness, would further strengthen the case of the petitioner for an award with full benefits. That being the case, this Court does not appreciate as to the legal and factual basis of the Labour Court award, restricting the award only for reinstatement without the benefit of continuity of service, back wages and other attendant benefits.

18. In the above circumstances, this Court is of the considered view that the award of the Labour Court has to be modified as follows:-

"The petitioner workman is entitled to continuity of service with 25% back wages during the period of his non-employment. The denial of 75% back wages is a sufficient punishment for the petitioner for remaining absent without sanction for leave by the Corporation. It is also made clear that any contribution payable to the Provident Fund towards the petitioner's service, shall be adjusted from the amount payable to the petitioner towards back wages. Since the petitioner had attained the age of superannuation on 30.06.2012, the petitioner shall be entitled to arrears of wages due from the date of the award till the date of retirement and also entitled to all retirement benefits as admissible to him."

19. In view of the modification of the award as above, the respondents are directed to pass consequential orders within a period of eight weeks from the date of receipt of a copy of this order.

20. In the light of the above direction, the writ petition is allowed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gsk

To

1.The Managing Director,
Tamil Nadu State Transport Corporation,
Kumbakonam.

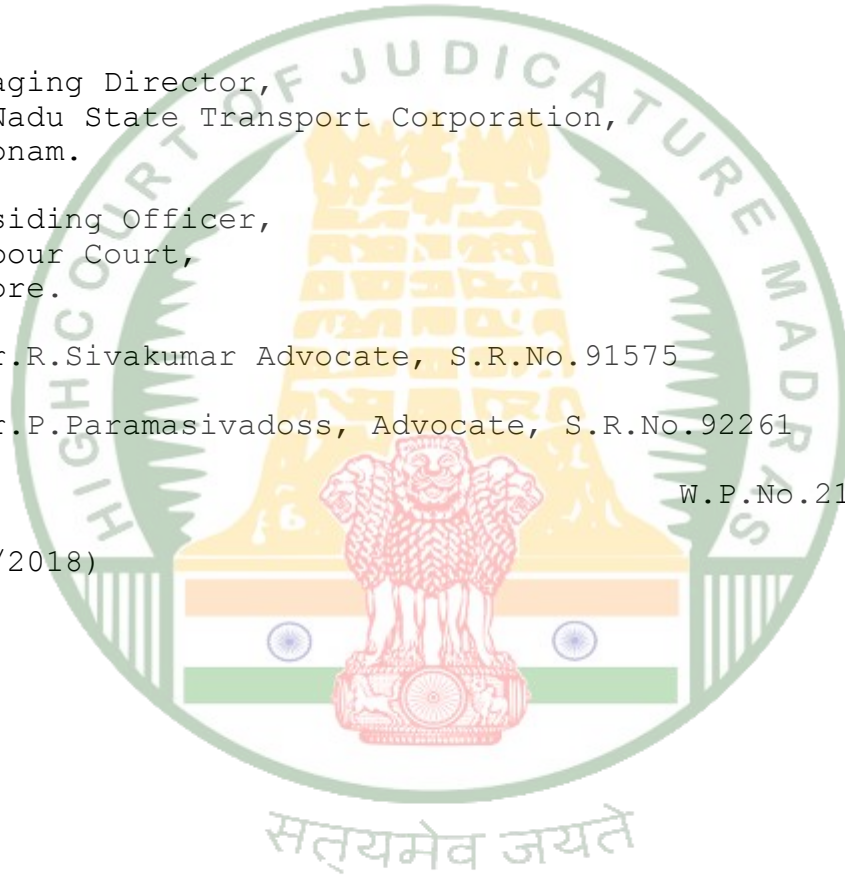
2.The Presiding Officer,
The Labour Court,
Cuddalore.

+1cc to Mr.R.Sivakumar Advocate, S.R.No.91575

+1cc to Mr.P.Paramasivadoss, Advocate, S.R.No.92261

W.P.No.21758 of 2011

RSY(CO)
RRK(07/02/2018)



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