

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.No.24345 of 2014

and

W.M.P.NO.1 of 2014 and 2 of 2015

The Management,
Tamilnadu State Transport Corporation (Villupuram) Ltd,
Regional Office,
Bye pass Road, Venkikkal - 606 604
Thiruvanamalai.Petitioner

Vs.

1.N.Prasad
2.The Special Joint Commissioner of Labour (Conciliation)
DMS Compound,
Chennai -600 006.Respondents

Prayer : This Writ Petition is filed under Article 226, of Constitution of India praying to issue a Writ of Certiorari, to call for the records passed by the 2nd respondent in A.P.No.74 of 2011 dated 31.10.2013 and to quash the same.

For Petitioner : Mr.P.Paramasiva doss

For Respondents: Mr.S.T.Varadarajulu for R1
R2 - Court

ORDER

This Writ Petition has been filed by the petitioner challenging the order passed under section 33(2)(b) of the Industrial Disputes Act, 1947, by which respondent no.2, while concurring with the findings nonetheless held that the punishment imposed on the 1st respondent is disproportionate.

2. The learned counsel appearing for the petitioner would submit that respondent No.2 has exceeded his jurisdiction. After having held that the enquiry was conducted in a fair manner, there is nothing more else to be done for interfering with the quantum of punishment imposed incidentally. It is also

found that the respondent No.1 was also paid one month salary which is mandatory.

3. Learned Counsel appearing for respondent No.1 would submit that the punishment appears to be very disproportionate, even if approval is granted.

4. The respondent No.1 is agitating the matter with respect to the quantum is concerned. This court has, in similar circumstances, remitted the matter to the petitioner for considering of lesser punishment. Learned counsel for respondent No.1 would submit that respondent No.1 is 52 years old and the occurrence was in the year 2009. The order was passed in 2013 and an approval petition was filed in the year 2011. Therefore at this length of time, this court, if remits the matter back, it perhaps lead to one more litigation. Therefore, the learned counsel would submit that appropriate orders may be passed, considering the facts and circumstances of the case.

5. The respondent No.1 has not worked over the years. It appears that even during the pendency of proceedings, he did not evince interest. However, this court is of the view that the order impugned cannot be sustained in eye of law, since the power under Section 11-A of the Act has been exercised by the respondent no.2 on an approval petition. Taking note of the facts and, instead of remitting the matter back, the order impugned is modified to the effect that the petitioner - Management shall reinstate respondent No.1 with continuity of service and without any back wages till the date of reinstatement. The order of reinstatement has to be passed by the petitioner within a period of six weeks from the date of receipt of copy of this order.

6. The writ petition is ordered accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

tkp/raa

To

The Special Joint Commissioner of Labour (Conciliation)
DMS Compound,
Chennai -600 006.

+lcc to M/S.S.T.varadarajulu, Advocate Sr.40571

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07.06.2017



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