

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.07.2017

CORAM

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

W.A. NOS. 1072 & 1073 OF 2012
AND
M.P. NOS. 1 of 2012 & 1 OF 2013

The Management
State Express Transport Corporation Ltd.
Pallavan Salai,
Anna Salai,
Chennai 600 002. ... Appellant in W.A.1072 of 2012

The Management of Thiruvalluvar
Transport Corporation Ltd.
Presently known as State Express Transport Corporation,
Anna Salai,
Chennai 600 002. ... Appellant in W.A.1073 of 2012

- Vs -

1. Mr. Meigandan
2. The Presiding Officer
II Addl. Labour Court
Chennai. ... Respondents in both Appeals

Appeal filed under Clause 15 of the Letters Patent, against the order of the learned Single Judge dated 6.2.2012, made in W.P. No.22668 of 2007 and W.P.No.24663 of 2007.

W.P. No.22668 of 2007:-Writ Petition filed under Article 226 of the constitution of India praying for a Writ of certiorarified Mandamus calling for the records pertaining to the award dated 26/10/2006 in I.D No 281/97 passed by the 2nd respondent, quash the same in so far as depriving the petitioner relief of back wages and all other attendant benefits including terminal benefits and consequently direct the first respondent to pay the petitioner, back wages and all other attendant benefits from the date of dismissals to the date of superannuation after adjusting Rs.1 50,000/- awarded as compensation and to pay the petitioner

the terminal benefits and monthly pension from the day next to the date of the petitioner superannuation.

Prayer in W.P.24663 of 2007:- Writ Petition filed under Article 226 of the constitution of India praying for a Writ of certiorari calling for the records pertaining to the award dated 26.10.2006 in I.D.No.281 of 1997 passed by the second respondent and quash the same.

For Appellant : Ms. Kala Ramesh

For Respondents : Mr. R.Krishnaswamy for R-1

COMMON JUDGMENT

(DELIVERED BY HULUVADI G.RAMESH, J.)

These appeals are directed against the order passed by the learned single Judge whereunder the learned single Judge ordered reinstatement of the workman with full backwages by modifying the order passed by the Labour Court.

2. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the 1st respondent and perused the materials available in the typed set of documents.

3. The workman stood dismissed on the ground of insubordinate attitude and misbehaviour with the superiors. In furtherance of the departmental enquiry, the charges were held proved based on which the workman was removed from service. Against the said removal from service, the workman moved the Labour Court, though belatedly. However, before the passing of order, the workman attained the age of superannuation. However, on the merits of the case, the Labour Court ordered reinstatement, however, since the workman stood superannuated by the time the award was passed, instead of ordering backwages, a lumpsum amount of Rs.1.50 Lakhs was ordered to be paid without any further benefits. Aggrieved against the said award, two separate independent writ petitions were filed, one by the Management and the other by the employee. Learned single Judge, after hearing the parties, in modification of the order of the Labour Court, while allowed the writ petition filed by the employee and ordered reinstatement with full backwages and consequential retiral benefits, dismissed the writ petition filed by the Management. Aggrieved by the said order, the appellant/Management is before this Court through the present appeal.

4. After hearing the learned counsel for the parties, looking into the gravity of the offence alleged, this Court is

of the considered view that the order of removal/dismissal from service is disproportionate to the allegation viz., misbehaviour and insubordination with the superior official. In that view of the matter, the order of the learned single Judge ordering reinstatement cannot be said to be arbitrary and illegal. However, it is seen that the workman had superannuated during the pendency of the proceedings before the Labour Court, which fact has been taken note of by the Labour Court, which awarded a lumpsum compensation of Rs.1.50 Lakhs, which has been modified by the learned single Judge ordering full backwages. This Court is of the view that though the concept of "No Work - No Pay" could be applied, however, looking at the gravity of the charges levelled against the workman, the punishment of dismissal being rather very harsh and, therefore, the learned single Judge had rightly ordered reinstatement, however, since the workman had already superannuated on the date of the order passed by the Labour Court, ordering payment of full backwages would not be proper and justified as the management has not extracted any work from the workman. Therefore, in the interest of justice, this Court feels that it would be justiciable if the amount of Rs.1.50 Lakhs, as has been ordered to be paid by the Labour Court is confirmed. At this point of time, learned counsel appearing for the workman submits that notional increment from the date of dismissal till superannuation as also the contribution of the employer towards the provident fund may be ordered so that the workman may atleast get the benefit of his reinstatement in the form of retiral benefits.

5. In such view of the matter, this Court while modifying the order of the learned single Judge to the effect that the workman would stand reinstated, however, the portion of the order awarding full backwages is modified to the extent that instead of full backwages, the workman would be entitled to a lumpsum payment from the amount of Rs.1.50 Lakhs ordered by the Labour Court. The period of suspension of the workman shall be treated as 'On Duty' for the purpose of fixation of notional increment. The portion of the contributory provident fund to be paid by the employer, to which the workman is entitled, for the period from the date of dismissal from service till the date of superannuation may be adjusted from and out of the amount of Rs.1.50 Lakhs that is to be paid to the workman. The balance after deduction of the employer's share of contributory provident fund from the amount of Rs.1.50 Lakhs shall be paid to the workman as lumpsum amount. The appellant is directed to complete the above exercise within a period of three months from the date of receipt of this order and pay the amounts due as ordered above, including the retiral benefits, to the workman.

6. Accordingly, these writ appeals are disposed of with the aforesaid observations and directions. Consequently, connected

miscellaneous petitions are closed. However, in the circumstances of the case there shall be no order as to costs.

Sd/-
Asst.Registrar (CS III)

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Sub Asst. Registrar

GLN

To

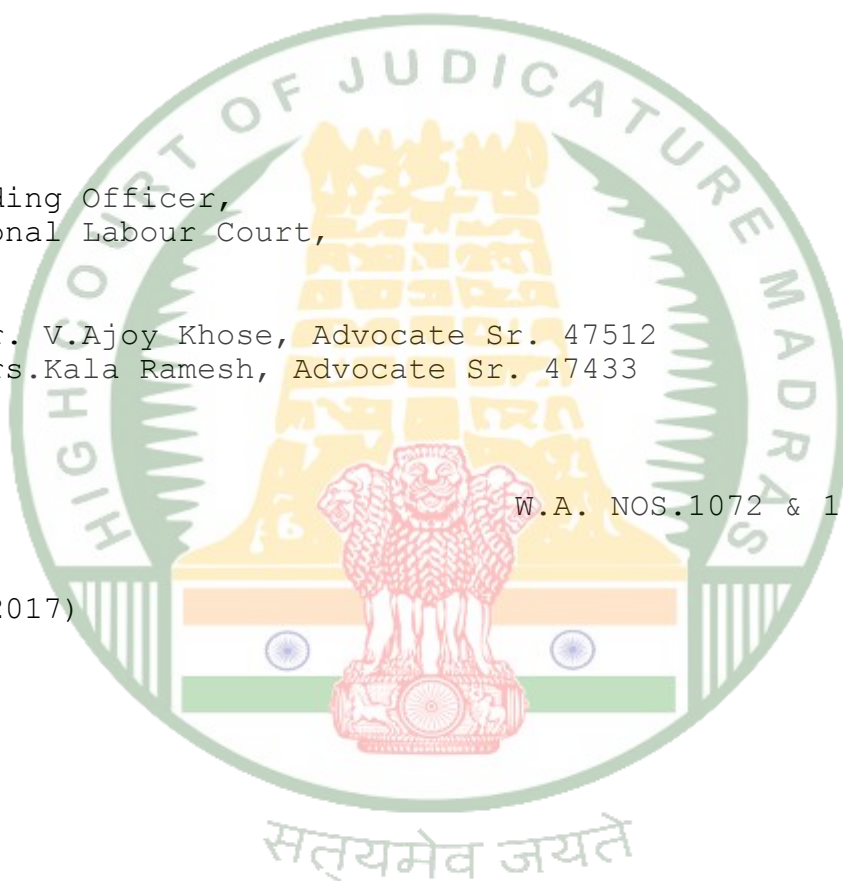
The Presiding Officer,
II Additional Labour Court,
Chennai.

+1cc to Mr. V.Ajoy Khose, Advocate Sr. 47512

+1cc to Mrs.Kala Ramesh, Advocate Sr. 47433

W.A. NOS.1072 & 1073 OF 2012

SJ(CO)
VR(04/09/2017)



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