

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.Nos.361 & 362 of 2017 and
W.M.P.Nos.7752 & 7753 of 2017

The General Manager,
Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Vazhuthareddy, Salamedu,
Villupuram Region,
Villupuram-604 602.

... Petitioner in
both W.Ps

Vs.

1. A.Iruthayaraj
2.The Special Deputy Commissioner of
Labour, D.M.S. Compound,
Chennai.

..Respondents in
W.P.No.361/2017

1. K.Sivaraman
2.The Special Deputy Commissioner of
Labour, D.M.S. Compound,
Chennai.

..Respondents in
W.P.No.362/2017

Prayer: Writ petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorari to call for the records of the second respondent made in A.P.No.118 of 2014 dated 29.03.2016 and A.P.No.285 of 2013 dated 10.05.2016 respectively and quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

For Petitioner : Mr.P.Paramasivadosh
in both WPs

For respondents : Mr.V.Ajay Khose for R1
in both WPs. Mr.R.A.S.Senthivel for R2

COMMON ORDER

By consent, the main writ petitions themselves are taken up for final disposal.

2. The petitioners filed applications under Section 33(2) (b) of the Industrial Disputes Act, 1947, seeking approval of the orders of dismissal passed. The approval petitions were rejected on the sole ground that on a prima facie consideration the charges were not proved based upon acceptable evidence. This finding has been given on the premise that the passengers have not been examined. On the other ground, the respondent No.2 has concurred with the case of the petitioner, by holding that the orders of dismissal are not willful and deliberate and the approval petitions have been filed within a reasonable time.

3. The learned counsel appearing for the petitioner would submit that the finding is bordering on perversity. Witnesses have been examined to substantiate the charges. The charges are very serious. The first respondent in W.P.No.362 of 2017 has indulged in a fatal accident. It is not the first time, he has done so. There were two similar occasions, for which lesser punishment has been imposed. It is not mandatory in all cases the passengers will have to be examined.

4. The learned counsel appearing for the respondent No.1 in both writ petitions would submit that the power of the judicial review over an order rejecting the approval petitions is rather limited. In a departmental enquiry, it is for the presenting officer to prove the charges. The respondent No.2, on facts, has held that the charges have not been proved. A stand has been taken before the jurisdictional Court in a claim petition that the respondent No.1 in W.P.No.362 of 2017 was not responsible. In the criminal case also he was acquitted. The orders are also in tune with the settlement entered into between the petitioner and the workmen represented by the Union on the effect of the acquittal passed by the Criminal Court.

5. This Court does not find any error in the order passed. As rightly submitted by the learned counsel appearing for the respondent No.1 in both cases, on a prima facie consideration the respondent No.2 can satisfy itself on the punishment imposed with relation to the charges and the enquiry conducted. After all, it is for the petitioner to prove the charges based upon the relevant materials. Thus, a finding of fact was arrived at, on the premise that there are no sufficient materials to prove the charges.

6. Alternatively, the learned counsel appearing for the petitioner submitted that in such an eventuality, the respondent No.1 in both the writ petitions are not entitled for back wages for the above. It is submitted that the respondent No.1 W.P.No.362 of 2017 had indulged in two similar occasions earlier. Even assuming that there is some technical flaw, that would not per se exonerate the Respondent No.1. The learned counsel for the respondent No.1 submits that some back wages may be paid, considering the facts and circumstances of the case and in any case, the Provident Fund and pension, which are

otherwise payable by the employer concerned, since they are languishing over the years without job, apart from non payment of salary.

7.Considering the above, while confirming the orders passed by the second respondent, it is hereby ordered that the petitioner-Management shall reinstate the respondent No.1 in both writ petitions with continuity of service, but without back wages. Back wage is not a matter of course but subject to the satisfaction on relevant factors. However, it is made clear that the petitioner will have to pay not only the employers contribution, but also the employees contribution, in both cases, till the date of reinstatement. It is further made clear that the same principle will have to be applied even for pension. The respondent No.1 in both writ petitions is also entitled as a one in continuity of service. They are also entitled for the attendant benefits as a consequence of continuity of service. Eight weeks time is granted to the petitioner to implement the order passed by this Court. The writ petitions stand ordered accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1.The General Manager,
Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,Vazhuthareddy, Salamedu,
Villupuram Region,Villupuram-604 602.

2.The Special Deputy Commissioner of
Labour, D.M.S. Compound,
Chennai.

+1cc to Mr.V.Ajoy Khose, Advocate in sr.no.44263(28/08/2017)

W.P.Nos.361 & 362 of 2017

SAI (CO)
NR 21/07/2017

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