

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.21128 of 2004

and

W.P.M.P.No.25483 of 2004

Tamil Nadu State Transport
Corporation (Villupuram) Ltd
Villupuram
rep. by its Managing Director ... Petitioner

Vs.

1. The Presiding Officer
Labour Court,
Vellore.
2. M.Gajendran
Poongulam Village & Post
Vaniyampadi Taluk
Vellore District. ... Respondent

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari or any other order or direction in the nature of writ to call for the records of the 1st respondent in C.P.No.20/2002 dated 18.12.2003 and quash the same.

For Petitioner : Mr.T.Chandrasekaran

For Respondent No.1 : Court

For Respondent No.2 : Mr.S.J.Varadharajulu

O R D E R

The petitioner/ Transport Corporation challenging the award of the labour court /first respondent ordered in favour of the second respondent workman wherein he was granted the benefits under the computation petition filed u/s.33(c) (2) of the Industrial Dispute Act.

2. The brief facts of the case is as follows:

The second respondent was working as conductor in the Corporation who filed a computation petition u/s.33(c) (2) of the Industrial Dispute Act, for recovery of the dues, in which, he claimed a sum of Rs.9,23,879.95/-.

3. For the sake of convenience, the petitioner is referred to as "Corporation" and the second respondent is referred to as "workman". The workman joined in the service of the petitioner/Corporation on 15.10.1976 as a conductor and he was dismissed from service on 27.07.1978 for his alleged misconduct. Aggrieved by the dismissal order, the workman raised the Industrial Dispute before the Labour Court in I.D.No.65 of 1992. On 08.11.1993, the labour court has set aside the order of dismissal and directed the corporation to reinstate the workman in service with full backwages and continuity of service and with other attendant benefits. Against the order of Labour Court, Corporation filed W.P.No.1499 of 1995 and this Court on 02.11.2000 has dismissed the writ petition. Aggrieved by the same, the "Corporation" filed further appeal in W.A.No.460/2001 and the same was also dismissed by the Division Bench of this court on 10.04.2001.

4. Again the "Corporation" has filed a Review Application in R.A.11 of 2002. This court, by consent of both parties, i.e., Corporation and the workman, passed an order that the workman is not entitled to backwages from 18.08.1980 to 01.09.1987. Accordingly, the review application is closed. Thereafter, the Corporation did not pay any amount as agreed in the review petition. Aggrieved by the inaction of the corporation, for its non-payment of the wages and other benefits, the workman filed a computation petition u/s. 33(c) (2) of the Industrial Dispute Act.

5. Though the workman has claimed a sum of Rs.9,23,879.95/- as per the calculation memo filed by the petitioner, which was marked as Ex.M2, this court, on perusal of the entire documents would come to the conclusion that a sum of Rs.1,89,106/- towards other attendant benefits was granted to the workman by the first respondent and the same was not included as wages and the said order was passed as per the order of this court in the above said review application. It is understood that the amount awarded by the labour court is not backwages but it is other benefits. Accordingly, the workman is entitled to get the benefits awarded by the labour court /first respondent.

6. While entertaining the writ petition, this court has granted an interim stay on 22.07.2004 and on 20.03.2006, this court modified the order and permitted the workman to withdraw one-third of the amount.

7. On perusal of the award, it is clear that the labour court has not awarded backwages to the petitioner but it has awarded only the other benefits for which the workman is entitled to.

8. Learned counsel for second respondent/workman has relied upon the decision reported in Civil Appeal in CA.1471 of 1980 in the case of M/s.Gammon India Ltd., vs. Sri Niranjana Dass wherein the workman is entitled to receive the other benefits for which he is entitled to. The relevant paragraph of the order is extracted as follows:

"4. In the course of hearing of this appeal, it was stated that the respondent has reached the age of superannuation therefore physical reinstatement in service is not possible. Appellant will have to establish that fact but in the event, the appellant shows that under a valid rule, respondent has reached the stage of superannuation and therefore physical re-instatement is not possible, it is hereby declared that the respondent shall continue to be in service uninterruptedly from the date of the attempted termination of service till the date of superannuation. Respondent would be entitled to all back wages including the benefit of revised wages or salary if during the period there revision of pay-scales with yearly increment, revised dearness allowance or variable dearness allowance and all terminal benefits if he has reached the age of superannuation such as Provident Fund. Gratuity, etc., Back wages should be calculated as if the respondent continued in service uninterrupted. He is also entitled to leave encashment and bonus if other workmen in the same category were paid the same. It appears that the respondent has been unlawfully kept out of service, therefore it is but just that the appellant-company shall pay all the arrears as calculated according to the directions herein given with 12% interest from the date the amount became due and payable till realisation. Appellant shall also pay costs to the respondent quantified at Rs.5,000/-. The appellant is directed to pay the amount as herein directed to be paid within 3 months from today."

9. The law is well settled and that in writ petition, interfering with the fact finding authority under Article 226 is very limited, unless the order of authority is perverse and against the settled principle of law.

10. In support of his contention, learned counsel for the second respondent has relied upon another decision in the case of C.A.No.673 of 2013 between M/s.Atlas Cycle (Haryana)Ltd.,

and Kitab Singh reported in CDJ 2013 SC 077.

The relevant portion of the above said judgment is extracted as under:

"6. Before the Division Bench of the High Court, the Management raised a question relating to the scope of interference by a writ Court in a finding of fact rendered by a Tribunal/Labour Court. It was urged by the Management that the Labour Court, having arrived at a firm finding that the workman was never tortured or that the story of forcible resignation claimed by him was unreliable, the learned single judge ought not to have interfered with the same in exercise of his extraordinary writ jurisdiction under Article 226 of the Constitution of India. Learned counsel for the Management further contended that in no circumstance, a direction for reinstatement of the workman in service is warranted, particularly when having regard to his misconduct, the Management had completely lost confidence in the workman. On the other hand, learned counsel for the workman contended that when the findings rendered by the Labour Court are contrary to the material evidence on record, it shall amount to perversity and the writ Court is fully justified in interfering with the same. On going through the entire materials, the Division Bench accepted the stand of the workman and confirmed the order passed by the learned single Judge.

38.(3). Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e., when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction - by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

11. In view of the categorical finding of the Hon'ble Apex court, this court is not inclined to interfere with the order passed by the labour court. Accordingly, the writ petition is dismissed. No costs.

The first respondent/labour court is directed to permit the 2nd respondent/workman to withdraw the remaining amount lying in the credit of the labour court. Consequently, connected

miscellaneous petition is closed.

Sd/-

ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

To

The Presiding Officer
Labour Court,
Vellore.

+1 CC to Mr.S.J.Varadharajulu Advocate SR.NO.69088

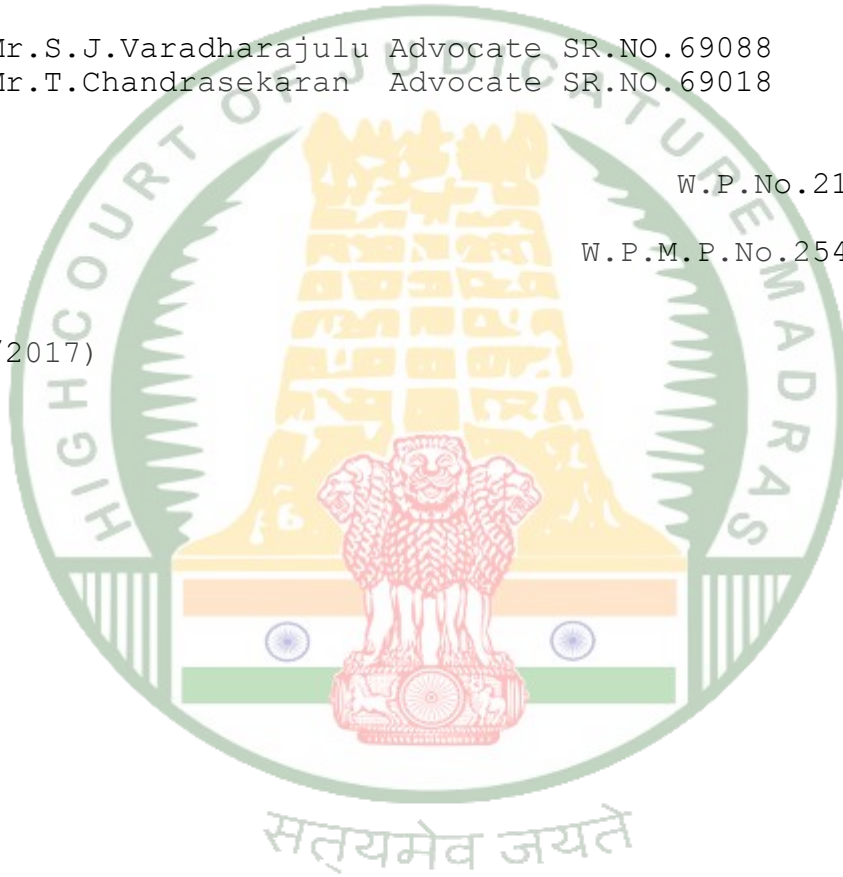
+1 CC to Mr.T.Chandrasekaran Advocate SR.NO.69018

W.P.No.21128 of 2004

and

W.P.M.P.No.25483 of 2004

VC (16/11/2017)



WEB COPY