

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.11.2017
CORAM
THE HONOURABLE Mr.JUSTICE V.PARTHIBAN
W.P.No.36919 of 2006

The Tamil Nadu State Transport Corporation
(Villupuram)Ltd., rep by its General Manager,
Vellore. ... Petitioner

Vs

1.The Presiding Officer,
Labour Court, Vellore.

2.Chandran (Deceased)

3.Tmt.Vijayalakshmi

4.Selvi.Usha

5.Selvan.Devakumar

6.Selvi.Prema

7.Selvan.Raja

R3 to R7 substituted as LR's of deceased R2 S.Chandran,
as per Order dated 03.11.2017 in M.P.No.1 of 2015 in
W.P.No.36919 of 2006. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of
India, praying to issue a writ of Certiorari, to call for the
records of the 1st respondent in I.D.No.53 of 2001, dated
27.09.2004 and quash the same.

For Petitioner : Mr.P.Paramasivadosh

For Respondents : Mr.V.Ajoy Khose for R3 to R7
R2-Died
R1-Court

ORDER

Heard Mr.P.Paramasivadosh, learned counsel for the
petitioner and Mr.V.Ajoy Khose, learned counsel appearing for
the respondent Nos. 3 to 7.

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

"To issue a writ of Certiorari, to call for the
records of the 1st respondent in I.D.No.53 of 2001,
dated 27.09.2004 and quash the same."

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

The petitioner is the Tamil Nadu State Transport Corporation (Villupuram) Ltd., Vellore Region. They have approached this Court, seeking to challenge the award of the Labour Court, the first respondent herein, in I.D.No.53 of 2001, dated 27.09.2004, directing reinstatement of the second respondent (deceased) workman with 50% of back wages.

4. The case of the petitioner is that the second respondent workman who died in 2013, during the pendency of the writ petition, was originally employed as Driver with the petitioner Corporation. While discharging his duties, he had caused fatal accident. He was proceeded departmentally for the incident. On the basis of the departmental action, the petitioner was eventually dismissed from service.

5. As against the action taken by the Corporation dismissing the workman from service, an Industrial Dispute was raised in I.D.No.53 of 2001. The first respondent- Labour Court, after considering all the relevant materials and evidence, had come to the conclusion that the both vehicles which met with the accident were responsible for the same. However, while considering the quantum of penalty, the first respondent has taken into consideration the clean record of service enjoyed by the second respondent workman in the past and therefore, interfered with the penalty under Section 11 (A) of the Industrial Disputes Act, 1947.

6. Finally, by Award dated 27.09.2004, the Labour Court while exercising its discretionary jurisdiction under Section 11 (A) of the Industrial Disputes Act, has ordered the reinstatement with 50% of back wages. The Corporation having aggrieved by the award of the Labour Court, is before this Court, challenging the same.

7. The learned counsel appearing for the petitioner Corporation has strenuously contended that the Award of 50% back wages by the Labour Court cannot be sustained in law, in view of the fact that the Labour Court itself has found that the second respondent workman was guilty negligence in discharge of his duties as Driver and the Labour Court once exercising its jurisdiction under 11 (A) of the Industrial Disputes Act, for interfering in the quantum of penalty, cannot be ordered payment of back wages to the workman. Such direction is, according to the learned counsel for the petitioner Corporation, is contrary to the law laid down by the Hon'ble Supreme Court of India, in the case of J.K.Synthetics Ltd., Vs. K.P.Agrawal and another, reported in 2007, 2SCC, 433. The learned counsel would particularly, draw the attention of this Court to paragraph 18, 19 and 20, which are extracted here under:-

"18. Coming back to back wages, even if the court

finds it necessary to award back wages, the question will be whether back wages should be awarded fully or only partially (and if so the percentage). That depends upon the facts and circumstances of each case. Any income received by the employee during the relevant period on account of alternative employment or business is a relevant factor to be taken note of while awarding back wages, in addition to the several factors mentioned in Rudhan Singh¹² and Uday Narian Pandey⁹. Therefore, it is necessary for the employee to plead that he was not gainfully employed from the date of his termination. While an employee cannot be asked to prove the negative, he has to at least assert on oath that he was neither employed nor engaged in any gainful business or venture and that he did not have any income. Then the burden will shift to the employer. But there is, however, no obligation on the terminated employee to search for or secure alternative employment. Be that as it may.

19. But the cases referred to above, where back wages were awarded, related to termination/retrenchment which were held to be illegal and invalid for non-compliance with statutory requirements or related to cases where the Court found that the termination was motivated or amounted to victimisation. The decisions relating to back wages payable on illegal retrenchment or termination may have no application to the case like the present one, where the termination (dismissal or removal or compulsory retirement) is by way of punishment for misconduct in a departmental inquiry, and the court confirms the finding regarding misconduct, but only interferes with the punishment being of the view that it is excessive, and awards a lesser punishment, being of the view that it is excessive, and awards a lesser punishment, resulting in the reinstatement of employee. Where the power under Article 226 or Section 11-A of the Industrial Disputes Act (or any other similar provision) is exercised by any court to interfere with the punishment on the ground that it is excessive and the employee deserves a lesser punishment, and a consequential direction is issued for reinstatement, the court is not holding that the employer was in the wrong or that the dismissal was illegal and invalid. The court is merely exercising its discretion to award a lesser punishment. Till such power is exercised, the dismissal is valid and force. When the punishment is reduced by a court as being excessive, there can be either a direction for reinstatement or a direction for a nominal lump sum

compensation. And if reinstatement is directed, it can be effective either prospectively from the date of such substitution of punishment (in which event, there is no continuity of service) or retrospectively, from the date on which the penalty of termination was imposed (in which event, there can be a consequential direction relating to continuity of service). What requires to be noted in cases where finding of misconduct is affirmed and only the punishment is interfered with (as contrasted from cases where termination is held to be illegal or void) is that there is no automatic reinstatement; and if reinstatement is directed, it is not automatically with retrospective effect from the date of termination. Therefore, where reinstatement is a consequence of imposition of a lesser punishment, neither back wages nor continuity of service nor consequential benefits, follow as a natural or necessary consequence of such reinstatement. In cases where the misconduct is held to be proved, and reinstatement is itself a consequential benefit arising from imposition of a lesser punishment, award of back wages for the period when the employee has not worked, may amount to rewarding the delinquent employee and punishing the employee for taking action for the misconduct committed by the employee. That should be avoided. Similarly, in such cases, even where continuity of service is directed, it should only be for purposes of pensionary/retirement benefits, and not for other benefits like increments, promotions, etc.

20. But there are two exceptions. The first is where the court sets aside the termination as a consequence of employee being exonerated or being found not guilty of the misconduct. Second is where the court reaches a conclusion that the inquiry was held in respect of a frivolous issue or petty misconduct, as a camouflage to get rid of the employee or victimise him, and the disproportionately excessive punishment is a result of such scheme or intention. In such cases, the principles relating to back wages, etc. will be the same as those applied in the cases of an illegal termination."

8. The Hon'ble Supreme Court has held that the benefit of back wages cannot be given, in case the Labour Court interferes with the quantum of penalty on the ground of proportionality. The learned counsel for the petitioner Corporation would further submit that although the second respondent-workman had been reinstated in service, in pursuance of the award way back in

2006, the Award of back wages cannot be countenanced in law and therefore, the award has to be either set aside or modified.

9. Per contra, the learned counsel appearing for the second respondent workman would submit that after reinstatement of the workman, the workman died in 2013, while in service and therefore, the legal heirs have been impleaded as petitioners in this writ petition. The learned counsel would also submit that he would give up his claim towards 50% back wages awarded by the Labour Court but would submit that he was entitled to arrears of wages payable to the workman from the date of Award till the date of writ petition, which was worked out to Rs.2,41,500/-, as regards the arrears of back wages(50%) was concerned, the same was worked out as Rs.1,34,375/-. The learned counsel would also implore this Court to direct the Corporation to make Provident Fund Contribution during the relevant period and in which event, the legal heirs of the deceased workman can be benefited.

10. Considering the submissions made on behalf of the learned counsel appearing for the parties, this Court modifies the award only to the extent that the grant of 50% back wages cannot be sustained and therefore, the same is set aside. However, the second respondent workman is entitled to the payment of wages for the period from the date of the award till the date of writ petition which is worked out to Rs.2,41,500/- and also the other retirement benefits as admissible to the deceased employee. As requested by the learned counsel for the second respondent, the petitioner Corporation is directed to make good their contribution towards Provident Fund and settle all the terminal benefits as admissible to the deceased workman. This direction shall be complied with by the petitioner Corporation within a period of 12 weeks from the date of receipt of a copy of this order.

11. The writ petition stands partially allowed as above. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gsk

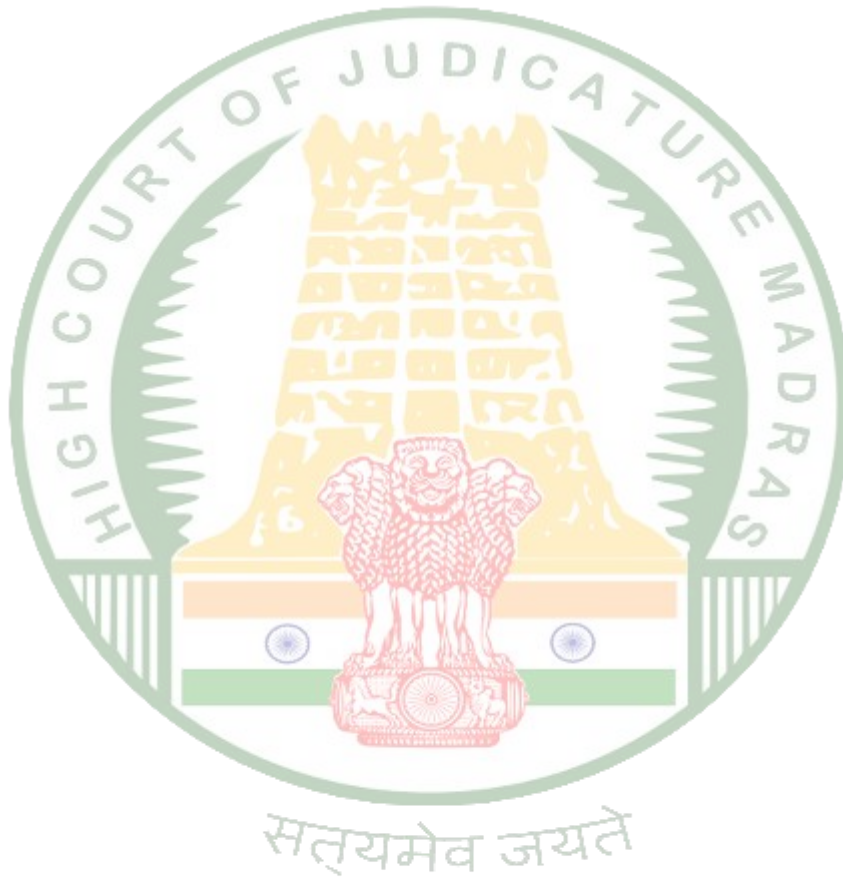
To

1.The Presiding Officer,
Labour Court, Vellore.

+1cc to Mr.V.Ajoy khose, Advocate Sr.No.82624

W.P.No.36919 of 2006

NM(CO)
sm:29.12.2017



WEB COPY