

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2017
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.23582 of 2003

The Management of State Express
Transport Corporation Ltd., rep. by its
Managing Director, Pallavan Salai,
Chennai 600 002. ... Petitioner
Vs.

1.The Presiding Officer,
I Addl. Labour Court,
Chennai 600 104.

2.S.Jayabalamurugan ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent passed in I.D.No.18/2002 dated 18.03.2003 and to quash the same and consequently direct the first respondent to decide the case on merits by giving opportunity to the petitioner Corporation.

For Petitioner : Mr.P. Paramasiva Doss

For Respondent No.2 : Mr.V.Ajoy Khose

O R D E R

The petitioner has filed this writ petition for issuance of a issue a Writ of Certiorarified Mandamus to call for the records of the first respondent passed in I.D.No.18/2002 dated 18.03.2003 and to quash the same and consequently direct the first respondent to decide the case on merits by giving opportunity to the petitioner/Corporation.

2. For the sake of convenience, the petitioner is referred to as "Corporation" and the 2nd respondent is referred as "workman".

3. The workman/second respondent was appointed as a Technical worker at Nagercoil depot on 17.11.1987. Thereafter, he was made permanent on 21.06.1988. On 13.04.1998, the petitioner suspended the second respondent from service for charges levelled against him. Subsequently on 24.04.1998, the

petitioner issued a charge memo to the second respondent alleging that he had committed theft of lift pump from the Management on 10.04.1998. Immediately after issuance of a charge memo, the second respondent / workman gave a representation/explanation denying the theft of lift pump from Management.

4. After perusing the explanation given to the petitioner/Corporation, the second respondent was reinstated in service. Thereafter, Domestic Enquiry was conducted at Tirunelveli by observing the principles of natural justice. On the same allegation, after receipt of enquiry report, the Corporation issued a second show cause notice to the second respondent/workman for which, he submitted the explanation. However, not satisfied with the reply, the second respondent/workman was dismissed from service by the General Manager of the Transport Corporation, Chennai by its order dated 11.06.1999. Thereafter, the second respondent has filed an appeal before the appellate authority. But no steps was taken for disposing his appeal. Further, he raised a dispute before the Conciliation Officer but no conciliation was arrived between the parties. Aggrieved by the same, the petitioner raised an industrial disputes before the first respondent/Labour Court under the 2-A(2) of the Industrial Dispute Act, 1947. The Labour Court passed an ex parte award in favour of the second respondent / workman. The Labour Court discussed the case in detail and passed a speaking award in terms of Tamilnadu Industrial Dispute Rules under Section 2(b) (ii) of the Industrial Dispute Act and 34 (10) & (11) of the Tamilnadu Industrial Dispute Rules, 1958.

5. The Labour Court has elaborately discussed and perused the documents filed by the second respondent/workman. Particularly when theft was noticed, the first respondent by invoking the Standing Order 1956 Rule 10, imposed the condition against the petitioner/Corporation for conducting search against the erred employee under Rule 10, which reads as follows:

"10. Liability for search:- All male workers shall be liable to be searched by the gateman while leaving the premises of the industrial establishment and all female workers shall be liable to be detained by the gateman for search by the female searcher, if acting without malice, the gateman suspects that any worker is in wrongful possession of property belonging to the industrial establishment. "

On perusal of the above Rule, it is seen that admittedly search was not conducted in the presence of two female members.

6. Learned counsel for the petitioner would submit that

the Labour Court without giving any opportunity to the petitioner/Corporation to cross examine the second respondent and to let in both oral and documentary evidences, passed an exparte award. Since exparte award was passed, it is not a speaking award in terms of the Industrial Dispute Act, 1947. It is further submitted that the balance of convenience is in favour of the petitioner.

7. Per contra, the learned counsel for the second respondent submitted that no search was conducted but simply charge was created by the petitioner/Corporation against the second respondent. Without following the procedure established by Standing Orders, conducting disciplinary proceeding is bad under law. He further submitted that admittedly the factual aspects is that after award, the second respondent was paid 17 (b) wages and was reinstated in service and thereafter, he retired from service.

8. On perusal of the above said Standing Orders, it is seen that admittedly no search was conducted and the perusal of the award of the Labour Court clearly shows that it has deeply perused the entire materials and Standing Orders and passed an award in favour of second respondent/workman for reinstatement with continuity of service, full back wages and all other attendant benefits.

9. Considering the above facts, both the learned counsel have conceded to modify the award with regard to payment of full backwages passed by the first respondent/Labour Court. Accordingly, the award is modified in the following terms :

"The order of reinstatement in service and continuity of service and other attendant benefits including provident fund are confirmed. However, the full backwages of the Labour Court is modified to the effect that the second respondent / workman is not entitled to any backwages from the date of dismissal till the date of reinstatement."

In the result, the writ petition is partly allowed. No costs. Since the second respondent is directed to be reinstated in service, the petitioner is directed to settle the benefits, within a period of eight weeks from the date of receipt of a copy of the order.

-sd/-

Assistant Registrar

True Copy

Sub-Assistant Registrar

gv

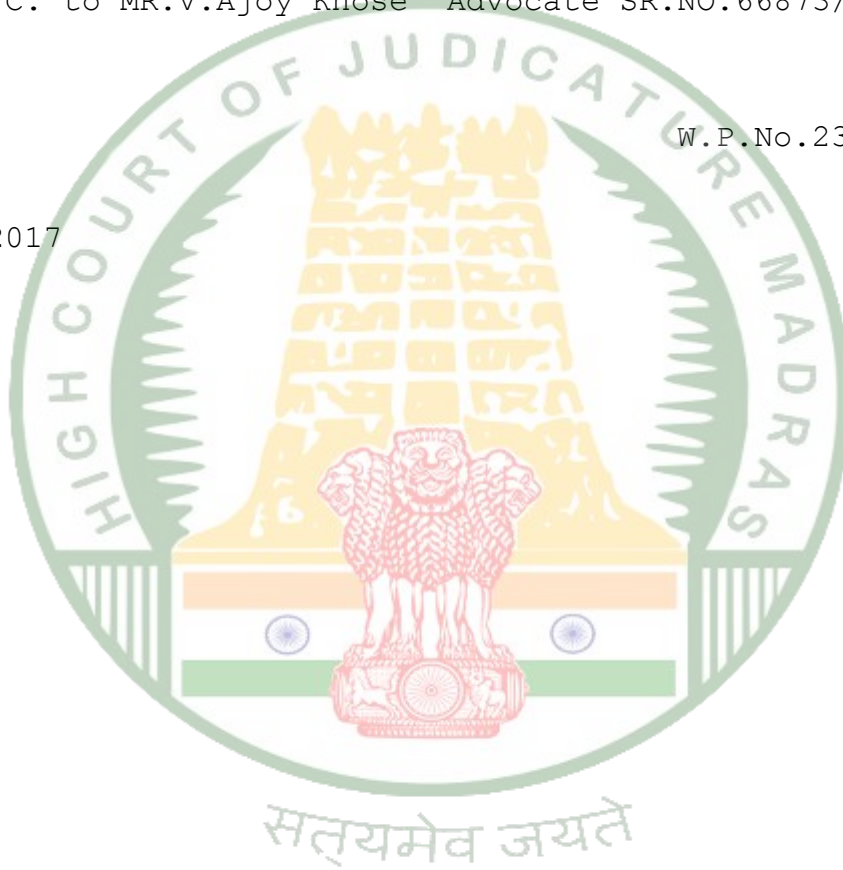
To

The Presiding Officer,
I Addl. Labour Court,
Chennai 600 104.

+1 C.C. to MR.V.Ajoy Khose Advocate SR.NO.66873/17

W.P.No.23582 of 2003

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