

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 21.07.2017
Coram

The Hon'ble Mr. Hon'ble M.Dhandapani

Writ Petition No.34587 of 2003
and
W.P.M.P.No.42014 of 2003

The Management,
Tamil Nadu State Transport Corporation,
(Kumbakonam Division. I) Ltd.,
Kumbakkonam.

...Petitioner

Vs.

1. The Presiding Officer,
Labour Court, Cuddalore.

2. N.K. Panneerselvam.

...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to calling for the records, pertaining to the award, dated 17.02.2003, made in I.D.No.182 of 1999, on the file of the Labour Court, Cuddalore and to quash the same.

For Petitioner : Mr. V.R. Kamalanathan

For Respondent-1 : Mr.M. Dig Vijayapandian
Additional Government Pleader

For Respondent-2 : No appearance

O R D E R

The challenge in this Writ Petition is to the award passed by the Labour Court, Cuddalore, in I.D.No.182 of 1999, dated 17.02.2003.

2. The petitioner, viz., Tamil Nadu State Transport Corporation, is the Management, and the second respondent, by name N.K.Panneerselvam, is the workman herein, and they shall be referred to as such, through out this judgment and order.

3. Heard Mr. V.R. Kamalanathan, the learned counsel appearing for the petitioner/Corporation and Mr.M. Dig Vijayapandian, the learned Additional Government Pleader for the first respondent.

4. The facts of the case, which are necessary for the disposal of the Writ Petition are as follows:-

i) The workman was employed as Conductor in the Management/Corporation on 05.05.1978. He was issued with a charge memo for the allegation that he has committed theft of ticket books, by the Management, to which, the workman submitted his explanation/reply. As the explanation/reply offered/submitted by the workman is not satisfactory, the Management decided to proceed against the workman departmentally. Accordingly, an Enquiry Officer was appointed, and the Enquiry Officer submitted a report holding that the charges levelled against the workman are proved. Based on the said report, the Management issued a second show cause notice, dated 20.11.1997, and called upon the workman to explain as to why he should not be dismissed from service, to which, the workman submitted his explanation. The Management not being satisfied with the explanation offered by the workman, passed an order of dismissal from service.

ii) As against the said dismissal order, conciliation proceedings were initiated, in which, both the Management and the workman participated, and 12 (3) settlement was arrived at between on 27.01.1999, which is to the effect that the workman shall be re-appointed as fresh entrant as a conductor on daily wage basis, without any continuity of service and backwages from 08.02.1999, and also subject to the condition that he is not entitled to claim any benefit during the non-employment period and he would be paid the wages only when work is assigned and when no work is provided, he is not entitled to claim wages whatsoever. Since he was engaged in service only for a few days and there was no work assigned to him from 22.03.1999, aggrieved by the non-provision of the employment, the workman raised an industrial dispute, under Section 2-A (ii) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'I.D.Act') which was taken on file by the Labour Court, Cuddalore, in I.D.No.182 of 1999.

iii) Before the Labour Court, both the workman and the Management did not choose to examine any witness. Insofar as marking of documents is concerned, the workman marked one document, viz., the 12 (3) Settlement, and on the Management's side, 21 documents were marked.

iv) The Labour Court on analysis of the averments set out in the Claim Statement and Written Statement and based on documentary evidence, framed the following three issues :-

a) Whether the Management deserves right to place the workman under non-employment?

b) Whether the workman is entitled to seek relief under Section 2 (A) (ii) of the Industrial Disputes Act, 1947?
and

c) Whether the workman can be reinstated in service along with continuity of service and backwages ? and answered those issues in favour of the workman.

v) The Labour Court, after having carefully analyzed the evidence, answered the issues in favour of the workman, and passed an award, ordering for reinstatement of the workman in service on daily wage basis, without continuity of service and backwages.

5. It is to be seen that the Labour Court, while answering the Issues has observed in para No.6 that, after the 12 (3) settlement, reinstatement order was passed by the Management, (M.W.19) indicating that the workman will be given employment for a period of one year, during which period, the workman should not indulge in any criminal activities, and if the activities of the workman and the work performed by him is not found satisfactory to the Employer, the workman will not be given employment, and without assigning any reason, the workman will be removed from service. Though as per the 12 (3) settlement, the workman was reinstated in service, he was given work only for few days, and subsequently thereafter, he was not assigned any work. Hence, the workman was forced to raise the dispute before the Labour Court. Further, it is not the case of the Management that the workman has violated the conditions imposed on him and the Management took action against the workman for violation of any of such conditions. When such being the factual position, entertaining the industrial dispute is permissible under law and the workman is entitled to claim relief under Section 2 -A (ii) of the Act. Further, the Labour Court after an elaborate discussion, arrived at a conclusion that the workman is entitled for reinstatement in service on daily wage basis, however, without continuity of service and backwages.

6. Thus, the Labour Court, after having carefully analyzed the evidence, which was placed in the domestic enquiry, passed the award of reinstatement of the workman in service on daily wage basis, but, without continuity of service and backwages, and in the absence of any perversity or illegality in the findings of the Labour Court, this Court is not inclined to re-appreciate the evidence available on record and come to a different conclusion. For all the above reasons, this Court finds no reason to interfere with the reasoned award passed by the Labour Court.

7. In the result, the Writ Petition is dismissed. No costs. Consequently, connected M.P. is closed.

sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

sd

To

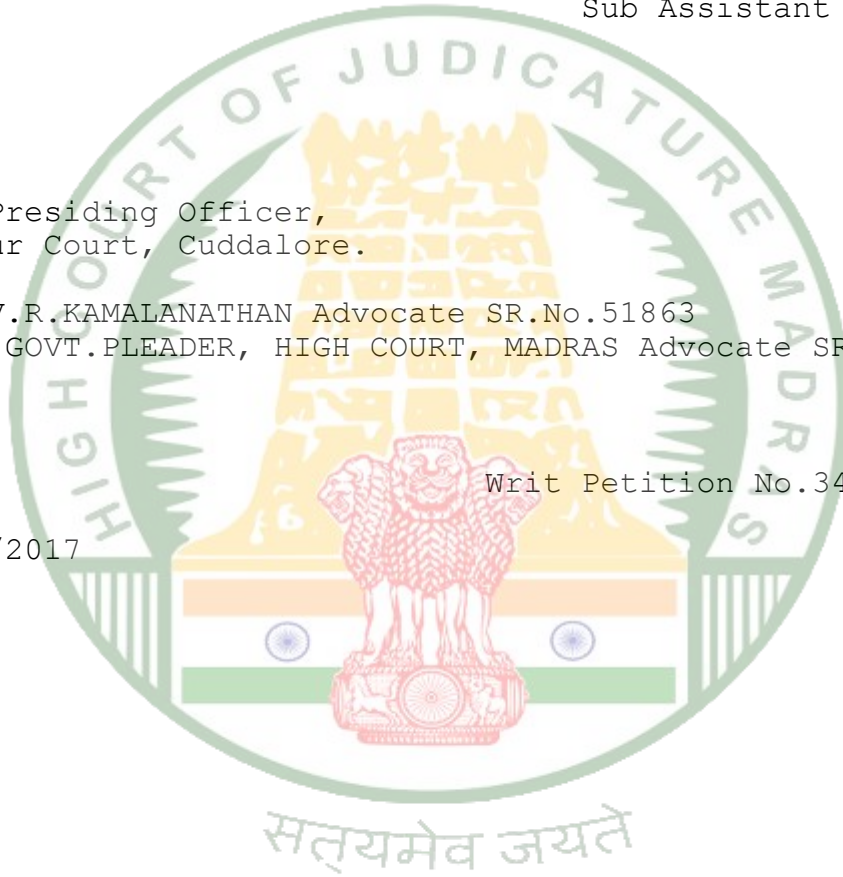
The Presiding Officer,
Labour Court, Cuddalore.

+1 CC Mr.V.R.KAMALANATHAN Advocate SR.No.51863

+1 CC THE GOVT.PLEADER, HIGH COURT, MADRAS Advocate SR.No.51996

BR (CO)
EGR 11/10/2017

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