



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.10.2017

CORAM :

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.19438 of 2017 and
W.M.P(MD)Nos.15736 & 15737 of 2017

K.Karuppiah

... Petitioner

Vs.

1. The General Manager,
Tamil Nadu State Transport Corporation, (Madurai) Ltd,
Bye pass Road, Madurai District - 625 016.
2. The Managing Director,
Tamil Nadu State Transport Corporation, (Madurai) Ltd,
Bye pass Road, Madurai District - 625016.
3. The General Manager,
Tamil Nadu State Transport Corporation,
(Dindigul) Ltd, Dindigul District.
4. The Branch Manager,
Tamil Nadu State Transport Corporation,
(Dindigul) Ltd, Theni Branch,
Theni District.

... Respondents

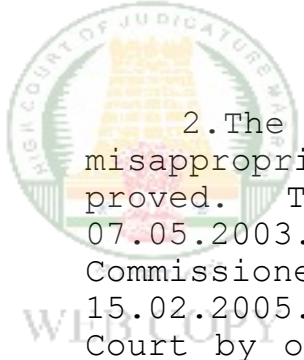
Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the first respondent in his proceedings in Ref.Nirvahan/A3/514/2014, dated 24.05.2014 to the extent of treating the petitioner as new entrant without continuity of services and consequently direct the respondents to treat the petitioner's reinstatement with continuity of service (except the period from 07.05.2003 to 11.12.2011) along with all attendant benefits within a time stipulated by this Court.

For Petitioner : Mr.M.M.Iqbal

For Respondent : Mr.A.Jeyaram for R1 to R4

O R D E R

The petitioner is employed as a conductor in the respondent corporation. He was appointed in the year 1998. He was promoted as Senior Grade Conductor. In the year 2003, based on a surprise checking inspection, the petitioner was suspended from service and departmental enquiry was also initiated.

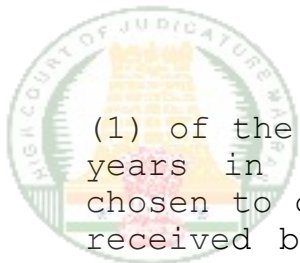


2.The allegation is that the petitioner attempted to commit misappropriation of a sum of Rs.243.50. The charge was held to be proved. The petitioner was dismissed from service by order dated 07.05.2003. The order of dismissal was also approved by the Joint Commissioner of Labour (Conciliation), Chennai vide order dated 15.02.2005. The petitioner filed WP(MD)No.6061 of 2007. This Court by order dated 16.07.2007 dismissed the writ petition giving liberty to raise labour dispute. The petitioner filed I.D.No.45 of 2012. The Labour Court, Madurai passed an award dated 27.05.2013 holding that the punishment imposed on the petitioner was not justified and directed the employer to reinstate the petitioner in service with continuity of service but without back-wages for the period from 07.05.2003 to 11.12.2011.

3.Thereafter, the first respondent herein and the petitioner entered into a settlement under Section 18(1) of Industrial Dispute Act, 1947. As per the terms of the settlement, the petitioner was inducted in service as a fresh recruit in the initial basic scale of pay. The petitioner also waived the right to claim the attendant benefits based on his past service. There was also a specific clause incorporated in the agreement that the petitioner herein would not move the High Court seeking back-wages or challenging the order treating him a fresh recruit. It was also placed on record that the petitioner herein had voluntarily entered into such a settlement and that he was not coerced into it. Based on the same, the first respondent herein passed an order dated 24.05.2014. The petitioner after rejoining the service, submitted a representation dated 20.07.2017 requesting the respondents 1 and 2 herein to reconsider the matter and grant relief by implementing the award passed by the Labour Court, Madurai in I.D.No.45/2012. Since there was no response to his request, the present writ petition came to be filed.

4.considering the nature of the issue raised in the writ petition, I passed over the matter and permitted the learned counsel for the writ petitioner to serve papers on the standing counsel for the respondent corporation.

5.When the matter was taken up in the afternoon, the learned standing counsel for the corporation opposed the grant of relief sought for by the writ petitioner on the ground that it was hit by the principle of estoppel. While it is true that the writ petitioner obtained an order for reinstatement with continuity of service but without back-wages from the Labour Court, Madurai, he chose to voluntarily forfeit the benefit available to him under the said award. Considering the serious allegations made against the writ petitioner, the management was intending to challenge the award before this Court. To forestall the same, the writ petitioner approached the management and offered to join service as a new recruit. That would entail foregoing the benefit of his past service. That was considered as a sufficient punishment by the management. Therefore, settlement was entered into under Section 18



(1) of the Industrial Disputes Act, 1947. After working for three years in terms of the said settlement, the writ petitioner has chosen to challenge the same. This cannot be allowed. A person who received benefit under a settlement cannot question the same. In other words, he cannot approbate and reprobate.

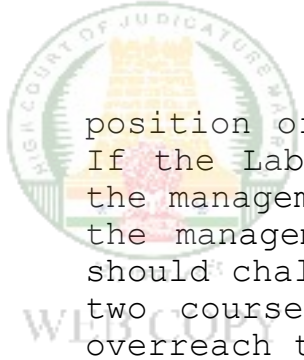
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6.I carefully considered the rival contentions. The facts are not in dispute. The writ petitioner was dismissed from service in the year 2003. But, the order of dismissal dated 07.05.2003 was set aside by award dated 27.05.2013 in I.D.No.45/2012 on the file of Labour Court, Madurai. The Labour Court directed the respondent corporation to reinstate the petitioner herein with continuity of service. Of course, back-wages were denied. This award has not been challenged by the management in writ proceedings. Therefore, the award has become final. The only question is whether it is open to the management to bye-pass the said direction issued by the Labour Court by entering into a settlement under Section 18(1) of the Industrial Disputes Act, 1947.

7.Let us take the case of a civil claim. The decree of any kind may be adjusted in whole or in part to the satisfaction of the decree holder. If the decree holder certifies such adjustment to the Court whose duty is to execute the decrees, the Court shall record the same accordingly. This is the statutory scheme set out under Order 21 of Civil Procedure Code. As per section 320 of Criminal Procedure Code, certain offences are compoundable between the parties and certain offences are compoundable with the permission of the Court. But, such freedom of contract is not available in all cases. One can come across statutory provisions which prohibit contracting out.

8.For instance, Section 17 of The Employee's Compensation Act, 1923 states that "Any contract or agreement whether made before or after the commencement of this Act, whereby a [employee] relinquishes any right of compensation from the employer for personal injury arising out of or in the course of the employment, shall be null and void insofar as it purports to remove or reduce the liability of any person to pay compensation under this Act." There is a public policy behind such provisions. Where the parties to an agreement are not having an equal bargaining power, the Courts will not hesitate to strike down the unfair and unreasonable terms found in the agreement between such parties. One example of such intervention is found in the decision of this Court reported in **2000 (2) LW 460 (S.Pappa Vs. Government of Tamil Nadu).**

9.In this case, the writ petitioner was out of employment right from 2003. He obtained an order for reinstatement with continuity of service after a 10 year long battle. Obviously, there had been a further challenge in writ jurisdiction, the writ petitioner herein would have found it difficult to contest. Therefore, out of sheer desperation he had the agreement on the dotted lines. But the management could not have taken advantage of the weak economic



position of the writ petitioner. These are matters of principle. If the Labour Court had passed an award in favour of the workman, the management must comply with the award in letter and spirit. If the management was of the view that the award was not proper, it should challenge the same by filing a writ petition. These are the two courses open to it. It is not open to the management to overreach the jurisdiction of the Labour Court in this manner.

10. Section 18(3) of the Industrial Dispute Act, 1947 states that an award of a Labour Court which has become enforceable shall be binding on all the parties to the industrial dispute. This Court is therefore of the view that the management acted unfairly in bye-passing the directive set out in the award of the Labour Court which was clearly binding on it by entering into a settlement with the workman.

11. This Court therefore quashes the order passed by the first respondent that has been impugned in this writ petition. The respondents are directed to confer all the benefits available to the writ petitioner in terms of the award dated 27.05.2013 in I.D.No.45 of 2012 on the file of the Labour Court, Madurai. This writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

To

1. The General Manager,
Tamil Nadu State Transport Corporation, (Madurai) Ltd,
Bye pass Road, Madurai District - 625 016.
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4. The Branch Manager,
Tamil Nadu State Transport Corporation,
(Dindigul) Ltd, Theni Branch, Theni District.

+ 1 CC TO Mr.M.M.IQBAL, ADVOCATE IN SR No. 83068

SKM

TE/KP/SAR-IV : 10/11/2017 : 4P/6C

<https://hcservices.ecourts.gov.in/hcservices/>

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