



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.12903 of 2011

and

M.P (MD) .Nos.1 of 2011 and 1 of 2012

The Management,
Tamilnadu State Transport Corporation,
(Madurai Ltd),
Bye Pass Road,
Madurai.

... Petitioner

Vs.

1. The Presiding Officer,
Labour Court,
Madurai.

2. Muthu

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records in I.D.No.14/1993, dated 11.02.2010 on the file of the Labour Court, Madurai and quash the same.

For Petitioner : Mr.A.Jeyaram

For R1 : Court

For R2 : Mr.K.Muthumalai

ORDER

The prayer in the writ petition is for a writ of certiorari calling for records in I.D.No.14 of 1993, on the file of the first respondent and quash the impugned award, dated 11.02.2010.

2.The second respondent, who was the driver of the petitioner corporation. On 14.05.1982, the petitioner involved in an accident pursuant to which enquiry was conducted and based on the domestic enquiry report, punishment of removal of service was inflicted against the petitioner. The petitioner instead of challenging the same by raising an Industrial Dispute immediately, after keeping



quite from 1982 to 1992, he raised the issue before the first respondent Labour Court only in the year 1992, where the industrial dispute raised by the second respondent had been numbered as I.D.No.14 of 1993 and was decided by the first respondent, Labour Court.

WEB COPY

3. On 29.11.1996, the first respondent passed an award in the said I.D.No.14 of 1993, directing the petitioner to reinstate the second respondent with full backwages. Aggrieved by the same, the petitioner already approached this Court in W.P.(MD).No.1240 of 1996 and the said writ petition was finally disposed of by order of this Court, dated 16.12.2004. In the said order this Court, after having set aside the award passed by the Labour Court, was pleased to remand the matter to the Labour Court for reconsideration, however, only with regard to the issue as to whether any lesser punishment instead of removal of service can be inflicted on the second respondent. The Labour Court also was directed to look into the aspect as to how the second respondent had been silent between 1982 and 1992 without raising any industrial dispute against the punishment awarded against him. In this regard, the order of this Court dated 16.12.2004 is in the following terms.

"8. Therefore, while remitting the matter back to the first respondent Labour Court for the purpose of considering the question as to what is the lesser punishment other than dismissal that could be awarded to the second respondent and also as to whether there was any justification at all in the second respondent remaining silent between 1982 and 1992 by not raising the dispute over his non-employment, the first respondent Labour Court is hereby directed to deal with the said issues and pass appropriate award. With that view without disturbing the re-instatement made by the petitioner and also the subsequent retirement of the second respondent, the first respondent Labour Court is hereby directed to deal with the above two issues after giving due opportunities to the petitioner as well as the second respondent and pass appropriate award. Having regard to the fact that the non employment was of the year 1982, the first respondent Labour Court is directed to dispose of the dispute and pass the award within three months from the date of receipt of the records along with this order."

4. Only pursuant to the said orders of this Court the case in I.D.No.14 of 1993 was again taken on file and reheard by the first respondent, Labour Court and ultimately the first respondent has passed the impugned award on 11.02.2010, wherein the Labour Court has considered the two issues namely by granting some lesser punishment and also decided the non-duty period of 10 years that is between 1982 and 1992 on the part of the second respondent.

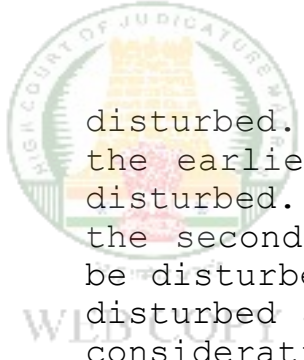


5. Heard the learned counsel appearing for the petitioner, who has submitted that the petitioner has involved in the accident and in spite of the specific findings by the Labour Court that the second respondent was responsible for the said accident, the subsequent relief given to the second respondent is totally untenable. Though this Court has given a direction in the earlier round of litigation as cited supra, the Labour Court, instead of giving a lesser punishment, had passed an award directing to pay 50% of the salary for the non-working period on the part of the second respondent, which is beyond the scope of the order passed by this Court whereby the issue was earlier remanded to the first respondent/Labour Court, therefore, the learned counsel for the petitioner would submit that the impugned award is liable to be interfered with.

6. Per contra, the learned counsel for the second respondent would submit that in the earlier award, the entire punishment of removal of service was set aside and the second respondent was directed to be reinstated to the service with full backwages. Only in that context, this Court in the earlier writ petition has given a direction to reconsider the issue only on two aspects, namely, whether any lesser punishment other than the removal of services can be inflicted on the petitioner and also to decide the non service period on the part of the second respondent as he had not approached the Labour Court between 1982 and 1992. While making such order, this Court has made a specific observation that without disturbing the reinstatement made by the petitioner and also subsequent retirement of the second respondent, the first respondent Labour Court was thereby directed to deal with the above said two issues after giving due opportunities to the petitioner as well as the second respondent.

7. Therefore, the learned counsel for the 2nd respondent would submit that what has been awarded now by the first respondent Labour Court through the impugned order is strictly in consonance with the direction already given by this Court and therefore no interference is required.

8. This Court has considered the rival submissions. As has been rightly argued by the learned counsel for the second respondent, this Court by the earlier order, dated 16.12.2004, cited supra has given only a specific direction to the Labour Court to decide the two issues namely one is that to give some lesser punishment to the second respondent instead of removal of service, secondly what shall be the relief to be given to the second respondent, in view of his long silent without having approached the Labour Court between 1982 and 1992. While giving ~~search online on this~~ to look into with these two issues afresh, this Court has consciously made an observation that the reinstatement and subsequent retirement of the petitioner shall not be



disturbed. It means that the order passed by the Labour Court in the earlier award reinstating the second respondent shall not be disturbed. Like that the peaceful superannuation on the part of the second respondent and retirement consequently, shall also not be disturbed. If the reinstatement of the second respondent be not disturbed and some lesser punishment has to be given, taking into consideration that the second respondent has been silent for 10 years without agitating the issue before the Labour Court in the manner known to law, thus, in between these contingencies, what shall be the best can be done by the Labour Court, in the opinion of this Court, has exactly been done by the first respondent, Labour Court in the order impugned.

9. The Labour Court specifically has given a findings that for 10 years, the second respondent had been silent without raising the issue before the Labour Court. Therefore the second respondent was not entitled to get the salary for the non-duty period. Since the reinstatement as well as the retirement of the second respondent shall not be disturbed as directed by this Court as stated supra, the Labour Court had to give relief only in between these two and accordingly the Labour Court has rightly given an award directing the petitioner to pay 50% of the salary for the non-duty period to the second respondent by way of compensation. The said award given by the first respondent, Labour Court in the impugned award is in the considered view of this court is quite justifiable and it therefore does not require any interference of this Court.

10. In that view of the matter, this Court find no infirmity in the impugned award and therefore the writ petition fails and accordingly it is dismissed. Consequently, connected miscellaneous petitions are dismissed. No Costs.

11. However, it is brought to the notice of this Court that pursuant to the impugned award, the second respondent already filed C.P.No.62 of 2010 before the Labour Court, where an order was passed on 31.10.2011 whereby it was directed to pay a sum of Rs.3,12,781/- (Rupees three lakhs twelve thousand seven hundred and eighty one only) to the second respondent and the said order was passed subject to the outcome of the order to be passed in this writ petition. The learned counsel for the petitioner submits that the petitioner already deposited a sum of Rs.1,00,000/- (Rupees one lakh only) pursuant to the direction issued by this Court in the earlier order, dated 16.12.2004 in W.P. (MD).No.1240 of 1996.

12. In view of the said deposit having been made already and in view of the order passed by the Labour Court in C.P.No.62 of 2010, dated 31.10.2011, the second respondent shall be paid the said amount of Rs.1,00,000/- (Rupees one lakh only) already lying in the account forthwith. With regard to the other amount as ordered by the Labour Court in the said C.P.No.62 of 2010, the petitioner is



given eight weeks time to deposit the same before the Labour Court concerned and on such deposit the second respondent can get the same by filing the formal petition before the Labour Court and if any such petition is filed, the same shall be taken up and the amount shall be immediately dispersed to the second respondent.

WEB COPY

Sd/-
Assistant Registrar(CS I)

/True copy/

Sub Assistant Registrar

To
The Presiding Officer,
Labour Court,
Madurai

+1cc to Mr.K.Muthumalai, Advocate SR.No.7653

pjl
sm:PM-PN:15/03/2017:5P/3C

W.P. (MD) No.12903 of 2011
09.02.2017