

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.10.2018

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

W.P. NO. 22280 OF 2004

Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd.

Railway Station New Road
Kumbakonam.

.. Petitioner

- Vs -

1. The Presiding Officer
Labour Court, Cuddalore.

2. A.Kumaraswamy

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the entire records culminating in the passing of the award dated 9.4.03 on the file of the 1st respondent herein, made in I.D. No.22 of 1993, and quash the same.

For Petitioner : Mr. D.Venkatachalam

For Respondent : Mr.V.Ajoykhose for R-2

ORDER

The writ petition has been filed by the Management challenging the order passed by the Labour Court dated 9.4.03 by which the Management has been directed to reinstate the 2nd respondent in service, however, without continuity of service and backwages. This order is under challenge in the present appeal.

2. It is the contention of the learned counsel for the Management that the 2nd respondent workman was only a casual labour and, therefore, the provisions relating to conduct of domestic enquiry will not be applicable to the case of the 2nd respondent and, therefore, the Management is justified in terminating the services of the workman.

3. The brief facts leading to the filing of this writ petition could be stated hereunder :-

The 2nd respondent joined the service of the petitioner at Mayiladuthurai on 4.2.84 on daily wage basis. He was working till 8.4.84 and, thereafter, for intermittent periods, i.e., from 28.9.84 to 29.9.84, 2.3.85 to 28.3.85, etc., for various periods till 1989 on daily wage basis. Subsequently, in the interview conducted on 5.9.98, he was selected and, thereafter, he was working from 16.1.90 to 17.8.90. Alleging that there was shortage of diesel and the workload has been reduced, the Management did not provide employment to the workman. It is alleged that even thereafter, on 24.1.92, for the fourth time, interview was conducted in which the workman got selected and was working till 29.5.92 at Karaikal Branch. Seeking reinstatement and regularisation of service, the workman had sent representations to the Management as well as to the Government.

4. Prior to the non-engagement/dismissal/termination on 29.5.92, there was a record showing that the workman was guilty of misappropriation and based on that report he was terminated from service. No show cause notice was issued and no enquiry was conducted before dismissing the workman from service. On the ground that no show cause notice was issued and no enquiry was conducted, the order of termination was challenged by the workman.

5. Learned counsel appearing for the petitioner/Management contended that the 2nd respondent, being appointed on casual basis, no enquiry is necessary for dismissing him from service and, therefore, the order of the Labour Court deserves to be set aside.

6. Per contra, learned counsel appearing for the 2nd respondent workman contended that the engagement of the 2nd respondent has been done after conduct of interview and following the procedure prescribed and, therefore, without issuance of show cause notice and conducting enquiry, the termination of the workman is bad in law, which has been properly appreciated by the Court below and, therefore, no interference is called for with the order passed by the court below.

7. This Court considered the contentions advanced by the

learned counsel on either side and also perused the materials available on record as also the findings recorded by the court below.

8. The allegation against the workman is that he was guilty of misappropriation to the tune of Rs.7.75. The Labour Court, relying upon the ratio laid down in M.C.D. - Vs - Praveen Kumar Jain (AIR 1999 SC 1540) wherein it was held that the dismissal of the workman without following the procedure as contemplated u/s 25 (F) of the Industrial Disputes Act is illegal. Following the abovesaid ratio laid down, the court below held that the termination is unsustainable. The court below further rendered a finding that the workman was continuously working for more than 240 days. In such circumstances, the court below was of the view that the termination of the workman without conducting any domestic enquiry is bad and the workman ought not to have been sent out of service.

9. Though it is the contention of the petitioner that the 2nd respondent was only a casual employee and, therefore, no enquiry is necessary, the said contention is not borne out by records. The finding of the Court below is based on records. In such a backdrop, the management ought to have conducted a domestic enquiry after issuing a show cause notice calling for explanation from the workman before passing order of termination. Non-following of the procedure contemplated under the Act vitiates the order.

10. On a careful analysis of the order passed by the court below, coupled with the ratio laid down in Praveen Kumar Jain's case (supra), this Court finds no reason to differ with the view taken by the court below. Issuance of show cause notice and conduct of domestic enquiry is a necessary concomitant to the compliance of Section 25 (F) of the Industrial Disputes Act and failure to adhere to the same renders the termination illegal. Therefore, this Court is of the considered view that no interference is called for with the order passed by the court below.

11. It is represented that the workman has attained the age of superannuation on 31.5.16. Therefore, the order for reinstatement cannot be implemented after 31.5.16. The only remedy open to the workman would be to claim monetary benefits in terms of the standing orders of the Corporation on the basis of the order passed by the court below. Accordingly, this Court directs that the Management shall calculate all the

benefits that are payable to the workman as on 31.5.16 and shall pay the same to the 2nd respondent/workman within a period of eight weeks from the date of receipt of a copy of this order.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

GLN

To

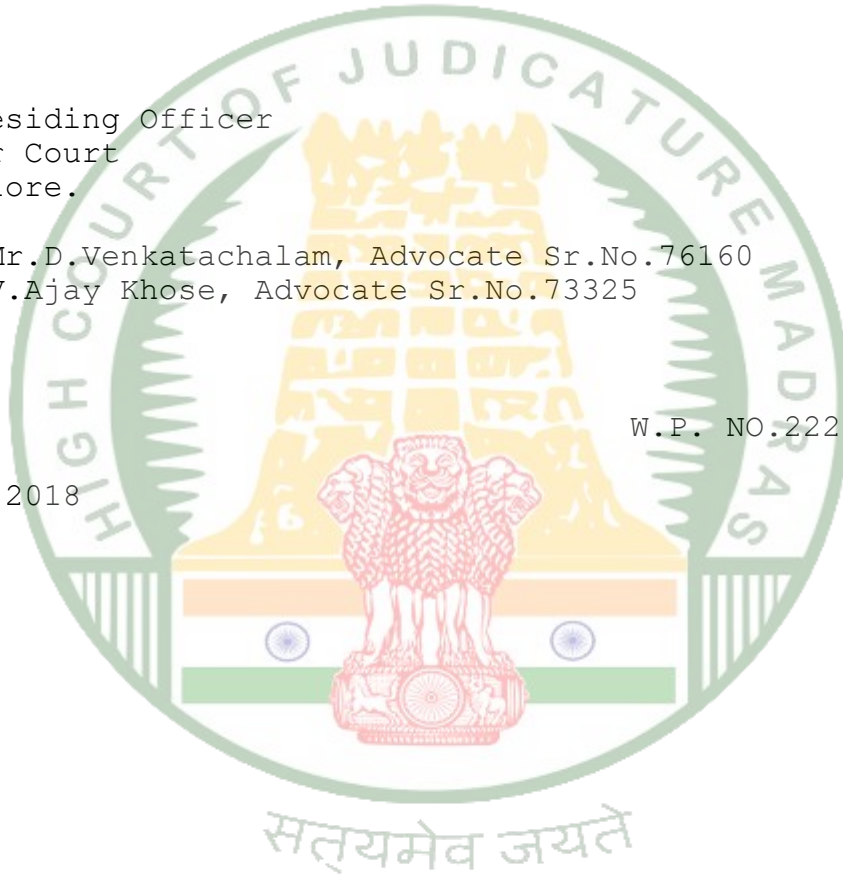
1. The Presiding Officer
Labour Court
Cuddalore.

+1 cc to Mr.D.Venkatachalam, Advocate Sr.No.76160

+1 cc to V.Ajay Khose, Advocate Sr.No.73325

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CSL/27.12.2018



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