

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 7/9/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Appeal No.1353 of 2018

The Management
Tamil Nadu State Transport Corporation
(Villupuram) Ltd
rep. By its General Manager
Tiruvannamalai Region
Tiruvannamalai.

... Appellant /Petitioner

Vs

1. P. Balaraman

2. The Special Deputy Commissioner of Labour
DMS Compound
Chennai.

... Respondents/ Respondents

Appeal filed under Clause 15 of Letters Patent against the order dated 23/6/2017, made in W.P.No.41968 of 2016.

W.P.No.41968 of 2016

Praying issue a writ of Certiorari To call for the records of the order passed by the 2nd Respondent in Approval Petition in A. P. No.44 of 2011 dated 04.04.2016 and to quash the same as illegal

For appellant ... Mr.D.Venkatachalam
for Mr.K.J.Sivakumar

For respondents ... Mr.K.M.Ramesh
for R.1
NA for R2

J U D G M E N T

(Judgment of the Court was made by SUBRAMONIUM PRASAD, J)

Instant Writ Appeal is directed against the order, dated 23/6/2017, in W.P.No.41968 of 2016.

2. The respondent No.1 was working with the petitioner Tamil Nadu State Transport Corporation. Charge sheet was served on the first respondent, for his unauthorized absence, from 21/6/2009 to 20/9/2009, which affected the smooth functioning of buses and bringing a bad name to the appellant Corporation. Charges were held to be proved in the domestic enquiry.

3. Reply of the first respondent to the enquiry report was not found to be satisfactory and therefore, notice was issued to him, as to why punishment for removal should not be imposed on him. Final order removing the first respondent from service was passed on 25/1/2011. Since the proceedings were pending conciliation, Approval Petition was filed, under Section 33 (2) (b) of the Industrial Disputes Act, before the Special Deputy Commissioner of Labour, Chennai, in A.P.No.44 of 2011.

4. Labour Court, framed five issues, as follows:-

"1. Whether the Domestic Enquiry was conducted as per law/standing orders and as per natural justice or not?

2. Whether prima facie case was made out during the domestic enquiry and the same was proved based on the evidence or not?

3. Whether the action taken by the management by removing the petitioner from service is to wreck vengeance upon the employee and against the employees welfare or it has been taken in a proper manner proving that the employee is found guilty or not?

4. Whether one month salary was given to the employee or not?

5. Whether the concerned officer had filed approval petition being the part of action taken against the employee or with the short span of period from the date of action or not?"

5. Vide order, dated 4/4/2016, labour Court held that domestic enquiry was not conducted, as per law and it was against the principles of natural Justice. It also held that disciplinary action on first respondent was motivated and rejected the Approval Petition.

6. Aggrieved against the abovesaid order, State Transport Corporation has filed W.P.No.41968 of 2016.

7. Vide, order, dated 23/6/2017, a learned Single Judge dismissed the writ petition, as follows:-

"While this Court can exercise discretion insofar as the payment of backwages is concerned, the provident fund contribution payable by the petitioner will have to be paid by them though the same can be deducted from the amount due in so far as the contribution payable by the first respondent is concerned. This Court does not find any perversity warranting interference. A factual finding was rendered with respect to the non-consideration of the request of the first respondent in respect of alternative employment. It is not in dispute that though such a request has been made by the first respondent, the same has not been sent to the Medical Board. Law also mandates such a procedure to be followed. Accordingly, writ petition stands dismissed. However, it is clarified that in as much as the first respondent has reached the age of superannuation and there is no dispute on the fact of unauthorised absence, the first respondent is entitled for one year salary alone for the period of non employment from 25/1/2011 to 31/1/2013. He is entitled for continuity of service and other incidental benefits. In so far as the payment of provident fund is concerned, the same can be deducted from the amount payable by the petitioner as indicated above. The benefits which the first respondent is entitled to, in pursuant to the superannuation, shall be made by the petitioner within a period of eight weeks from the date of receipt of a copy of this order."

8. Being aggrieved, State Transport Corporation has filed the instant Writ Appeal.

9. Mr.D.Venkatachalam, learned counsel for the appellant is not able to show any infirmity in the order of the learned Single Judge, other than repeating what was argued before the writ Court. No material has been produced to show as to why the order of the labour Court is perverse. The first respondent has attained super annuation, on 31/1/2013. More than 5 ½ years have lapsed, since retirement. We therefore, not inclined to interfere with the order of the learned Single Judge.

10. In the result, Writ Appeal is dismissed. Appellant Corporation is directed to compute the arrears of salary for one year, deduct Provident Fund, as directed by the writ Court, compute the other retirement benefits and disburse the same, to

the first respondent, within one month, from today. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

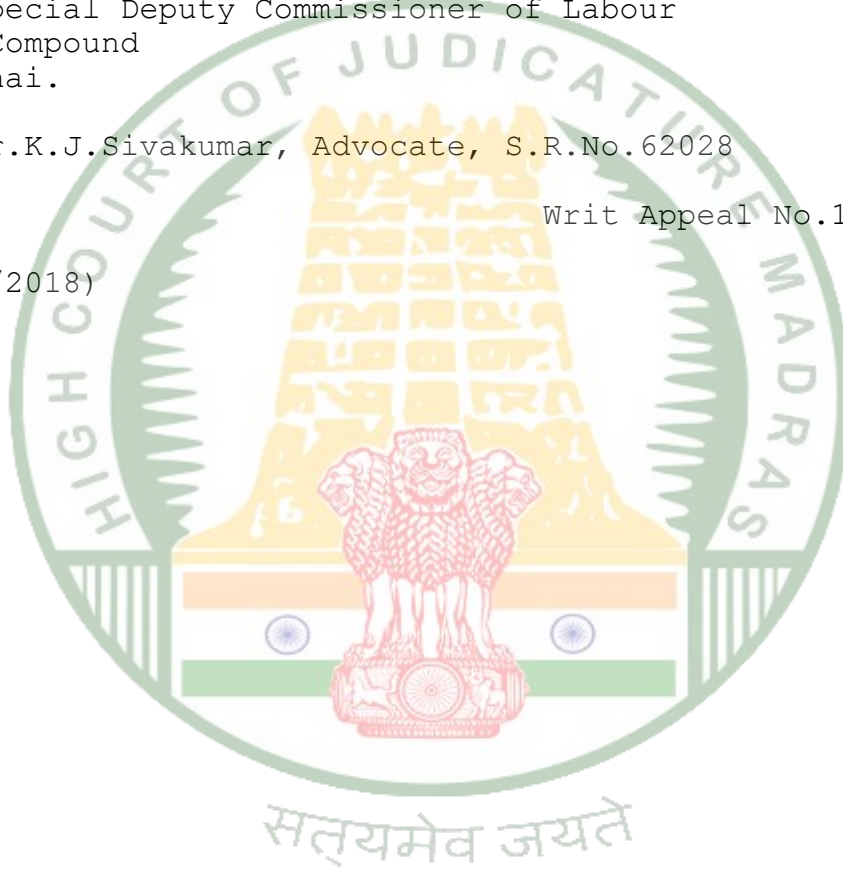
To

1. The Special Deputy Commissioner of Labour
DMS Compound
Chennai.

+1cc to Mr.K.J.Sivakumar, Advocate, S.R.No.62028

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GSP(18/09/2018)



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