

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.39068 of 2005

Tamil Nadu State Transport Corporation
(Villupuram) Ltd., Vellore Region,
Vellore,
Rep. by its Managing Director ... Petitioner

.Vs.

1.The Joint Commissioner of Labour
(Conciliation) Chennai.

2.C.Rajendran ... Respondents

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India praying for issuance of a Writ of
Certiorari calling for the records of the 1st respondent in
Approval petition No.150/2003 dated 18.11.2004 and quash the
same.

For Petitioner : M/s.Rajini Ramadoss

For Respondents : Mr.S.T.Varadarajulu
for R2

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O R D E R

The prayer sought for herein is a writ of certiorari to call
for the records of the 1st respondent in Approval petition
No.150/2003 dated 18.11.2004 and quash the same.

2.The short facts leading to the filing of this writ
petition are as follows. The 2nd respondent was working as a
conductor with the petitioner Corporation. While so, while he
was on duty on 06.12.2002, in vehicle No.TN-23-N-1247 in Route
No.204/B, while the Checking Inspector carried out inspection,
he found certain shortcomings from the 2nd respondent. Based on
such shortcomings found by the inspection team, a report was
given, pursuant to which, charge memo was issued against the 2nd

respondent by the petitioner Corporation on 10.12.2002. In the said charge memo, six charges were framed and the petitioner was directed to give his reply, which, he gave on 26.12.2002. Not satisfied with the reply given by the 2nd respondent, the petitioner Corporation conducted a domestic enquiry, where, the enquiry was conducted properly and all opportunities were given to the 2nd respondent to participate in the enquiry, including the opportunity of cross-examining the witnesses produced by the management side and also opportunity was given to the 2nd respondent to produce his side witnesses. However, no witness or evidence was produced by the respondent workman.

3.Ultimately, the Enquiry Officer found that, all the charges framed against the 2nd respondent were proved.

4.Based on such findings given by the Enquiry Officer, second show cause notice was given on 07.04.2003, for which, the 2nd respondent has given his reply on 17.04.2003. Not satisfied with the said second reply given by the 2nd respondent and on consideration of the findings given by the Enquiry Officer, the petitioner Corporation passed an order of punishment of dismissal of service against the 2nd respondent, on 26.05.2003.

5.The said order of punishment passed by the petitioner Corporation had been forwarded to the 1st respondent for his approval under Section 33(2) (b) of the Industrial Disputes Act.

6.However, the 1st respondent, after having considered the application to approve the said order of dismissal made by the petitioner Corporation, has ultimately rejected the same by refusing to give such approval, by order dated 18.11.2004. As against the said order passed by the 1st respondent dated 18.11.2004, the petitioner Corporation has filed this writ petition with the aforesaid prayer.

7.I have heard Mr.Rajini Ramadoss, learned standing counsel appearing for the petitioner Corporation, who would submit that, the domestic enquiry conducted by the petitioner Corporation was perfectly in order and not against the principles of natural justice and accordingly, he held that, the enquiry into the charges framed against the 2nd respondent had been conducted according to the principles of natural justice. Even though, such a finding had been given by the 1st respondent in the impugned order, the said authority has found fault with the petitioner Corporation in not furnishing certain documents and based on which, they had arrived at a criptic conclusion that there is no prima facie case to conclude that the guilt against the 2nd respondent by way of charges framed as against him has been proved and accordingly, the 1st respondent had come to a conclusion that the punishment awarded against the 2nd respondent

was not justifiable and hence, he had refused to give approval and rejected the said request of the petitioner Corporation through the impugned order.

8. Per contra, Mr. S.T. Varadarajulu, learned counsel appearing for the 2nd respondent would submit that, none of the documents alleged to have been in support of the case of the petitioner Corporation, had been produced before the 1st respondent authority, for taking a decision as to whether the order of punishment of dismissal of service, inflicted against the 2nd respondent, was justifiable. Therefore, the 1st respondent authority has come to a conclusion that, in the absence of any such documents having been produced for perusal before the 1st respondent authority, there had been no prima facie case to be acceptable from the side of the petitioner Corporation to inflict the punishment of dismissal of service against the 2nd respondent.

9. In this context, the learned counsel for the 2nd respondent relies upon the following finding given by the 1st respondent in the impugned order.

"The next issue to be decided is whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out. Ex.A2 is the proceedings of the enquiry into the charges framed against the Opposite Party. Ex.A3 is the findings of the enquiry officer into the charges framed against the Opposite Party. I have perused both the documents. In the enquiry into the charges framed against the Opposite Party, several documents had been marked. These include the special report against the Opposite Party, the report of misconduct against the Opposite Party, the special report, the statement of the passengers, the statement of the conductor, the ticket issued by the conductor, the invoice, the tickets sold during the day, the charge sheet, and the explanation of the conductor. But these documents were not produced before for my perusal. Not even the charge sheet and the explanation of the Opposite Party to the charge sheet had been placed before me. In the absence of these documents I hold that the Applicant had not made out a prima facie case based on legal evidence against the Opposite Party in the enquiry into the charges against him."

10. I have considered the said submissions made by the learned counsel appearing for the parties.

11. Though, it has been pointed out by the learned standing counsel, appearing for the petitioner Corporation that, the 1st respondent had concluded and also held that enquiry was properly conducted in accordance with the principles of natural justice, the fact remains that, none of the documents relied upon by the petitioner Corporation before the Enquiry Officer, had been produced before the 1st respondent for their perusal and consideration.

12. When statute prescribes something to be undertaken in a particular manner, the authorities concerned, who seek indulgence of further authority to act upon as per law, should have also acted upon on their side to produce necessary documents before the adjudicating authority or the approving authority to reach a just and equitable conclusion. Here in the case on hand, it is an admitted fact that, on the side of the petitioner Corporation, except the following documents, no other documents have been produced. The documents which were only produced before the 1st respondent reads thus :

"The Applicant had filed the following documents.

1. Exhibit A1 Last pay certificate of the Opposite Party.

2. Exhibit A2 Copy of the proceedings of the enquiry into the charges framed against the Opposite Party.

3. Exhibit A3 Copy of the findings of the enquiry into the charges framed against the Opposite Party.

4. Exhibit A4 Copy of the orders of the General Manager of the Applicant dismissing the Opposite Party from its services.

5. Exhibit A5 copy of postal Acknowledgment."

13. However, documents like the special report against the Opposite Party, the report of misconduct against the Opposite Party, the special report, the statement of the passengers, the statement of the conductor, the ticket issued by the conductor, the invoice, the tickets sold during the day, the charge sheet, and the explanation of the conductor, which are very crucial documents, which were mainly relied upon by the Enquiry Officer to give a conclusion that the charges framed against the 2nd respondent were proved, should have been made over to the 1st respondent, for arriving at a conclusion as to whether the punishment inflicted on the 2nd respondent was justifiable or in commensurate with the alleged charges framed against the 2nd respondent.

14. In the absence of these documents, we cannot expect the authority, who is exercising statutory power under the Industrial Disputes Act, to take a decision in favour of the petitioner Corporation.

15. There is no acceptable or exclusive reason given by the petitioner Corporation for having not produced those documents, and in the result, this Court cannot find fault with the approach, reasoning and conclusion made by the 1st respondent in the impugned order. Accordingly, the impugned order, in the opinion of this Court, requires no interference.

16. Insofar as the further consequential relief is concerned, the 2nd respondent was removed from service on 26.05.2003, pursuant to the disciplinary action and the order of punishment of dismissal of service passed by the petitioner and he retired on 31.01.2015. Therefore, he should have had service from 26.05.2003 till 31.01.2015. When this order impugned was passed on 18.11.2004, the 2nd respondent could have been reinstated into service, however, because of the pendency of this writ petition, where, an interim order was granted with a conditional order to deposit 50% of the backwages, the 2nd respondent could not be in a position to join duty.

17. Therefore, the period from 26.05.2003 till 31.01.2015, i.e. the date on which he retired from service, shall be treated as full duty for all purposes. However, with regard to the backwages, it is admitted that, for this period, the 2nd respondent had not worked with the petitioner Corporation and therefore, without extracting any work from the 2nd respondent, it may not be just to direct the petitioner Corporation to pay full backwages to him. However, proportionately, the 2nd respondent could be entitled to get backwages, which, in the interest of justice and taking into account the factual matrix, this Court quantifies as 50%.

18. In the result, the following orders are passed in this writ petition.

(i) The impugned order is fully justifiable and hence, it requires no interference.

(ii) However, since, the 2nd respondent already superannuated on 06.01.2015 and retired from service on 31.01.2015, the question of reinstatement does not arise, however, the petitioner Corporation is hereby directed to pay 50% of the backwages to the 2nd respondent from 26.05.2003, i.e. from the date of dismissal, till 31.01.2015, i.e. the date of retirement.

(iii) While calculating this said 50% backwages, the petitioner Corporation can deduct the 17(b) wages, already paid to the 2nd respondent.

(iv) It is also made clear that, pursuant to the interim order passed by this Court dated 05.12.2005, 50% of the backwages till such time was deposited in the Labour Court and therefore, after deducting the said amount, the remaining of the 50% backwages, shall be paid to the 2nd respondent.

(v) It is also made clear that, the petitioner Corporation can retain or withhold the necessary amount for the purpose of making employees contribution towards the Contribution Fund. That apart, the employers contribution shall also be made by the petitioner Corporation for the entire period from the date of dismissal till the date of retirement of the 2nd respondent.

(vi) It is further made clear that, while making the employees contribution, the petitioner Corporation shall make the said contribution taking into account the full backwages of the 2nd respondent.

(vii) It is also made clear that, the 2nd respondent can withdraw the 50% backwages, already deposited, pursuant to the interim order of this Court as referred above, by filing a formal petition before the Court below.

(viii) The aforesaid exercise of calculating the backwages as indicated above, shall be made, and the said amount shall be paid to the 2nd respondent by the petitioner Corporation, within a period of two months from the date of receipt of a copy of this order.

19. With these directions, this writ petition is disposed of. No costs.

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Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

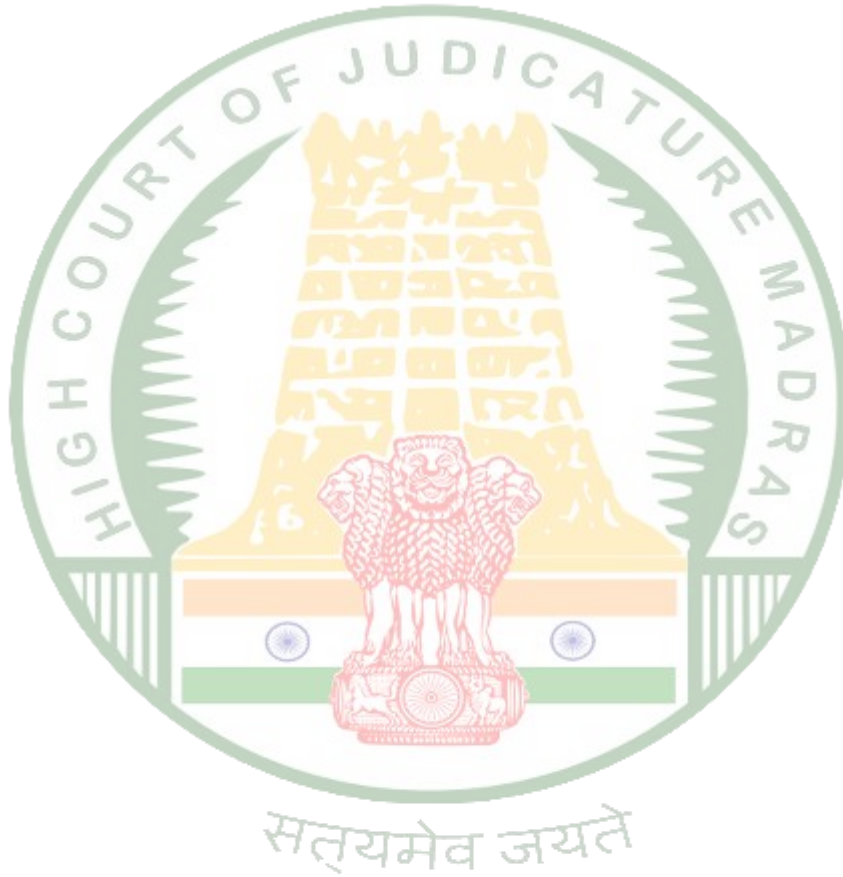
1. The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram) Ltd., Vellore Region,
Vellore.

2.The Joint Commissioner of Labour
(Conciliation) Chennai.

+1 cc to Mr.S.T.Varadarajulu, Advocate SR.No.79252

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RV (CO)
CSL/13.03.2019



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