

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2018
CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.13369 of 2011

C.Samidurai

... Petitioner

Vs

1.The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram-605 602.

2.The Presiding Officer,
Labour Court,
Cuddalore.

.... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the second respondent made in I.D.No.62 of 2003 dated 15.09.2010, to quash the same insofar as denial of continuity of service and back wages are concerned and to consequently direct the first respondent to extend continuity of service and back wages with all other benefits both service and monetary thereto.

For Petitioner : Mr.L.Chandrakumar
For Respondents : Mr.V.R.Kamalanathan for R1
2nd Respondent : Labour Court

O R D E R

Heard Mr.L.Chandrakumar, learned counsel for the petitioner and Mr.V.Kamalanathan, learned counsel appearing for the first respondent.

2. The petitioner has approached this Court, seeking the following relief,

"To issue a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the second respondent made in I.D.No.62 of 2003 dated 15.09.2010, to quash the same insofar as denial of continuity of service and back wages are concerned and to consequently direct the first respondent to extend continuity of service and back wages with all other benefits both service and monetary thereto."

3. The case of the petitioner is as follows:-

The petitioner was appointed as Driver in the first

respondent Corporation on 14.01.1987. He became a permanent employee with effect from 01.12.1987. While working as such, a charge memo was issued to the petitioner on 23.10.1999, for alleged unauthorized absence during July 1999 and September to October 1999. After obtaining explanation from the petitioner, an enquiry was conducted and on the basis of the report of the Enquiry Officer, the petitioner was ultimately dismissed from service by proceedings dated 27.11.2000. An appeal was preferred, but however, no order was passed. Therefore, the petitioner was constrained to raise an industrial dispute which was numbered as I.D.No.62 of 2003.

4. The second respondent - Labour Court adjudicated the dispute and ultimately allowed the dispute partially by directing reinstatement without continuity of service and back wages. The said award passed by the Labour Court dated 15.09.2010, is put to challenge in the present writ petition by the employee, so far it denied continuity of service and back wages. It appears that the Corporation has not filed any petition against the award passed by the Labour Court, directing reinstatement. In pursuance of the award passed by the Labour Court, the petitioner was reinstated in service and also retired on attaining the age of superannuation on 31.05.2015.

5. The learned counsel for the petitioner would submit that the Labour Court fell into an error by not granting continuity of service though the findings of the Labour Court was that the misconduct committed by the petitioner was only a minor one and the petitioner had medical reasons for remaining absent for the so called period of absence. Such findings of the Labour Court was on the basis of evidence and material made available before the Labour Court. That being the findings by the Labour Court, the ultimate award denying continuity of service and back wages is without any justification.

6. The learned counsel for the petitioner would also submit that the petitioner would be satisfied if the award is modified only to the extent of refusing continuity of service and he would not press the relief of back wages.

7. Upon notice, learned counsel for the first respondent entered appearance.

8. The learned counsel appearing for the first respondent Corporation would submit that the petitioner was habitually absenting and therefore, he was rightly dismissed from service. Moreover, the Labour Court had taken into consideration the various factors and rightly denied the continuity of service and back wages and the same does not call for any interference from this Court.

9. This Court after consideration of the rival submissions and pleadings and materials placed on record, is of the considered view that once the Labour Court has found that the act of misconduct of the petitioner was minor, the same did not call for extreme punishment of dismissal from service and while passing the award, the Labour Court cannot deny continuity of service. Such denial of continuity of service would have far reaching monetary implications for the petitioner as that by itself would be a major penalty. Such serious consequences would take away the intention of the Labour Court interfering with the quantum of penalty of dismissal from service.

10. In the above circumstances, the ultimate award of the Labour Court, atleast on the aspect of denial of continuity of service is without any justification in the facts and circumstances of the case. As fairly conceded by the learned counsel for the petitioner that the grant of back wages would not arise and therefore, the same is not pressed for the simple reason that the workman is not entitled to back wages on the principle of "no work no pay". The denial of back wages by itself for a long period is a sufficient punishment in the place of dismissal from service. Further denial of continuity of service would take away the valuable service rendered by the petitioner in the Corporation. Such denial by the Labour Court takes away the spirit in which the Labour Court interfered with the quantum of penalty viz., dismissal from service.

11. In the fitness of things, this Court is of the considered view that the award of the Labour Court ought to be modified and the same is modified to the extent of denial of continuity of service to the petitioner. Therefore, this Court directs that the petitioner is entitled to continuity of service on being reinstated in service with all the benefits that the petitioner is entitled to by virtue of continuity of service ordered by this Court. It is also made clear that in respect of denial of back wages, the award as passed by the Labour Court shall remain intact. The first respondent is directed to comply with the direction passed by this Court, within a period of eight weeks from the date of receipt of a copy of this order.

12. With the above direction, the writ petition stands partially allowed as indicated above. No costs.

s/d-

Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

gsk

To

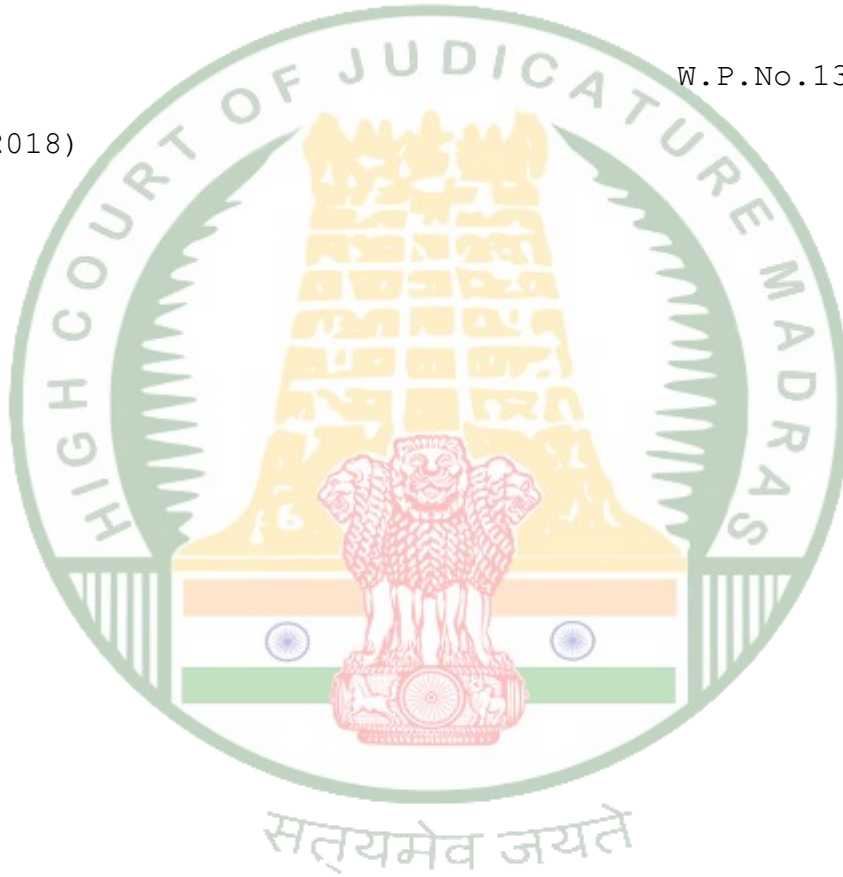
1. The Presiding Officer,
Labour Court,
Cuddalore.

+1 CC to Mr.V.R. Kamalanathan, Advocate sr 10465.

+1 CC to Mr.L. Chandrakumar, Advocate sr 10339.

W.P.No.13369 of 2011

SP(13/03/2018)



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