

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.1910 of 2018
and
C.M.P.No.15416 of 2018

The Management
Tamil Nadu State Transport Corporation Ltd.,
(Villupuram Division - II),
Vellore - 632 009
Rep. by its General Manager. ... Appellant

Vs.

1.The Presiding Officer,
II Additional Labour Court,
Chennai.

2.A.Jamshed ... Respondents

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent, against the order dated 23.06.2017, in W.P.No.4085 of 2014.

W.P.No.4085/2014:

Petition filed under Article 226 of the constitution of India praying to issue a Writ of certiorari to call for the records of the order passed by the 1st respondent in Industrial Dispute in I.D.No.277 of 2004 dated 31.05.2013 and to quash the same as illegal.

For Appellant : Ms.Rajeni Ramadass

For R2 : Mr.M.Ravi

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

This writ appeal is directed against the order, dated 23.06.2017, passed by the learned Single Judge of this Court in W.P.No.4085 of 2014.

2. The facts in brief leading to this appeal, are that the second respondent was appointed as Assistant Engineer in the appellant-Corporation. It is the allegation that, on 25.03.2018, he with the assistance of one Mr.Kumar and another Mr.Varghese, sent dishonestly 7 tins of paint out of the Depot through lorry and committed theft. Charge memo was issued on 16.04.1992, to the second respondent and it was received on 12.05.1992. On the very next day itself, the second respondent submitted his explanation to the Corporation. The Enquiry Officer, after perusing the evidence of documents, gave a report holding that the second respondent was guilty of the charge. On 05.01.1993, the second respondent was dismissed from service. While I.D.No.62/1982 which was filed against the enquiry report was pending on the file of Industrial Tribunal, dismissal order was issued by the Management, without obtaining prior approval of the Labour Court, as required under Section 33 (2)(b) of the Industrial Disputes Act, 1947.

3. The second respondent therefore filed I.D.No.277 of 2004, seeking reinstatement in service with back wages, continuity of service and other attendant benefits.

4. The II Additional Labour Court, Chennai, by order dated 31.05.2013, held that the enquiry was not proper. It was found that the other two persons namely, Mr.Kumar and Mr.Varghese, who were allegedly in connivance with the second respondent in committing theft, had not been charge sheeted, and therefore the petitioner alone could not have proceeded again.

5. The II Additional Labour Court, Chennai, held that the order of dismissal of the second respondent, was excessive in nature and thus set aside the same. The II Additional Labour Court, Chennai, directed the Corporation to reinstate the second respondent in service with continuity of service but without backwages and other attendant benefits.

6. Both the employee and Management filed writ petitions. W.P.No.4073 of 2014, was filed by the employee and W.P.No.4085 of 2014 was filed by the Management. The employee prayed for a direction to quash the portion of order in respect of reinstatement "without backwages and other attendant benefits", passed by the II Additional Labour Court, Chennai. The Management challenged the order of reinstatement.

7. A learned Single Judge, after perusal of the entire materials, came to a conclusion that the enquiry was not held properly. The learned Single Judge observed that the other two persons, who are supposed to have connived with the petitioner had not been charge sheeted. The learned Single Judge, held that the order of the Labour Court was not perverse, Vide common order dated 23.06.2017, the learned Single Judge dismissed W.P.No.4073 of 2014, filed by the second respondent. In W.P.No.4085 of 2014, filed by the Management, the learned Single Judge directed the Management, to pay attendant benefits.

8. Being aggrieved, instant writ appeal is filed by the Management.

9. Heard both sides and perused the materials available on record.

10. Learned counsel for the appellant contended that the finding of the Labour Court and the learned Single Judge that the other two persons, namely Mr.Kumar and Mr.Varghese, had not been examined or charge sheeted is factually incorrect and they had been proceeded against. This stand is taken for the first time in the writ appeal. No documents were produced by the Management, before the Labour Court despite the specific contention of the employee that he alone had been charge sheeted.

11. Even before the learned Single Judge, nothing had been produced to show that the finding of the Labour Court that Mr.Kumar and Mr.Varghese, have not been proceeded against is factually incorrect. In fact, the learned Single Judge has approved the finding of the Labour Court that Mr.Kumar and Mr.Varghese, have not been proceeded against for the alleged theft. Now, at this stage, the Corporation cannot be permitted to raise a new fact and adduce fresh evidence/material.

12. In any event, the second respondent has attained the age of superannuation. At this Juncture, it will not be proper to set aside the order of dismissal, by reversing the order of the Labour Court as affirmed by the learned Single Judge. However, it is relevant to note that, writ petition No.4073 of 2014 filed by the employee, has been dismissed. While dismissing the writ petition in W.P.No.4085 of 2014 filed by the Management, the learned Single Judge, held that, the employee would be entitled to attendant benefits. After dismissing W.P.No.4073 of 2014, filed by the employee, the learned Single Judge, ought to not have directed the Management to pay the attendant benefits to the second respondent, whose filed writ petition No.4073 of 2014 filed against the rejection of attendant benefits, and that was dismissed.

14. In view of the above, Writ Appeal is allowed in part with the modification that the second respondent would be entitled to reinstatement in service, but without attendant benefits. No Costs. Consequently, the connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

dm

To

The Presiding Officer,
II Additional Labour Court,
Chennai.

+2 CCS to Mr.M.Ravi, Advocate sr 60914, 60013.

+1 CC to Ms.Rajeni Ramadass, Advocate sr 60041.

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GSP (20/09/2018)