

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2018

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THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.8650 of 2010 and
M.P.No.1 of 2010

The Management of Tamil Nadu State
Transport Corporation (Villupuram) Ltd.,
Rep by its General Manager,
Villupuram. Petitioner

Vs

1.The Presiding Officer,
Labour Court,
Cuddalore.

2.G.Shanmugam Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records made in I.D.No.70 of 2004 dated 30.09.2009, on the file of the 1st respondent and quash the same.

For Petitioner : Ms.S.Vijaya for
Mr.T.Chandrasekaran

For Respondents : Mr.R.Jayaprakash for R2

सत्यमेव जयते
O R D E R

Heard Ms.S.Vijaya, learned counsel for the petitioner and Mr.R.Jayaprakash, learned Counsel appearing for the second respondent.

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

"To issue a Writ of Certiorari, to call for the records made in I.D.No.70 of 2004 dated 30.09.2009, on the file of the 1st respondent and quash the same."

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

The second respondent employee was employed as Helper during the relevant time. He was issued with the charge memo on 21.07.2001, for unauthorized absence from 21.12.2000.

According to the petitioner Management, inspite of several notices sent to the employee, he did not participate in the enquiry. Therefore, the enquiry was conducted exparte and the charges were held proved against him. Thereafter, the petitioner Management has passed an order on 20.09.2003, dismissing the employee from service. On 31.07.2007, the second respondent attained the age of superannuation.

4. As against the dismissal order, the second respondent employee raised an industrial dispute and the same was referred before the first respondent for adjudication. The first respondent - Labour Court by its award dated 30.09.2009, ordered reinstatement of the second respondent employee with continuity of service and 50% back wages. The said award is put to challenge by the petitioner management.

5. The learned counsel for the petitioner Corporation at the outset would submit that the second respondent employee had attained the age of superannuation on 31.07.2007 and therefore, the award of the Labour Court dated 30.09.2009, ordering reinstatement does not arise at all. Therefore, the Labour Court had completely erred in passing such award. Therefore, this award has to be set aside on this ground alone.

6. The learned counsel for the petitioner Corporation would further submit that even otherwise, the Labour Court failed to appreciate the materials placed before it in proper perspective. But, erroneously, had come to the conclusion in favour of the employee stating that the Management failed to prove the absence of the employee. Even on merits, the findings of the Labour Court are not legally acceptable and the same is perverse and liable to be interfered with. Even otherwise, grant of back wages by the Labour Court is without any justification for the reason that the employee failed to cooperate with the enquiry proceedings and despite the receipt of notice, he did not choose to participate in the enquiry. Therefore, the Labour Court cannot reward the employee with 50% back wages for his known act of non cooperation with the enquiry proceedings.

7. Per contra, learned counsel for the second respondent employee would submit that the Labour Court has given a clear finding that the employee suffered injury during the course of his employment and sustained 60% disability, for which, proper medical certificate has also been produced. As the employee was continuously taking medical treatment and the leave was also sanctioned by the Management, the Management cannot allege unauthorised absence on the part of the employee in the facts and circumstances of the case. In fact, this argument was not accepted by the first respondent - Labour Court by a detailed finding as found in paragraph No.11 of the award. The said paragraph is reproduced below:-

"11. The main document relied upon by the petitioner is the advocate's notice dated 20.12.1999, which is marked as Ex.W.1. The Ex.W.1 shows that the petitioner demanded damages, back wages and employment. Ex.W.2 reply dated 28.12.1999, shows that the petitioner is not entitled to any compensation under Workman's Compensation Act and since he was absent from duty 13.01.1999, he is entitled to back wages and the respondent cannot give alternate employment. The petitioner did not pray for alternate employment. Ex.W.4 reply to the domestic enquiry notice dated 17.12.2001, shows that the petitioner is ready to join duty and to know how his absence from 13.01.1999 to 21.12.2000, was treated and why the charge memo was issued after 7 months by the Management. Ex.W.6 shows that since he filed workman's compensation petition, employment was not given to him. Ex.W.9 shows that he is willing to join duty. Ex.W.10, shows that he is 40% fit and ready to join duty. Ex.W.11 is the order dated 03.03.2002, awarding compensation of Rs.91,854/- Ex.W.12 shows that he was 60% disability and need not appear before the medical board. Ex.W.13 shows that he requesting for employment. Ex.W.14 shows that the petitioner was asked to appear before the Assistant Manager on 18.12.2002. Reason was not specified. Ex.W.16 shows that as if the petitioner was asked to join duty and thereafter he was directed to appear before the medical board. Ex.W.17 shows that memo was issued by the respondent to the petitioner dated 04.03.2003 for his wilful absent. Ex.W.18 is the explanation that he was not absent and no employment was given by the Management. Ex.W.23 is the memo dated 30.12.2002, received by the petitioner directing him to appear before the medical board. Ex.W.24 is the explanation given by the petitioner, praying for employment. Ex.W.25 is the charge memo dated 21.07.2001. Ex.W.26 is the explanation given by the petitioner that no employment was given to the petitioner. Ex.W.28, shows cause notice issued to the petitioner dated 20.06.2003. Ex.W.29 is the explanation given by the petitioner dated 12.07.2003. Ex.W.30, is the dismissal order dated 20.09.2003. Ex.W.31 is the appeal petition dated 13.10.2003, filed by the petitioner. All these documents shows that the petitioner who was working as a Helper and met with an accident during the course of his employment and taking treatment and filed workman's compensation petition and obtained compensation amount and got 60% disability and no employment was given to the petitioner. It is the case of the respondent that the petitioner applied medical leave from 13.01.1999 to 20.12.2000 and it was granted and subsequently,

no leave letter was given and the petitioner was absent continuously from 20.12.2000. It was denied by the petitioner. The respondent was given opportunity to bring the documents that the petitioner had given medical leave and the same was granted by the respondent. The said document was not produced by the Management. In the argument stated that all the records more than 3 years will be normally destroyed. In this case, it is the specific plea of the respondent that the medical leave was granted to the petitioner till 20.12.2000. Therefore, the burden is upon the respondent to prove that the petitioner was on medical leave from 13.01.1999 to 20.12.2000. If really medical leave was granted from 21.12.2000, the petitioner will be considered as absent, otherwise, it is not so. From when the petitioner was absent was not proved by the respondent. It is not the case that the petitioner sustained injuries elsewhere. It is during the course of his employment. If the petitioner sustained injuries elsewhere, he could have asked to submit medical fitness certificate. Since he sustained injuries in the course of employment and the petitioner filed medical certificate that he sustained 60% disability. After giving employment he could have referred to the medical board. Therefore, it is clear from the records that no employment was given to the petitioner and the petitioner was not absent from 21.12.2000 to 21.07.2001 and his dismissal is illegal and the employment was denied to the petitioner."

While holding so, the Labour Court further proceeded to consider whether the employee was entitled to back wages.

8. The reasoning of the Labour Court in this regard as rightly stated by the learned counsel for the petitioner, cannot be accepted, since the employee himself admittedly remained absent for number of days. Therefore, he cannot be rewarded with 50% of the back wages. Such award of 50% back wages would be against the principle of "no work no pay". Moreover, ordering reinstatement by the first respondent - Labour Court after the employee attained the age of superannuation on 31.07.2007, cannot be countenanced both in law and on facts. However, as regards the conclusion of the Labour Court in this regard, the same cannot be faulted, since the Labour Court has given a detailed reasoning which is legally acceptable and valid. Unless the findings of the Labour Court are found to be legally unacceptable and perverse, the findings of fact cannot be re-appreciated by this Court exercising its extraordinary jurisdiction under Article 226 of the Constitution of India.

9. This Court therefore finds that in regard to the reinstatement of the employee with continuity of service, need not be interfered at all as the same is founded on legal and factual basis. But, as regards the award of 50% back wages is concerned, this Court does not find any justification in such direction by the first respondent - Labour Court.

10. In view of the above narrative and discussion, this Court modifies the award to the extent that the grant of 50% back wages is set aside and the second respondent employee is deemed to have been reinstated on 20.09.2003 and the second respondent employee on such deemed reinstatement, is entitled to all the pensionary benefits as admissible to him. The petitioner Management is directed to implement this order, within a period of eight weeks from the date of receipt of a copy of this order.

11. With the above direction, the writ petition stands partially allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

The Presiding Officer,
Labour Court,
Cuddalore.

+ 1 cc to MR.T. Chandrasekaran, Advocate Sr.18507
+ 1 cc to Mr.R. Jayaprakash, Advocate SR.18874

PA (CO)
EU(11/04/2018)

W.P.No.8650 of 2010