

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.5660 of 2011

T.Sivanandam

... Petitioner

Vs

1.The presiding Officer,
Labour Court,
Salem.

2.The Management,
TNSTC, Salem Division-1,
12, Ramakrishna Salai,
Salem 636 007.

... 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 connected with the part of the award dated 07.11.2009, passed by the 1st respondent/ Labour Court, denying the relief of back wages and benefits in I.D.No.61/2006, quash the same and also direct the 2nd respondent/Management to reinstate the petitioner with back wages and all other attendant benefits.

For Petitioner : Ms.S.Girija

For Respondents : Ms.S.Rajeni Ramadoss for R2

O R D E R

Heard Ms.S.Girija, learned counsel for the petitioner and Ms.S.Rajeni Ramadoss, learned counsel appearing for the second respondent.

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

"To issue a writ of Certiorarified Mandamus, to call for the records connected with the part of the award dated 07.11.2009, passed by the 1st respondent/ Labour Court, denying the relief of back wages and benefits in I.D.No.61/2006, quash the same and also

direct the 2nd respondent/Management to reinstate the petitioner with back wages and all other attendant benefits."

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

The petitioner joined as Conductor in the respondent Corporation at Salem during 1988. He was dismissed from service on 09.01.1990, on the basis of the disciplinary action initiated against him. Thereafter, he came to be reinstated in service on the basis of the 18(1) settlement of the Industrial Disputes Act, arrived at between the petitioner and respondents. While he was working as such, he was issued with the charge memo on 18.10.2001, alleging that he was unauthorizedly absent from service from 22.09.2001. An enquiry was conducted into the charges and ultimately he was once again dismissed from service on 15.06.2002.

4. The petitioner raised an industrial dispute in I.D.No.61 of 2006, against the order of dismissal from service. The first respondent - Labour Court adjudicated the dispute and passed an award on 07.11.2009, by directing the Corporation to reinstate the petitioner in service without back wages, but, with continuity of service for the purpose of pensionary and retirement benefits. The petitioner is before this Court, challenging the award of the Labour Court, denying him the back wages for the period of non-employment.

5. The learned counsel for the petitioner would submit that the Labour Court has given a finding in favour of the petitioner viz., he had given letter, seeking leave for the days he was absent and therefore, the same could not be termed as unauthorized absence.

6. According to the Labour Court, it was found that the petitioner was not willfully absent. However, while giving a finding as such that the petitioner was merely dismissed from service for unauthorized absence and also the fact that the dismissal order which was issued second time in 2002 and the industrial dispute was raised only after a lapse of four years i.e., in 2006, the question of grant of back wages would not arise. The Labour Court also reasoned that there was no assertion on the part of the workman that he was not gainfully employed during the period of non-employment. Therefore, the Labour Court thought fit not to grant back wages for the period of non-employment.

7. Upon notice, learned counsel appearing for the second respondent, entered appearance and made her submissions.

8. The award of the Labour Court is not put to challenge by the Management. However, the workman is before this Court having aggrieved by the fact that the Labour Court did not grant him back wages. This Court does not see any justification in entertaining the writ petition, since the award of the Labour Court is well founded and the reasons were sound in terms of factual and legal basis. This Court does not find any infirmity in the reasoning of the Labour Court for denying the back wages to the petitioner. The petitioner having chosen to raise a dispute after the delay of four years, cannot expect the Court to grant any back wages for the period of non-employment. Moreover, as rightly held by the Labour Court that there was no pleading on the part of the petitioner workman that he was not gainfully employed during the period of non-employment. That being the case, this Court does not find any iota of reason for interfering with the findings of the Labour Court and eventually the award.

9. Therefore, the writ petition is devoid of merits and the same is dismissed. No costs.

Sd/-
Assistant Registrar

/true copy/

Sub Assistant Registrar

gsk

To

1.The Presiding Officer,
Labour Court,
Salem.

2.The Management,
TNSTC, Salem Division-1,
12, Ramakrishna Salai,
Salem 636 007.

1 cc to M/s.S. Girija, Advocate, Sr. 7681

1 cc to Mrs.S. Rajeni Ramadoss, advocate, sr. 6701

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