

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2019

CORAM:
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.21230 of 2013

The General Manager,
State Express Transport Corporation Ltd.,
R.Devaraj, Male, aged about 55 years,
Pallavan Salai,
Chennai 600 002. ... Petitioner

vs.

1. The Presiding Officer,
II Additional Labour Court,
Chennai.
2. M.Murugesan ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorari, to call for the records in order dated 08.02.2013 in Industrial Dispute No.814/2010 on the file of the II Additional Labour Court, Chennai and to quash the same.

For Petitioner : Mr.R.P.Prathap Singh

For 2nd Respondent : Ms.L.Sonia Gandhi,
for Mr.S.Sadacharam

ORDER

Petitioner has come up with the present Writ Petition challenging the Award of the Labour Court dated 08.02.2013 made in I.D.814 of 2010, wherein, the Labour Court has granted the relief of reinstatement into service with 25% backwages and other attendant benefits.

2. According to the Petitioner/Management, the 2nd Respondent, who was appointed as Conductor in their Transport Corporation on 27.05.1987, was placed under suspension on 30.10.1990, for the incident that took place on 29.09.1990. Since the suspension order was revoked subsequently, the 2nd Respondent rejoined duty on 27.11.1990 itself.

3. The charge against the 2nd Respondent was that a passenger's Gold chain worth ten sovereigns which was found in the Bus, was collected by the Driver and handed over to the 2nd Respondent to be handed over to the Police or the authorities concerned. As it was reported that the 2nd Respondent has appropriated the said jewel, a complaint was given against him and domestic enquiry was conducted. As charges against the 2nd Respondent were proved based on the evidence of the Driver of the Bus, the 2nd Respondent was dismissed from service on 28.04.1994.

4. Aggrieved by the order of dismissal, the 2nd Respondent herein raised an industrial dispute in I.D.No.814 of 2010. Before the Labour Court, the 2nd Respondent questioned the fairness of the domestic enquiry, however, the Management did not seek for an opportunity to let in evidence to establish the charges. By an Award dated 08.02.2013, the Labour Court, holding that the enquiry is not fair and proper, reinstated the 2nd Respondent into service with 25% backwages and other attendant benefits.

5. In the interregnum, the 2nd Respondent has also approached this Court by filing W.P.No.18210 of 2000 and by an order dated 07.12.2009, this Court disposed of the said Writ Petition, by holding as under:

“3. Accordingly, the Petitioner is granted liberty to approach the appropriate Statutory Authority and in case, the Petitioner initiates any such proceedings within a period of four weeks from the date of receipt of a copy of this order, the authority shall consider and dispose of the same on merits and as per law, without rejecting the same on the ground of limitation, as the Petitioner has been prosecuting the Writ Petition before this Court from the year 2000 onwards. Since the dismissal of the Petitioner from service was of the year 1994, the authority concerned is directed to dispose of the matter as expeditiously as possible.”

6. The Labour Court, without taking note of the fact that the 2nd Respondent was dismissed from service in the year 1994 and that he had approached this Court with a delay of six years, has granted the relief of reinstatement into service with 25% backwages and other attendant benefits. Even a wrong interpretation of evidence cannot be interfered with by this Court under Article 226 of the Constitution of India, completely ignoring the evidence of the Driver of the Bus that he had handed over the ten sovereign gold chain to the 2nd Respondent.

7. At this juncture, it is worth referring to the decision rendered by the Apex Court in the case of **Shankar Chakravarti vs. Britannia Biscuit Company** reported in **1979 (2) LLN 72 : AIR 1979 SC 1652**, wherein, it is held that it is the duty cast upon the employee to seek an opportunity to let in evidence before the Labour Court, in case the domestic enquiry is held to be not fair and proper. The Apex Court, in another decision, has held that raising an industrial dispute belatedly cannot throw the employee's case on the ground of laches, but the delay can be taken note of, for the purpose of molding the relief.

8. In the case on hand, there is a charge of serious misconduct against the 2nd Respondent/employee. Also, the evidence of the Driver of the Bus is against him. But, the Complainant, who had lodged the complaint that she missed her gold chain in the Bus, had thereafter stated that she got back the same. In view of the irregular procedure adopted, this Court is inclined to interfere with the Award of the Labour Court only on technical grounds and not on merits, as, prima facie, it appears that the 2nd Respondent is involved in the incident.

9. Accordingly, the Award of the Labour Court is modified into one of reinstatement into service without backwages, but with continuity of

service and attendant benefits. However, the 2nd Respondent will not be entitled to any of the consequential benefits. It is made clear that continuity of service is taken into account only for the purpose of granting terminal benefits to the 2nd Respondent, and not for any other purpose.

This Writ Petition is allowed to the extent indicated above. No costs.

Index : Yes/No
Speaking Order : Yes/No

31.07.2019

(aeb)

To:
The Presiding Officer,
II Additional Labour Court,
Chennai.



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S.VAIDYANATHAN,J.

(aeb)



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