

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.03.2018

Coram

THE HONOURABLE Mr. JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

W.A.No.869 of 2013
and M.P.No.1 of 2013

The Management of Tamil Nadu State
Transport Corporation
(Coimbatore Division)
Rep by its Managing Director ... Appellant/Petitioner

Vs.

1.The Presiding Officer
Labour Court, Coimbatore.

2.M.Kumarasamy ... Respondents/Respondent

Writ Appeal filed under Clause 15 of Letters Patent to set-aside the order dated 27.03.2013 made in W.P.No.19055 of 2011 on the file of this Court. Writ petition has been filed U/A.226 of the constitution of India praying for a writ of certiorari to call for the records of the first respondent in I.D.NO.380 of 2001 dated 5.8.2009 and quash the same.

For Appellant : Mr.P.Kannan Kumar
For R2 : Mr.L.Mouli

J U D G M E N T

[Judgment of the Court was delivered by
K.K.SASIDHARAN, J.]

The second respondent raised a dispute before the Labour Court, Coimbatore alleging that he was illegally terminated from service by the appellant. The Labour Court registered the dispute and thereafter, adjudicated the matter. Before the Labour Court, the second respondent adduced evidence to demonstrate that he has been continuously working from 09 September, 1998 onwards. He was terminated by the appellant later. The Labour Court analysed the entire evidence and arrived at a conclusion that the termination was illegal. The said order was challenged before the writ court in

W.P.No.19055 of 2011. The learned single Judge once again considered the entire evidence on record and arrived at a finding that the Labour Court was justified in directing the appellant to take the second respondent into service without continuity of service and back wages. The learned single Judge also referred to a similar case of another employee by name M.Ramesh Babu, who was taken into service by the appellant without liability to account for the past service as well as payment of back wages. The order passed by the learned single Judge is under challenge at the instance of the Management.

2. The learned counsel for the appellant submitted that after the order in W.P.No.19055 of 2011, a call letter was sent to the second respondent to appear before the Management along with his driving licence. Such a course was undertaken on account of the fact that the driving licence earlier produced by the second respondent materially differed with respect to the name of his father. The notice sent to the second respondent was returned with an endorsement "Not found". The learned counsel contended that neither the Labour Court nor the writ court were correct in its finding that the engagement of the second respondent was through employment exchange and that he worked continuously for a period more than 240 days.

3. We have also heard the learned counsel for the second respondent.

4. The Labour Court, Coimbatore by way of a very detailed order allowed the claim made by the second respondent. The Labour Court, on the basis of evidence has given a factual finding that the appointment of the second respondent was through the employment exchange and he has been working since 09 September, 1998.

5. Before the Labour Court, the second respondent marked Exs.W.1 to W.10 to prove that he was continuously engaged by the appellant. The Labour Court, on the basis of the evidence available on record, arrived at a factual finding that the engagement was by resorting to a fair procedure and the termination was illegal.

6. When a challenge was made to the Award passed by the Labour Court, the learned single Judge once again considered the entire factual matrix. The learned single Judge even referred to a case of another employee who was similarly situated and who was subsequently reinstated by the appellant.

7. The Labour Court is the final court of facts. It would not be within the province of the High Court to analyse the materials considered by the Labour Court once again as if it is an appellate authority. The judicial review is essentially against the decision making process. It would not be within the authority of the writ court to consider the entire background by way of re-appreciating the facts and to arrive at a different conclusion. Even on facts, if a different conclusion is possible, the conclusion arrived at by the Labour Court should be given preference. We are, therefore, of the view that there is absolutely no merit in the contention taken by the appellant.

8. The learned counsel for the appellant has taken up a contention that the second respondent produced a bogus driving licence indicating a different name against the column earmarked for indicating his father's name.

9. It is always open to the Management to call upon the employee to produce his driving licence. In case it is made out that he is not in possession of a valid driving licence, it is always open to the Management to take action in accordance with law.

The intra court appeal is disposed of with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

gms
To

1. The Managing Director
Management of Tamil Nadu State
Transport Corporation
Coimbatore Division

2. The Presiding Officer,
Labour Court, Coimbatore.

1 cc to Mr.P.Kannan Kumar, Advocate Sr.19434
+ 1 cc to M/s. L. Mouli, Advocate Sr.19713

W.A.No.869 of 2013

VGII(CO)
EU(04/04/2018)