

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. No.34275 of 2012

P.Murgesan

.. Petitioner

Versus

1. The Presiding Officer,
Labour Court, Salem.

2. The Management,
Tamil Nadu State Transport Corporation
(Salem Division - I) Ltd.,
12, Ramakrishna Road,
Salem - 636 007.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus calling for the records connected with the award dated 10.06.2003 made in I.D. No.88/2001 passed by the 1st respondent and quash the same in so far as it relates to the denial of continuity of service and other attendant benefits and also direct the respondent to grant continuity of service and other attendant benefits and thereby protect the interest of the petitioner for being eligible for pension.

For petitioner : Ms.S.Girija

For respondents : M/s.S.Rajani Ramadoss for R2

सत्यमेव जयते
ORDER

The petitioner joined as a Technician in the second respondent-Transport Corporation on 14.11.1992. While in service, the petitioner remained absent, for two spells, for which he was issued two charge memorandum, dated 05.06.2000 and 01.07.2000. In response to the charge memoranda, it appears, that the petitioner has submitted an explanation stating that he was suffering from some ailment and therefore, he was not able to attend the work regularly.

2. A common enquiry was ordered in respect of both the charge memoranda and in the enquiry, the charges in respect of both charge memoranda were held proved. A show cause notice was

issued on 07.08.2000 proposing to impose the punishment of dismissal of service, for which, the petitioner submitted his explanation on 17.08.2000, but on the same day, the second respondent Corporation passed an order, dismissing the petitioner from service vide Proceedings, dated 17.08.2000.

3. The petitioner approached the first respondent, the Labour Court, challenging the dismissal order, in ID No.86/01,. The first respondent, Labour Court after adverting to various materials and evidence placed on record, passed an award on 10.06.2003 ordering reinstatement of the petitioner without continuity of service and backwages.

4. Being aggrieved by the denial of continuity of service and backwages, the petitioner is before this Court.

5. Ms.Girija, learned counsel appearing for the petitioner would submit that the Labour Court interfered with the quantum of punishment by invoking its powers conferred under Section 11 (A) of the Industrial Disputes Act, and in which case, the Labour Court ought not to have denied the benefit of continuity of service. By such denial, the entire consequential benefits due to the petitioner from the date of dismissal till the date of passing the award in 2003 has been deprived. According to the learned counsel, the intention of the Labour Court, as reflected in the order, is only to deny the backwages but not the continuity of service. She has drawn the attention of this Court to the observation of the Labour Court made in the award, which is impugned in the present writ petition.

6. Per contra Ms.Rajani Ramadoss, learned counsel appearing for the 2nd respondent would stoutly resist the writ petition stating that the petitioner has absented on several occasions and therefore, he was rightly proceeded with, by departmental proceedings and dismissed from service. According to her, the petitioner did not show any improvement, despite the earlier action taken by the Corporation. Therefore, his retention to continue with the service of the Corporation was not in public interest and therefore, for the proved misconduct, he was dismissed from service and such action on the part of the Corporation cannot be faulted by this Court. However, she would submit that consequent to the award passed, the petitioner was re-instated in service as per the directions of the 1st respondent, Labour Court.

7. However, the learned counsel for the petitioner would attempt to argue that the action initiated by the Corporation, dismissing the petitioner from service, cannot be sustained. This Court is unable to appreciate such attempt made on the part of the petitioner. From the award of the Labour Court, it is

very clear that the unauthorised absence was established, however only in order to give one more chance, the Labour Court ordered reinstatement by denying continuity of service and back wages. Therefore, this Court cannot find any fault with the approach of the first respondent Labour Court.

8. At the same time, as contended by the learned counsel for the petitioner that the denial of continuity of service will result in very grave monetary consequences and would also deprive pensionary benefits to the petitioner on his retirement. This Court is of the considered view that the Labour Court has rightly denied the continuity of backwages, however denial of continuity of service cannot be sustained. In fact, the Labour Court has extended one more opportunity to the petitioner, in order to improve his attendance as an employee of the Corporation. Such approach by the Labour Court in the said circumstances is appropriate and therefore, the Labour Court ought not to have ordered for the denial of continuity of service. Therefore, this Court appreciates the approach of the Labour Court in denying the backwages, however, unable to sustain the view of the Labour Court in denying the continuity of service.

9. For the above said reasons, this Court set aside the award of the labour Court, dated 10.06.2003 in ***ID No.88 of 2001** in so far as it relates only to the denial of continuity of service to the petitioner. The other portion of the award with regard to back wages shall remain as such. The second respondent - Corporation is directed to pass orders, granting continuity of the service to the petitioner with all attendant benefits admissible to the petitioner. The Writ Petition is partially allowed as indicated above. No costs.

Sd/-

Assistant Registrar(CS III)

Dated: 04/04/2018

*** Amended as per order of
this court dated 20/04/2018
in WP.No.34275/12**

Sd/- Assistant Registrar(CS III)

Dated : 28/04/2018

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Presiding Officer,
Labour Court, Salem.

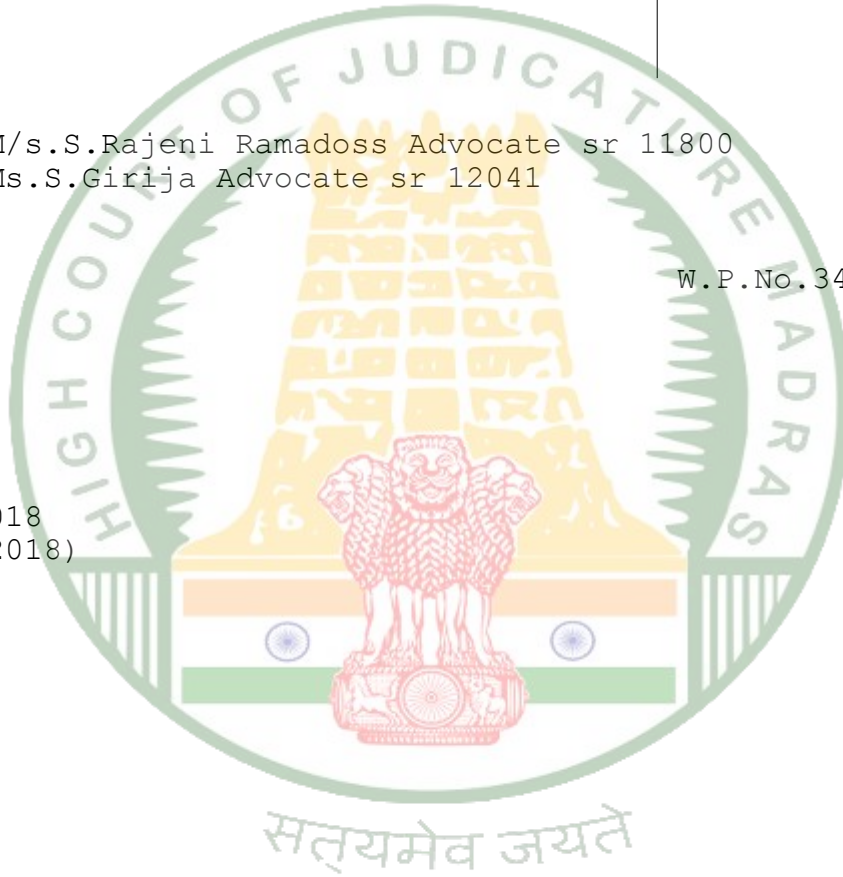
2. The Management,
Tamil Nadu State Transport Corporation
(Salem Division - I) Ltd.,
12, Ramakrishna Road,
Salem - 636 007.

To be substituted to
the Order already
despatched on
10/04/2018

+1 cc to M/s.S.Rajeni Ramadoss Advocate sr 11800
+1 cc to Ms.S.Girija Advocate sr 12041

W.P.No.34275 of 2012

pa(co)
aa05/04/2018
GN(28/04/2018)



WEB COPY