

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 24.07.2018
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.42571 of 2006

The Management,
Tamil Nadu State Transport Corporation,
Villupuram Division II Limited,
Vellore, represented by its General Manager,
Rangapuram, Vellore. ... Petitioner

Versus

1. The Joint Commissioner of Labour (Conciliation),
D.M.S. Compound,
Teynampet, Chennai - 600 006.
2. G. Krishnan ... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records of the first respondent in Approval Petition NO.332 of 2003 dated 12.02.2005 and quash the same.

For Petitioner : Mr. S. Rajeni Ramadoss
For Respondents : Mr.R.Ravikumar, for R1
Additional Government Pleader.
: Mr. S.T. Varadharajan for R2

ORDER

The petitioner management has filed this writ petition challenging the order of the first respondent / Labour Court rejecting the approval petition filed by the petitioner/management.

2. The case of the second respondent/employee is that he studied up to 9th Standard in the Government Higher Secondary School, Avarampalayam, Aarni, Thiruvannamalai District. Initially, he was selected as a Soldier in Indian Army in the year 1997. At that time, his school certificates were verified and it was found genuine. Accordingly, after Training, he joined the post as soldier and he served for 17 years without any remarks and retired from the Military service. After his retirement, he enrolled himself with the Assistant Director of Ex-Servicemen Welfare, Saidapet. The second respondent was called for an interview by the petitioner management for the post of Driver. The School certificates issued to the petitioner were sent for verification to the School authority and also to the Indian Army. At the time of appointment his certificates were found to be genuine. After completion of 5

years and 4 months service, he was issued a charge memo by the second respondent on the ground that he produced bogus certificate. Thereafter, an inquiry officer was appointed, who conducted an inquiry and submitted a report. After enquiry, he was removed from service and thereafter the petitioner management filed the approval petition under Section 33(2)(B) of the Industrial Disputes Act, before the first respondent Tribunal. The first respondent Tribunal conducted a detailed enquiry and rejected the approval petition. Challenging the same, petitioner has filed this present writ petition.

3. Before the first respondent, the petitioner management examined 7 documents and marked Ex.A1 to A7. Ex.A1 is the dismissal order dated 23.06.2003. Ex.A2 is the document relating to the copies of the findings of the Enquiry Officer, dated 08.10.2002 and Ex.A6 is the Transfer Certificate issued by the School Authorities. Ex.A7 is the letter issued by the Head Masters of the Government Higher Secondary School at Avarampalayam, Aarni, Thiruvannamalai District where the second respondent studied.

4. The learned counsel for the petitioner would submit that the petitioner was initially employed in the Indian Army, after his retirement he was appointed as Driver in the petitioner's Management. The educational testimonial submitted by the second respondent were sent for verification to the school authority and it was found to be bogus. Thereafter, a charge memo was issued to the second respondent and after conducting inquiry, the order of dismissal was passed by the petitioner management. Thereafter, the petitioner management has filed the approval petition before the first respondent/Labour Court. The first respondent/labour court rejected the approval petition on the ground that the second respondent by relying on Section 64 (2) of the Tamil Nadu Industrial Dispute Rules, 1958. The first respondent/Labour Court, by placing reliance on Rule 64 (2) of The Tamil Nadu Industrial Dispute Rules, concluded that Ex.A5 filed on behalf of the Management to show that the order of dismissal was received by the second respondent. But there is no proof to show that Form T had been sent to the employee as prescribed under Rule 64 (2). Therefore, the first respondent allowed the Approval Petition for having violated Rule 64 (2). The fact remains that the petitioner management had produced before the first respondent/Labour Court documentary evidence to show that form T was sent and acknowledged by the second respondent. Therefore, the learned counsel for the petitioner prayed for allowing this Writ Petition.

5. The learned counsel for the second respondent/employee would justify the order passed by the labour court by contending that there is a procedural violation in passing an order of dismissal and it was rightly pointed out by the labour court.

6. Heard the counsel for the petitioner as well as the learned counsel for the second respondent. The first respondent/Labour Court dismissed the approval petition filed by the petitioner management mainly on two grounds. The enquiry

was conducted exparte and the second respondent was not aware of the conduct of the enquiry. Therefore, it was concluded that the entire enquiry are vitiated and is in violation of principles of natural justice. Secondly, the labour Court concluded that there is a procedural violation in adhering to Rule 64 (2) of The Tamilnadu Industrial Dispute Rules.

7. It is seen from the records that the charges levelled against the second respondent are serious in nature. At the same time, the charges were not proved in a manner known to law. It is also seen that the second respondent was dismissed from service on 20.01.2003 and at that time, he was 45 years old. Prior to the dismissal of the second respondent, he had rendered more than 10 years of service. At the time of filing of the present writ petition, the second respondent was 48 years old and by now he would have attained the age of retirement. Therefore, this Court feels that the question of reinstating the second respondent in service does not arise at this stage. Above all, it is seen that the labour court had rejected the approval petition only on the ground that enquiry was conducted exparte and that the management did not follow Rule 64 (2). Taking note of the above, this Court feels that instead of ordering reinstatement of the second respondent, the petitioner management can be directed to pay compensation in lieu thereof so that the interest of the second respondent will also be protected. In this context, this Court is fortified by the decision of the Honourable Supreme Court in the case of (Bharat Sanchar Nigam Limited Vs. Man Singh) reported in (2012) 1 Supreme Court Cases 558 held as follows:-

"5. In view of the aforementioned legal position and the fact that the respondent workmen were engaged as "daily wagers" and they had merely worked for more than 240 days, in our considered view, relief of reinstatement cannot be said to be justified and instead, monetary compensation would meet the ends of justice.

8. In the light of the above decision of the Honourable Supreme Court, the impugned judgment passed by the Labour Court is modified. This Court direct the Petitioner management to pay a sum of Rs.2,50,000/- within six weeks from the date of receipt of a copy of this order to the second respondent, as full and final settlement. If any amount is deposited in the Labour Court, the petitioner is permitted to withdraw the amount. Accordingly, the order in Approval petition No.332 of 2003, dated 12.02.2005 is modified and this writ petition is disposed of in the above terms. No costs.

Sd/-

Assistant Registrar (CS-V)

To

1. The Joint Commissioner of Labour
(Conciliation)
D.M.S. Compound
Teynampet, Chennai - 600 006.

+1cc to Mr.S.RAJENI RAMADASS, Advocate SR.No.49873
+1cc to Mr.S.T.VARADARAJULU, Advocate SR.No.49587
+1cc to Government Pleader SR.No.50386

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RSY(CO)
SMI/21.08.2018



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