

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2018

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P.No.15145 of 2001

and

WMP No.22496 of 2001

The General Manager,  
Tamil Nadu State Transport Corporation,  
(Madurai Division-II) Ltd,  
No.19, Thiruvananthapuram Road,  
Vannarpettai (P.O),  
Tirunelveli. ....Petitioner

...Vs...

1.Mr.T.manimuthu (Deceased)

2.The Presiding Officer  
Labour Court,  
Tirunelveli.

3.Mrs.Madathi

4.Mrs.Gomathi

5.Mr.Mariselvan

[R3 to R5 impleased as per order  
dt.5.8.2009]

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records pertaining to the Award dt.14.6.2000 passed by the Second Respondent in I.D.NO.108 of 1995 and to quash the same.

For petitioner : Mrs.Rajeni Ramadass

ORDER

The prayer sought for in the writ petition is for a Writ of Certiorari to call for the records pertaining to the Award dt.14.6.2000, passed by the Second Respondent in I.D.No.108 of 1995 and to quash the same.

2.The short facts which are required to be noticed for the disposal of this writ petition are as follows:

3.The first respondent was working as driver at the petitioner Transport Corporation attached with Sankarankoil Branch. It is the case of the petitioner that the first respondent had been irregular in duty and he had been absent several times without plausible reasons. In such case, he was also absent for duty from 20.02.1993, and since his absence exceeded 8 days, a show cause notice was issued to him by the petitioner Transport Corporation on 12.06.1993. Since the first respondent submitted his explanation on 17.8.1993, which was not satisfactory to the management, a domestic enquiry was ordered.

4.The first respondent also participated in the domestic enquiry, and he had admitted his absence from 20.02.1993, and he had also not made any leave application along with medical certificate, but, he claimed that due to ill health only, he was not attending duty. But, the said reason given by the first respondent was not followed by any medical documents.

5.Based on the evidence, the enquiry officer found that the first respondent was guilty of the charges. A second show cause notice was issued on 07.01.1994, for which the first respondent had replied. However, not satisfied with the same, the petitioner Corporation dismissed the first respondent from service with effect from 16.03.1994.

6.Since already a dispute was pending before the Industrial Tribunal, Chennai, an approval petition under Section 33 (2)(b) of the ID Act was filed before the Industrial Tribunal, Chennai in A.P.No.49 of 1994. and the said approval, petition was cancelled by the Tribunal by order dated 10.11.1994, where the Tribunal passed an order stating that the approval petition was not maintainable. However, without prejudice to the first respondent to raise an industrial dispute before the proper forum.

7.Thereafter as against the order of dismissal, the first respondent raised an industrial dispute in I.D.No.108 of 1995. The said I.D.was decided by the Labour Court, Tirunelveli and an award was passed on 14.06.2000. In the said award, the Labour Court eventhough rejected the I.D.No.108 of 1995 raised by the first respondent, however, has considered the plea raised by the first respondent that due to the eye sight of the first respondent affected, he was not able to do the duty as driver, and therefore, he sought for an alternate employment from the petitioner Corporation. The said request of the first respondent was accepted by the Labour Court and in this regard, the award was passed directing the petitioner Corporation to provide alternative employment to the first respondent and the Labour Court rejected the claim of the first respondent raised for continuity of service and back wages.

8. Aggrieved by the said award passed by the Labour Court in I.D.No.108 of 1995 dated 14.6.2000, the petitioner Corporation filed this writ petition.

9. It is to be noted that as against the impugned award the first respondent employee did not prefer any appeal before this Court.

10. At the time of admission, there had been an interim order of stay by this Court which was continuing. In the mean while, during the pendency of the writ petition, the first respondent died on 01.11.2002. Thereafter, the legal heirs of the first respondent have been impleaded as respondents 3 to 5. However, there is no representation for the respondents' side.

11. I have heard Mrs. Rajini Ramadoss, learned counsel appearing for the petitioner Corporation who would submit that once the Labour Court found that domestic enquiry conducted by the petitioner Corporation was in accordance with the principles of natural justice and based on the evidence, the Labour Court came to the conclusion that the enquiry officer's conclusion accepted by the disciplinary authority can be accepted, the Labour Court should not have gone to the other aspect by giving a direction to the petitioner Corporation to give alternate employment to the first respondent on the ground of medical invalidity.

12. The learned counsel would further submit that if at all the first respondent became medically invalid, he would be medically invalidated and accordingly what ever the retirement benefits would be available to him alone should have been directed to be given, and therefore, the award passed in this regard by the Labour Court is unjustifiable, and therefore, the said award has to be interfered with.

13. I have gone through the award passed by the Labour Court and also perused the materials, and I have heard the arguments advanced by the learned counsel appearing for the petitioner Corporation.

14. It is not in dispute that the first respondent suffered an eye defect, and therefore definitely he cannot be directed to be re-employed for driver post. Even though the disciplinary enquiry was conducted and unauthorised absence beyond 8 days was considered to be without sanction, it cannot be said that the said conclusion reached by the enquiry officer is faulty. At the same time for the said absence on the part of the first respondent, medical reasons had been given, of course not supported by medical certificates. However, the fact remains that the petitioner's eyesight was effected, and therefore certainly he would be entitled for any alternative employment.

Only in that context, the Labour Court had given direction by way of award to the petitioner Corporation to consider the first respondent for alternative employment based on his medical condition.

15. In the meanwhile, the first respondent also died on 01.11.2002. Assuming that the first respondent had been given alternative employment, pursuant to the impugned award of the Labour Court dated 14.06.2000, his service period in that alternative employment would have been only up to 01.11.2002. In that circumstances, to meet ends of justice, this Court is inclined to pass the following order.

16. The petitioner Corporation is directed to pay a lump sum amount of compensation by taking into account either the last drawn salary paid to the first respondent or the salary payable to the first respondent if he had been given alternative employment pursuant to the impugned award and calculate the same for the period between 14.06.2000 and 01.11.2002 and pay the same by way of full settlement to the legal heirs of the first respondent, who are respondents 3 to 5 herein, and such settlement shall be made by mandatory compensation to the respondents by the petitioner Corporation within a period of twelve weeks from the date of receipt of copy of this order. With these directions, this writ petition is disposed of. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

KP

To

The Presiding Officer  
Labour Court,  
Tirunelveli.

+1cc to M/s.S.Rajeni Ramadass, Advocate, S.R.No.57415

PA(CO)

W.P.No.15145 of 2001

RRS (09/04/2019)