

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.08.2018
CORAM :
THE HONOURABLE MR. JUSTICE P.D.AUDIKESSAVALU
W.P.No.34899 of 2002

The Management of
Tamil Nadu State Transport Corporation Ltd.
No.12, Ramakrishna Road, Salem - 7.

... Petitioner

Vs.

1.The Presiding Officer
Labour Court, Salem.

2.R.Varadharajan
Son of Ramasamy Padayachi
Palani Nagar, Meenammal Nagar
Erumappatti Post, Namakkal.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to ID No.235 of 1997 dated 11.07.2001 on the file of the First Respondent and quash the same.

For Petitioner : M/s.Rajeni Ramadoss
For Respondents: Court (For R1)
Mr.K.V.Shanmuganathan (For R2)

ORDER

Heard M/s.Rajeni Ramadoss, learned Counsel appearing for the Petitioner and Mr.K.V.Shanmuganathan, learned Counsel appearing for the Second Respondent.

2. The Second Respondent, who was employed as Driver in the Transport Corporation of the Petitioner, had unauthorisedly absented himself from duty for the period from 28.11.1995 to 12.01.1996 and on proof of the charges, he was terminated from service by the Petitioner by order dated 30.09.1996. The Second Respondent raised an industrial dispute bearing I.D.No.235 of 1997 under Section 2-A(2) of the Industrial Disputes Act, 1947, before the Labour Court, Salem. Though the Labour Court found that the charges against the Second Respondent had been proved in the enquiry conducted by the Management following the principles of natural justice, it had come to the conclusion that a lenient view of the matter ought to have been taken instead of inflicting the extreme punishment of dismissal and accordingly, directed the reinstatement in service of the Second Respondent without backwages, continuity of service or other benefits.

3. When it was brought to notice of this Court that the Second Respondent was permitted to rejoin duty without prejudice to the rights of the Petitioner and subject to the result of the Writ Petition, during the hearing on 10.09.2003, an order was passed in W.P.M.P. No.51899 of 2002, which reads as follows:-

"Heard both sides.

2. Learned Counsel appearing for the second respondent-workman reports that the petitioner-management has reinstated the second respondent.

3. The above statement is hereby recorded. However, he submits that he is not being paid current wages and the management pays only the last drawn wages. It is settled legal position that once the management agrees and takes the workman without prejudice to their stand pending disposal of the main writ petition, it is but proper that workman is to be paid wages commensurate to his work or the wages being paid on par with other workers, who are doing similar nature of work. Accordingly, the petitioner-management is directed to pay current wages as referred above.

4. With the above direction, this petition is ordered."

4. Learned Counsel for the Petitioner states that despite reinstatement, the Petitioner continued to be absent for various periods as per the particulars shown below:-

S. No.	Dates	No of days worked	No of days absent
1.	From 9.5.2003 to 24.05.2003 - 5/03	14	2
2.	From 25.5.2003 to 24.06.2003 - 6/03	27	4
3.	From 25.6.2003 to 24.7.2003 - 7/03	25	5
4.	From 25.7.2003 to 24.8.2003 - 8/03	27	4
5.	From 25.8.2003 to 24.9.2003 - 9/03	23	4+4
6.	From 25.9.2003 to 24.10.2003 - 10/03	22	4+4
7.	From 25.10.2003 to 08.11.2003 - 11/03	12	3

It is further brought to the notice of this Court that the Second Respondent failed to attend the duty from 09.11.2003 onwards despite notice dated 04.05.2004 calling upon him to rejoin duty.

5. The learned Counsel for the Second Respondent does not dispute the correctness of the aforesaid factual particulars placed on record by the Petitioner.

6. It is seen from the aforesaid subsequent conduct of the Second Respondent that despite granting him the benefit of reinstatement in service without back wages and continuity of service, he has failed to avail the said benefit except for sporadic periods from 09.05.2003 to 08.11.2003 as mentioned supra. In such circumstances, the Second Respondent would not be entitled to any monetary benefits except the wages paid to him for the days he had attended duty during the period from 09.05.2003 to 08.11.2003 and he shall not be entitled to claim anything else from the Petitioner in terms of the impugned award of the Labour Court.

7. In view of the same, it has become unnecessary to go into the question of examining the correctness or otherwise of the impugned award of the Labour Court and the Writ Petition is disposed with the aforesaid observations. No costs.

vjt

Sd/-
Assistant Registrar(CSII)

//True Copy//

Sub Assistant Registrar

To

1.The Management of
Tamil Nadu State Transport Corporation Ltd.
No.12, Ramakrishna Road, Salem - 7.

2.The Presiding Officer
Labour Court, Salem.

+1cc to Mr.S.Rajeniramadoss, Advocate SR.NO.54393

SSV(CO)
sm:17.9.2018

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