

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2018

CORAM

THE HON'BLE DR. JUSTICE S.VIMALA

W.P.No.28478 of 2017
and W.M.P.Nos.30589 of 2017 and 18487 of 2018

The Management,
Tamilnadu State Transport Corporation,
Vellore Zone,
Vellore
Rep. by its General Manager. ... Petitioner

versus

1. D.Saravanan
2. The Principal Labour Court,
Vellore,
Vellore District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, to call for the records passed by the 2nd respondent in I.D.No.125 of 2016 dated 17.07.2017 and to quash the same.

For Petitioner : M/s.Antony Arockiaraj
For Respondents: M/s.T.P.Prabakaran for R1

ORDER

Do the Driver, aged above 45 years, know how tall he was? How tall was the Driver, when he entered into the service and how tall was he, when he was measured some years later?. Alleging that the driver was short of length by 1 cm., as against the required height, after some years in service, the Management has terminated the services of the driver.

2. No one wants to shrink, of course, but it's a normal part of life if anybody live long enough. The Labour Court in I.D.No.125 of 2016 accepting that there may be circumstances for the difference in the height, passed an award dated 17.07.2017, directing the Management to reinstate the workman along with backwages, continuity of service and other attendant benefits. Challenging the same, the Management has filed the present writ petition.

3. The first respondent herein is the workman. He joined the services of the management on 16.07.2010, through the process of selection. Alleging malpractices in the selection process, there was a complaint to the Director of Vigilance and Anti-Corruption Department. A committee was constituted for verifying the authenticity and truthfulness in the content of the complaint. It was found that some of the persons selected were found to fall short in height of whom the first respondent is the one among them, whose height was 159 c.m. as against the prescribed height of 160 c.m.

4. Detailed enquiry was conducted by the Management after issuing a charge memo. Based on the report of the Enquiry Officer, the workman was dismissed from service on 31.10.2015. Challenging the same, the workman filed I.D.No.125 of 2016.

5. The order of reinstatement passed by the Labour Court is under challenge by the Management.

6. Whether the finding of the Labour Court is perverse as claimed by the Management is the issue to be considered.

7. During the time of interview, all the candidates, who participated in the Interview, had submitted a physical fitness certificate along with "Self Details Form". The Interview Panel had cross-checked the details furnished and the panel had written the height and weight of the candidates in the right side of the Self Details Form. Thus, it is clear that the interview panel had endorsed the height and weight of the candidates and had signed it.

7.1. It has been specifically admitted by the Management witness that at the time of interview, one of the member of the Interview Panel checked the height and weight of the candidates and made an endorsement in the application. Therefore, it is not a case of dishonest information having been furnished in the application by the petitioner himself. It is supported by the certificate of the Doctor that the height of the workman is 160 c.m., as also the additional endorsement made by the Committee.

8. The scaling down of the height of the person may be different on account of the different type of the tools used in measuring and difference of 1 cm. may be on account of the manner and method of measurement also. The measuring scale is always prone to slight variations, which is a well accepted phenomenon.

9. The petitioner has joined the services of the Transport Corporation on 16.07.2010. Charge memo has been

issued after four years, i.e. on 16.06.2014. In fact, the domestic enquiry is not scientific. The enquiry did not aim at finding out the reasons for the difference in height.

9.1. Short of height, that too negligible, as in this case, could be due to the discs between the vertebrae in the spine dehydrating and compressing. The aging spine can also become more curved, and vertebrae can collapse due to loss of bone density (osteoporosis). Loss of muscle in the torso can also contribute to stooped posture. Even the gradual flattening of the arches of the feet can make anyone slightly shorter. These scientific aspects has to be taken into account which has been lost sight of by the Enquiry Committee which had taken a decision simply based upon the statement of the staff of the Management. Therefore the contention that the enquiry is not fair and proper is liable to be sustained.

9.2. When the difference is only 1c.m, which could be accounted for, the contention of the Management that the medical certificate produced could be false, cannot be accepted. The truth and veracity of the certificate cannot be disputed. In a case of this nature where the discrepancy is 1 cm., that could be due to various medical reasons as discussed above. Considering all these aspects, the Labour Court has given a finding which cannot be branded as perverse. Therefore, there is no scope for interference in the award.

10. The next contention canvassed by the learned counsel for the Management is that the Court ought not have awarded backwages. So far as backwages is concerned, the evidence must indicate that that workman was not gainfully employed elsewhere.

11. It is contended by the learned counsel for the workman that the workman could not have been without employment for a period of 3 years, from the date of dismissal, i.e. on 31.10.2015, upto this date. Taking into consideration the totality of the circumstances, this Court is of the considered view that 50% of backwages would meet the ends of justice.

12. Accordingly, while confirming the award of the Tribunal insofar as reinstatement is concerned, however, the workman will be entitled to only 50% of the backwages, but, with continuity of service and all other attendant benefits.

13. This writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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The Principal Labour Court,
Vellore,
Vellore District.

+1cc to M/s.T.P.Prabakaran, Advocate SR.No. 65775

W.P.No.28478 of 2017

A.SK(21/01/2019)



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