

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2018

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.No.39900 of 2002

The Management,
Tamil Nadu State Transport Corporation
(Kumbakonam Division.I) Ltd.,
Kumbakonam ... Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Cuddalore.

2.P. Natarajan ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of the First Respondent in I.D.No.66/1996 dated 25.09.2001 and quash the same.

For Petitioner : Mr.D. Venkatachalam
For First Respondent : Lower Court
For Second Respondent : Mr.Thameem Mohideen

O R D E R

The Writ Petition challenges the Award of the Labour Court in I.D. No. 66/1996 dated 25.09.2001, by which, the Second Respondent was directed to be reinstated with full back wages with continuity of service.

2. Heard Mr.D.Venkatachalam, learned Counsel for the Petitioner and Mr.Thameem Mohideen, learned Counsel for the Second Respondent.

3. The Second Respondent was employed as a conductor by the Petitioner which is a Transport Corporation. When the Second Respondent was on duty in the bus bearing Registration No.TN 49-N 0034 on 01.02.1993 plying on the route from Thanjavur to

Sathanur at about 07.25 p.m., the Ticket Inspector of the Petitioner on checking found that the Second Respondent had collected Rs.2.80 each from two illiterate women and had issued to them only ticket for Rs.1.40 each and had thereby admitted to have misappropriated a sum of Rs.2.80 without issuing tickets for that value. The cash bag of the Second Respondent was also found to have excess cash and the Second Respondent refused to receive the Memo that was sought to be served on him by the Checking Inspector. In respect of that incident, a Charge Sheet was issued to the Second Respondent, who submitted his explanation. Since the explanation was not found to be satisfactory, a domestic enquiry was conducted on the Second Respondent, he was held guilty of charges. A second show cause notice was issued to the Second Respondent enclosing the copy of the enquiry report for which he submitted a explanation and as the same was not satisfactory, the Petitioner was dismissed from service by an order dated 14.10.1993. The Second Respondent raised a Industrial Dispute challenging his dismissal from service in I.D. No. 66 of 1996 before the Labour Court, Cuddalore. The Labour Court by an order dated 12.03.1999 arrived at a factual findings that the enquiry had been properly conducted by the Petitioner and the matter was to be heard on the question of proof of charges and justification of punishment imposed upon the Second Respondent.

4. Thereafter, the Labour Court by an award dated 25.09.2001 in I.D. No. 66 of 1996 came to the conclusion that the charges against the Second Respondent had not been proved mainly for the reason that the Standing Orders of the Petitioner had not been produced to show that intention to misappropriate is a misconduct and proceeded to set aside the order of dismissal and directed the reinstatement of the Second Respondent with full back wages and continuity of service.

5. The learned Counsel for the Petitioner contended that when the act of the Second Respondent in not having issued the tickets of the full value of Rs.2.80 to the two illiterate women passengers would suffice to prove the misappropriation committed by the Second Respondent, the reasoning of the Labour Court that it was necessary to produce the Standing Orders of the Petitioner in order to prove that intention to misappropriate is a misconduct, cannot be countenanced.

6. The aforesaid contentions of the learned Counsel for the Petitioner are well founded and deserve acceptance. The Labour Court is expected to consider the evidence placed on record and render its findings on the proof of charges, which exercise has not been carried out in the present case. In view of the same,

the impugned award of the Labour Court cannot be sustained and the same is set aside and in the interests of justice, the matter is remitted back for fresh determination of the matter, uninhibited and uninfluenced by the reasonings made. Since the evidence of the parties had already been recorded, it would suffice to permit the Petitioner to produce the copy of the Standing Orders alone as additional evidence for effectual and complete adjudication of the matter. The parties shall appear before the Labour Court, Cuddalore for the hearing fixed on 31.10.2018 for which notice shall be issued to the parties for their appearance. The learned Counsel for the Petitioner further submits that the Petitioner would also serve private notice to the Second Respondent for appearance on that hearing. After hearing both parties, the Labour Court shall pass reasoned orders on merits and in accordance with law and file a report of such compliance before the Registrar (Judicial) of this Court by 31.12.2018.

7. It is brought to the notice of this Court that the order dated 24.09.2003 in W.P. M.P. No. 59336 of 2002, this Court has passed the following interim order:-

"2.It is represented that the Second Respondent-workmen has attained superannuation even on 28.02.1998. As per the award of the Labour Court, Cuddalore, the back wages upto the said date comes to Rs.1,60,133/- (Rupees One Lakh Sixty Thousand and One Hundred and Thirty Three only). Considering all these material, interim stay granted on 30.10.2002 is made absolute subject to the following terms:-

1.The Petitioner-management is directed to deposit a sum of Rs.1,60,130/- (Rupees One Lakh Sixty Thousand and One Hundred and Thirty only) to the credit of I.D. No.66 of 1996 before the Labour Court, Cuddalore, within a period of 12 weeks from the date of receipt of a copy of this order.

2.On such deposit being made, the Second Respondent herein, viz., P.Natarajan is permitted to withdraw a sum of Rs.80,000/- (Rupees Eighty Thousand only) without furnishing security.

3.The Labour Court, Cuddalore is directed to invest the balance amount in a Nationalised Bank initially for a period of three years and renewable thereafter under re-investment scheme.

4.These Petitions are ordered accordingly."

8. Depending upon the outcome of the final decision of the Labour Court in the matter, appropriate orders shall be passed by the Labour Court in respect of aforesaid amount, if it has been deposited by the Petitioner in the Labour Court.

9.The Writ Petition is disposed of in the aforesaid terms.
No costs.

Sd/-
Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

vjt

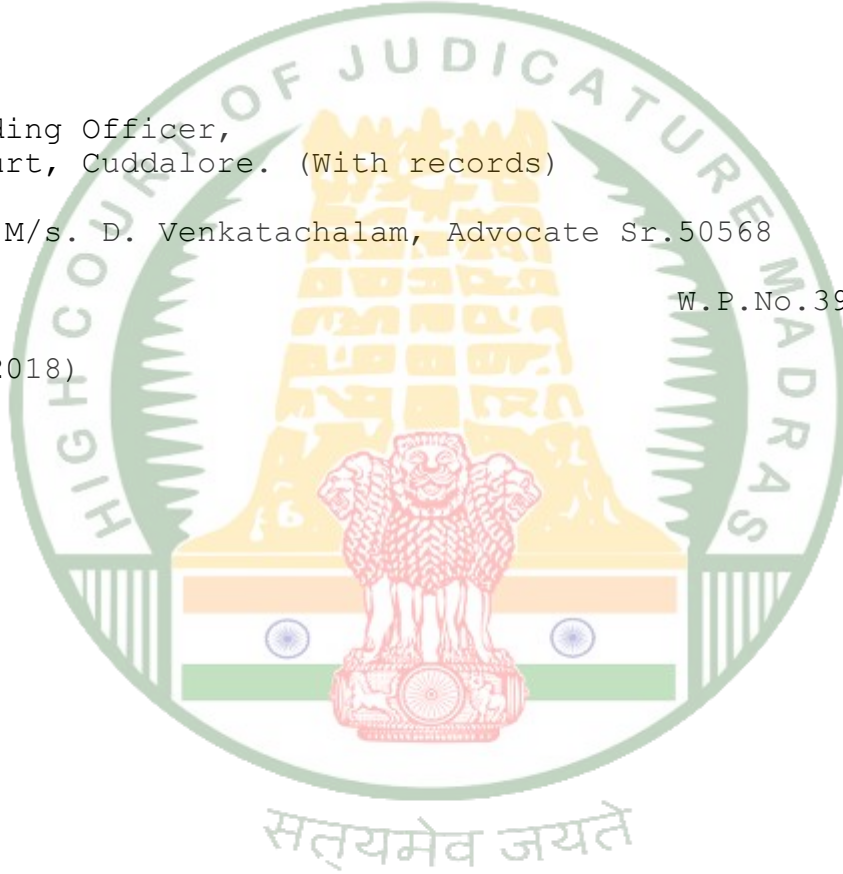
To

The Presiding Officer,
Labour Court, Cuddalore. (With records)

+ 1 cc to M/s. D. Venkatachalam, Advocate Sr.50568

W.P.No.39900 of 2002

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