



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.A.(MD)No.183 of 2018
and
C.M.P.(MD)No.993 of 2018

- 1.The Managing Director,
Tamil Nadu State Transport Coporation,
(Madurai) Limited, Head Office,
Madurai 625 010, now the Manging Director,
Tamil Nadu State Transport Corporation
Tirunelveli Limited, Tirunelveli.
 - 2.The General Manager,
Tamil Nadu State Transport Corporation,
Madurai Limited, Rani Thottam, Nagercoil,
Kanyakumari District.
 - 3.The senior General Manager,
Central Office, Tamil Nadu State
Transport Corporation Madurai Limited,
Tirunelveli. ... Appellants/Respondents 1 to 3
- Vs.
- K.Murugesan ... Respondent

PRAYER: Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order passed by this Court in W.P.(MD)No.13554 of 2009 dated 17.04.2013.

Prayer in WP(MD). 13554/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified mandamus, calling for the records relating to the proceedings of the second respondent vide his proceedings No. 877/A2/TNSTC/08 culminating in his order dated 21/02/2008, quash the portion of the order denying the benefit of seniority and



consequently direct the second respondent to give promotion to the petitioner on the basis of the seniority.

For Appellants

: Mr.K.Sathiya Singh

For Respondent

: Mr.B.Brijesh Kishore

JUDGMENT

(Judgment of the Court was delivered by M.SATHYANARAYANAN,J.)

By consent, the writ appeal is taken up for final disposal.

2. Mr.B.Brijesh Kishore, learned Counsel accepts notice on behalf of the respondent/ writ petitioner.

3. The facts leading to the filing of the writ appeal would have been narrated in detail and extenso in the impugned order dated 17.04.2013, passed in W.P.(MD)No.13554 of 2009 in and by which, it came to be allowed and therefore, it is not necessary to restate the facts once again, except to cull out the relevant facts for disposal of this writ appeal.

4. The respondent/writ petitioner was working as a Conductor in the services of Tamil Nadu State Transport Corporation, Madurai Region and he was vested with disciplinary proceedings alleging misappropriation and he was dismissed from service and raising an industrial dispute, he approached the Labour Court, Tirunelveli in I.D.No.94 of 2000 and the Labour Court, Tirunelveli found that the enquiry was not held properly and as regards misappropriation of Rs.1.30 also, it has held that the evidence let in had not been sustained the fact and therefore ordered his reinstatement for duty with 25% of back wages.

5. The writ petitioner, aggrieved by the award of the Labour Court, dated 26.04.2006, in I.D.No.94 of 2000, with regard to the continuity of service and the Management, aggrieved by the order of reinstatement, filed W.P.(MD)Nos.8064 of 2006 and 9797 of 2006 respectively. The learned Single Judge, vide a common order dated 28.08.2007, has dismissed both the writ petitions and in paragraph No.10 of the said common order, observed that

" A reading of the Labour Court's Award impugned in the writ petition does not show that it had denied the relief of continuity of service. I think that the apprehension raised by the workman (the respondent herein) is not justified"

6. The petitioner thereafter approached the appellant Management for the said relief and it was rejected vide proceedings dated 21.02.2008 and making a challenge, he filed W.P.(MD)No.13554 of 2009. The said writ petition was entertained and notices to the respondents/appellants herein were ordered. A Single Bench of this



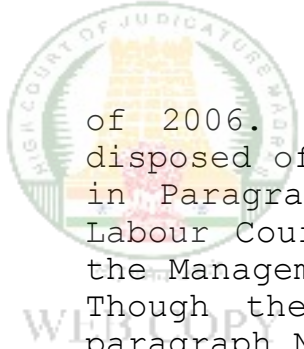
Court, vide impugned order dated 17.04.2013, has allowed the writ petition and as a consequence, quashed the impugned order of denial of seniority by the Management and however held that the respondent/petitioner is entitled to fix the seniority fixed at the time of suspension. The Management, aggrieved by the said order came forward to file the present Writ Appeal.

7. The learned Counsel appearing for the appellants/respondents in the writ petition would submit that the petitioner is guilty of misappropriation of public amount and though the amount is very meagre and small, he is entitled to be vested with grave punishment of dismissal from service for the reason that the respondent/writ petitioner was in a public post to entrust the public and therefore, taking note of the misappropriation, he was rightly dismissed from service and however, the Labour Court did not properly appreciate the said aspect and allowed the Industrial Dispute Original Petition and though the Management had challenged the same by filing W.P.(MD) No.9797 of 2006 before this Court, the learned Single Judge has also not properly appreciated the said fact and dismissed both writ petitions and the said material aspect has not been taken into consideration by the learned Single Judge, while allowing the writ petition in W.P.(MD)No.13554 of 2009 and hence, prays for appropriate orders.

8. Per contra, the learned Counsel appearing for the respondent/writ petitioner has invited the attention of this Court to the common order dated 28.08.2007 made in W.P.(MD)Nos.8064 and 9797 of 2006 and would submit that the learned Judge, in paragraph No.8 of the common order, has recorded the finding that the Labour Court found that it was difficult to believe the version of the Management that the workman had misappropriated the said amount and though dismissed both writ petitions filed by the writ petitioner as well as by the Management, in paragraph No.10, the learned Judge made an observation that on a reading of the Labour Court's Award impugned in the writ petition does not show that it had denied the relief of continuity of service and though the said fact has been brought to the knowledge of the Management, it was rejected and challenging the same, the writ petition filed by the petitioner was successful and hence, in the absence of any infirmity, this Court, by invoking the provisions under Clause 15 of Letters Patent, may not interfere with the same and hence, prays for dismissal of the Writ Appeal.

9. This Court paid its best attention to the rival submissions and perused the materials placed on record.

10. The respondent/writ petitioner was dismissed from service on the ground of misappropriation of Rs.1.30/- and the industrial dispute raised by him in I.D.No.94 of 2000 came to be allowed vide order dated 28.08.2007, the respondent/writ petitioner, with regard to the continuity of service, has filed W.P.(MD)No.8064 of 2006 and the Management, aggrieved by the said award, filed W.P.(MD)No.9797



of 2006. Both writ petitions were taken up together and were disposed of by a common order dated 28.08.2007 and the learned Judge in Paragraph No.8 of the order has observed that therefore, the Labour Court found that it was difficult to believe the version of the Management that the workman had misappropriated the said amount. Though the learned Judge has dismissed both writ petitions, in paragraph No.10 observed as follows:

" 10. The learned counsel for the workman stated that the continuity of service was denied to the workman and it was not proper. A reading of the Labour Court's Award impugned in the writ petition does not show that it had denied the relief of continuity of service. I think that the apprehension raised by the workman is not justified"

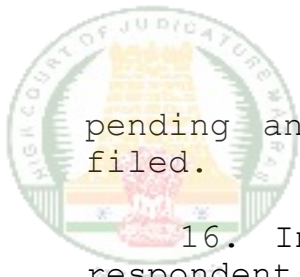
11. The respondent/writ petitioner armed with the said observation, approached the appellants/Management for reinstatement of service with seniority and it was rejected vide proceedings dated 21.02.2008 and he made a challenge to the said proceedings by filing W.P.(MD)No.13554 of 2009.

12. The learned Judge has observed that the clarification sought for by the petitioner before the learned Single Judge was also rightly answered in paragraph No.10 of the order and also indicated that the question of seniority did not come for consideration before the Labour Court and therefore, allowed the writ petition and thereby quashed the impugned proceedings of the appellants Management, dated 21.02.2008. In the considered opinion of this Court, there are no infirmity attached to the said findings recorded by the learned Single Judge, for the reason that the learned Single Judge, while dismissing W.P.(MD)Nos.8064 and 9797 of 2006, in paragraph No.10, has clarified the issue. It is also a settled position of law that in the event of setting aside the order of dismissal/reinstatement in service, the continuity of service would normally follow and the Labour Court, taking into consideration the fact that the writ petitioner did not work during the relevant period, ordered 25% of back wages.

13. This Court with an independent application of mind is of the considered opinion that there is no infirmity or error apparent on the face of the record for the reason assigned by the learned Single Judge for allowing the writ petition and finds that the writ appeal lacks merits.

14. In the result, the Writ Appeal is dismissed, confirming the order, dated 17.04.2013, passed in W.P.(MD)No.13554 of 2009. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

15. It is also brought to the knowledge of this Court by the learned Counsel appearing for the respondent/writ petitioner that despite the said order, his seniority was not revised and therefore, he filed W.P.(MD)No.15919 of 2016 and it was also disposed of on 28.08.2016, with a positive direction and since it has not been complied with, he filed Cont.P.(MD)No.1242 of 2017 and the same is



pending and thereafter only, the present writ appeal came to be filed.

16. In the light of the dismissal of this Writ Appeal, the respondent/writ petitioner is at liberty to pursue the contempt petition No.1242 of 2017.

Sd/-

Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar

+1CC to Mr.B.Brijesh Kishore, Advocate, SR.No. 46296

+1CC to Mr.K.Sathiya Singh, Advocate, SR.No. 46109

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