



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 14.02.2018

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**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE R.THARANI**

W.A. (MD) .Nos.245 and 246 of 2018
and
C.M.P. (MD) .Nos.1465 and 1466 of 2018

W.A. (MD) .No.245 of 2018:

The Managing Director,
Tamil Nadu State Transport Corporation
Kumbakonam Limited,
Karaikudi.

... Appellant No.1/Respondent No.1

Vs.

1.A.Subramanian

... Respondent No.1/Petitioner

2.The Presiding Officer,
Labour Court,
Madurai.

... Respondent No.2/Respondent No.2

PRAYER: Writ Appeals filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.(MD).No.8810 of 2008 dated 25.11.2016.

Prayer in WP(MD)No.8810/ 2008 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records pertaining to the order passed by the Labour Judge, Madurai, in I.D.No. 38 of 1995, dated 06/08/2007 and quashes the same as illegal and invalid.

W.A. (MD) .No.246 of 2018

1. The Managing Director,
Tamil Nadu State Transport Corporation,
Kumbakonam Limited,
New Railway Feeder Road,
Kumbakonam.

... Appellant No.1/Respondent No.1



2. The General Manager,
Tamil Nadu State Transport Corporation
Kumbakonam Limited, Maruthapathi,
Karaikudi. ... Appellant No.2/Respondent No.2

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Vs.

A.Subramanian ... Respondent /Petitioner

PRAYER: Writ Appeals filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.(MD).No.9315 of 2008 dated 25.11.2016.

Prayer in WP(MD)No. 9315/ 2008 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to implement the award in I.d.No. 38 of 1995 dated 06/08/2007 and reinstate the petitioner in services with continuity of service.

For Appellants in
both the appeals : Mr.D.Sivaraman

For Respondents
in both the appeals : Mr.Rahul

JUDGMENT

[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

Heard Mr.D.Sivaraman, learned counsel appearing for the appellants and Mr.Rahul, learned counsel appearing for the respondent/workman.

2.These appeals by the appellant Management are directed against the common order dated 25.11.2016. The appellant Management filed W.P.No.8810 of 2008 challenging the award of the Labour Court in I.D.No.38 of 1995, dated 06.08.2007. The Labour Court, by the said award set aside the order of dismissal passed against the respondent workman, directed the reinstatement with continuity of service, but denied back wages and other reliefs. The workman sought for implementation of the award by filing W.P.(MD).No.9315 of 2008. Both the cases were heard together and the writ petition filed by the appellant Management was dismissed and in the writ petition filed by the workman, the Writ Court came to the conclusion that the wages under Section 17(B) of the Industrial Disputes Act, 1947 was not paid, therefore, it has to be paid within time frame and in default, to pay interest at the rate of 8% p.a.

3.The learned counsel for the appellant Management strenuously contended that the finding of the labour Court, while particularly, in paragraph No.8 of the award is erroneous and the Labour Court has

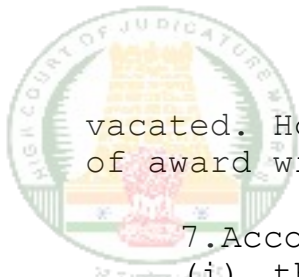


failed to take into consideration the documents marked by the Management viz., Exs.M1 to M8 and held that they have not produced any document or witness.

4. We have perused the impugned award and the findings recorded therein. The Labour Court opined that the domestic enquiry was vitiated on account of violation of principles of natural justice and that the workman did not have adequate opportunity to defend himself and after such finding was rendered the appellant Management filed I.A.No.107 of 2005 requesting permission to reopen the case and to lead additional evidence to substantiate their contention. The copy of the affidavit filed in I.A.No.107 of 2005 was produced before this Court by the learned counsel for the respondent workman from which, we find that the appellant Management has admitted that the domestic enquiry was vitiated. Therefore, they sought for permission to reopen the matter to lead oral and documentary evidence. This permission sought for in I.A.No.107 of 2005 was granted. Unfortunately, the appellant Management did not mark any additional documents nor additional oral evidence. The above facts have been recorded in Paragraph No.8 of the impugned award and the Labour Court proceeded further to discuss the matter on merits and came to the conclusion that the domestic enquiry was vitiated. However, taking note of the allegations and the gravity of the charge against the workman, which is one of misappropriation and the workman being a Conductor, the Labour Court exercised its discretion and while setting aside the order of dismissal from service, denied back wages and other reliefs except continuity of service.

5. The writ Court, before which, the appellant Management challenged the correctness of the award, considered the submissions, took note of the findings recorded by the Labour Court and dismissed the writ petition filed by the appellant Management. It is a settled legal position that the Writ Court, while examining the correctness of the award of the Labour Court, cannot examine the same as a second appellate Court over the findings recorded by the Labour Court and the scope is limited only when there is perversity in the award and no reasonable person would come to such a conclusion as recorded by the Labour Court. The appellant Management has not made out any case of perversity in the award, warranting interference. Therefore, we find that the order passed by the writ Court dismissing the writ petition filed by the appellant Management was perfectly valid and proper.

6. For the above reasons, the writ appeal filed by the appellant Management against the said order should necessarily fail. So far as the writ petition filed by the workman is concerned, the Writ Court has directed arrears of wages under Section 17(B) of the Industrial Dispute Act to the workman from the date of the award within a time frame, in default, to pay interest at the rate of 8% p.a. The learned counsel for the appellant Management submitted that there is no arrears of 17(B) wages. The submission made is taken on record and to that extent the direction issued by the Writ Court stands



vacated. However, the workmen is entitled to get wages from the date of award without interest.

7. Accordingly,

(i) the writ appeal in W.A.(MD).No.245/2018 against the W.P.(MD).No.8810 of 2008 dated 25.11.2016 is dismissed.

(ii) the writ appeal in W.A.(MD).No.246 of 2008 filed against the W.P.(MD).No.9315 of 2008, dated 25.11.2016, is partly allowed and the direction to pay arrears of Section 17(B) wages is set aside, as it has already been settled and the arrears of wages from the date of award shall be paid within a period 12 weeks from the date of receipt of a copy of this judgment and the interest awarded by the Writ Court on the said amount stands deleted. No costs. Consequently, the connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Managing Director,
Tamil Nadu State Transport Corporation
Kumbakonam Limited,
Karaikudi.

2. The Managing Director,
Tamil Nadu State Transport Corporation,
Kumbakonam Limited,
New Railway Feeder Road,
Kumbakonam.

3. The General Manager,
Tamil Nadu State Transport Corporation
Kumbakonam Limited, Maruthapathi,
Karaikudi.

4. The Presiding Officer,
Labour Court, Madurai.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 49321
+ 1 CC TO Mr.A.RAHUL, ADVOCATE IN SR No. 48743
+ 2 CC TO Mr.D.SIVARAMAN, ADVOCATE IN SR No. 48769 & 48770

NS

TE/KKR/SAR-2 : 08/03/2018 : 4P/9C