

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 14.02.2018****CORAM:****THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM
and****THE HONOURABLE Mrs. JUSTICE R.THARANI****W.A. (MD) No.265 of 2018****and****C.M.P. (MD) No.1551 of 2018**

The Management of Tamil Nadu
State Transport Corporation (Kumbakonam) Ltd.,
Rep.by its General Manager,
Trichy Region,
Trichy.

... Appellant

Vs.

1.The Presiding Officer,
Labour Court,
Tiruchirapalli.

2.M.Subramanian

... Respondents

PRAYER: The appellant filed under Clause 15 of Letters Patent Act, against the order dated 26.02.2014 in W.P.(MD)No.3607 of 2010 passed by the Learned Single Judge of this Court.

Prayer in WP(MD). 3607/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Pleased to issue appropriate writs, orders or directions and in particular writ of Certiorarified Mandamus after calling for the records from the Ist respondent Labour court relating to the award dated 23.07.2001 in I.D.No. 4/2000 of the Ist respondent in so far as not reinstating the petitioner in service and also denying him continuity of service and other attendant benefits, quash the same and consequently to direct the 2nd respondent to pay him all benefits including arrears of wages and terminal benefits including pension as if he was reinstated in service with continuity of service and all other attendant service on 28.02.2008, award cost.

For Appellant

: Mr.D.Sivaraman

For Respondents

: Mr.S.Arunachalam for R2

**JUDGMENT**

(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)

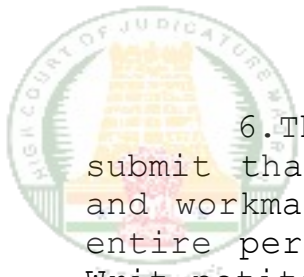
Heard Mr.D.Sivaraman, learned counsel for the appellant and Mr.S.Arunachalam, learned counsel for the respondent / Writ petitioner.

2.This Writ Appeal is directed against the order dated 26.02.2014 made in W.P.(MD)No.3607 of 2010 by the Learned Single Judge of this Court. The said Writ petition was filed by the workman, challenging a portion of the award of the Labour Court, Trichirapalli in I.D.No.4 of 2000 dated 23.07.2001, denying continuity of service and other attendant benefits. The Management has filed a Writ petition in W.P.No.34670 of 2002 before the Principal Bench, challenging the award of the Labour Court, directing reinstatement of the workman as a fresh entrant. During the pendency of the said Writ petition before the Principal Bench, the petitioner moved this Bench and filed the present Writ petition in W.P.(MD)No.3607 of 2010 for the aforementioned relief.

3.Unfortunately, both the Writ petitions were not tagged together. The Writ petition filed by the Management was not decided on merits, but, was disposed of on the ground that the workman was reinstated as a fresh entrant. In the light of the same, the Writ petitioner independently pursued his Writ petition, which has been disposed of by the impugned order by making a slight modification in the award of the Labour Court. The relief granted to the workman is that he should be reinstated with continuity of service, but not entitled for backwages, not only for the period of his absence, but, also the entire period during which, the enquiry was pending.

4.The learned counsel for the appellant would point out that the workman has challenged the award, after a period of 10 years and therefore, the workman ought not to have granted any indulgence. Though it may be true that the Writ petition was filed by the workman in the year 2010, at that point of time, the Writ petition filed by the Management, challenging the award of reinstatement as a fresh entrant, was still pending. Therefore, the workman cannot be non-suited on the said ground.

5.Coming to the relief granted to the workman in the impugned order, we find that after considering attendant circumstances as to why the workman absented himself from duty, recorded a factual finding that the punishment imposed by the management was disproportionate and exercised discretion under Section 11-A of the Industrial Disputes Act and directed reinstatement of the workman with continuity of service, but denied the backwages not only for the period of absence, but also during which the enquiry was pending.



6.The learned counsel appearing for the workman would submit that the Writ petitioner has rendered 17 years of service and workman is ready and willing to forego the backwages for the entire period and this Court may confirm the order passed in the Writ petition so far as it has granted the relief of reinstatement with continuity of service. We find the plea raised by the learned counsel for the workman to be reasonable and this will also vindicate the case of the management to a partial extent. Thus, we find that the discretionary exercise of the Writ Court is neither arbitrary nor unreasonable coupled with the fact that the workman is willing to forego the entire back-wages. Accordingly, the Writ Appeal is partly allowed and the order passed in the Writ petition is modified to the following extent:

The respondent / workman shall be reinstated with continuity of service, but will not be entitled for backwages for the entire period ie., till his date of retirement on superannuation.

7.In the light of the above order, the workman is entitled for pension. However, if any contribution has not been recovered from the workman, then while computing the pension, the appellant / management may deduct the contribution payable by the workman and then fix the pension and release the same. No costs. Consequently, connected C.M.P.is closed.

Sd/-

Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar

To

1.The Presiding Officer,
Labour Court,
Tiruchirapalli.

2.The General Manager,
Management of Tamil Nadu
State Transport Corporation (Kumbakonam) Ltd.,
Trichy Region,Trichy.

+1cc to Mr.S.Arunachalam , Advocate Sr.No.48851

+1cc to Mr.D.Sivaraman, Advocate SR.No.48771

NBJ

VB/CVC/SAR1/01.03.2018/3P/5C

W.A. (MD)No.265 of 2018
14.02.2018