



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P(MD)Nos.3479 of 2018 and 23558 of 2015

and

M.P.(MD)No.1 of 2015

and

W.M.P.(MD)No.8085 of 2016

W.P(MD)No.3479 of 2018

G.Thiyagarajan

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Trichy.

2.The Management of
Tamilnadu State Transport
Corporation (Kumbakonam) Ltd.,
Trichy Region,
Rep. by its Managing Director,
Trichy.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records from the 1st respondent Labour Court relating to the impugned award dated 13.11.2014 in I.D.No.143 of 2002 passed by the 1st respondent insofar as denying the petitioner 50% back wages and other attendant benefits, quash the same and consequently to direct the 2nd respondent to pay him full back wages from 27.02.2001 to 30.08.2008 and to settle all his terminal and pension benefits giving him continuity of service and all other attendant benefit and award cost.

For Petitioner : Mr.Ajay Khose
for Mr.S.Arunachalam

For Respondents : Mr.Aayiram K.Selvakumar
Additional Government Pleader for R1

: Mr.D.Sivaraman for R2

**W.P(MD)No.23558 of 2015**

The Management of
Tamilnadu State Transport
Corporation (Kumbakonam Division II) Ltd.,
Trichy Region,
Rep. by its Managing Director,
Trichy.

... Petitioner/Respondent

Vs.

1.The Presiding Officer,
Labour Court,
Trichy.

2.G.Thiyagarajan

... Respondents/Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records from the 1st respondent herein dated 13.11.2014 in I.D.No.143 of 2002 and quash the same.

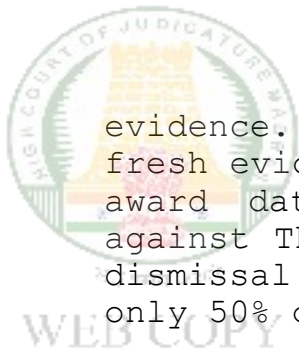
For Petitioner : Mr.D.Sivaraman

For Respondents : Mr.Aayiram K.Selvakumar
Additional Government Pleader for R1

: Mr.Ajay Khose
for Mr.S.Arunachalam for R2

C O M M O N O R D E R

Thiru.G.Thiyagarajan joined Tamilnadu State Transport Corporation (Kumbakonam) Limited, Trichy Region, Trichy as Junior Security Guard on 11.09.1982. He was designated as Security Guard with effect from 23.11.1988. He became the Senior Security Guard with effect from 22.05.1998. When he was working at Thuraiyur Depot/Branch of the Corporation, he was issued with a suspension order dated 10.10.2001. It was alleged that while on duty on 09.10.2001/10.10.2001, Thiru.G.Thiyagarajan was found sleeping in the Canteen at about 2.20 a.m. He was issued with charge memo dated 11.10.2001. The writ petitioner submitted his explanation on 25.10.2001. The domestic enquiry was ordered and the enquiry report dated 28.01.2002 held that the charges framed against Thiru.G.Thiyagarajan stood proved. The second show cause notice was issued on 05.02.2002. Thiru.G.Thiyagarajan sought time to offer his explanation. But then, he was dismissed from service on 27.02.2002. He raised industrial dispute. It was taken on file in I.D.No.143 of 2002, on the file of the Labour Court, Trichy. The Labour Court passed a preliminary award dated 13.11.2014, holding that the domestic enquiry was not conducted in a fair and proper manner. The management was given opportunity to let in fresh



evidence. The management availed the said opportunity and let in fresh evidence before the Labour Court. The Labour Court passed an award dated 13.11.2014, holding that the allegations levelled against Thiru.G.Thiyagarajan were not proved and that the order of dismissal was illegal and it was accordingly set aside. However, only 50% of the back wages was ordered.

2.Questioning the award passed by the Labour Court, the management filed W.P.(MD)No.23558 of 2018 and seeking payment of full back wages, Thiru.G.Thiyagarajan filed W.P.(MD)No.3479 of 2015. Since the challenge in these writ petitions are in respect of the same award, they were clubbed together.

3.Heard the learned counsel appearing for the workman and the learned counsel appearing for the management.

4.As already pointed out before, the management adduced fresh evidence. This is because the Labour Court has passed preliminary award holding that the domestic enquiry was not conducted in a fair and proper manner. Before the Labour Court the workman examined himself as M.W.1 and marked as many as 29 documents. On the side of the management two witnesses were examined and eight documents were marked.

5.After a careful consideration of the evidence on record, the Labour Court came to a conclusion that the charge made against the workman was not established. The allegation against the workman was that he was found sleeping in the canteen at about 02.20 a.m. on the occurrence date. To substantiate the charge, the management examined two witnesses namely., Gunasekaran and Selvaraj. But then M.W.2 did not corroborate the stand taken by M.W.1. Though the management claimed that M.W.2/Selvaraj saw the workman sleeping and that one Venkatasen had given a report, the said Venkatasen was not examined as witness and his report was not marked as a document. According to the management, three persons namely M.W.1/Gunasekaran, M.W.2/Selvaraj and Venkatasen saw the workman sleeping and while Venkatasen was not examined, M.W.2/Selvaraj did not corroborate the stand taken by M.W.1. Therefore, the Labour Court came to the conclusion that the charge levelled against the workman was not established.

6. This Court is exercising its jurisdiction under Article 226 of the Constitution of India. The award passed by the Labour Court warrants interference only it is shown that it suffers from perversity. No material has been placed before this Court to come to a conclusion that the impugned award of the Labour Court holding that the charge was not established warrants interference. In this view of the matter, W.P.(MD)No.23558 of 2015 filed by the management is dismissed.



7.The Labour Court has given only 50% of the back wages. I am of the view that it also does not warrant any interference. But then, even while sustaining the impugned award passed by the Labour Court, this Court directs the management to pay the employee's contribution towards provident fund treating as if G.Thiyagarajan was in receipt of entire wages from the date of dismissal till the date of attaining the age of superannuation i.e., 30.08.2008. This shall be done within a period of six weeks from the date of receipt of a copy of this order. The benefits payable to the writ petitioner shall be disbursed within ten days thereafter. W.P.(MD) No.3479 of 2018 is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AD-II)

// True Copy //

Sub Assistant Registrar(CS)

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To

The Presiding Officer,
Labour Court,
Trichy.

+1CC TO MR.D.SIVARAMAN, Advocate Sr. No.96389
+1CC TO MR.S.ARUNCHALAM, Advocate Sr. No. 96250

W.P(MD)Nos.3479 of 2018 and 23558 of 2015
20.11.2018

db (CO)

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