



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2018

CORAM :

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

WA (MD) No.1158 of 2017

The Management
Tamil Nadu State Transport Corporation,
Madurai Unit - IV Ltd.,
Dindigul.

... Appellant

Versus

1.The Presiding Officer,
Labour Court,
Trichy.

2.K.Raju

... Respondents

Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order dated 02.03.2017 made in W.P.(MD) No.362 of 2017 on the file of this Court.

Prayer in WP(MD). 362/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records relating to the impugned award in I.D.No.146 of 2002 dated 02.09.2016 passed by the 1st respondent and quash the same as illegal.

For Appellant : Mr.A.Jeyaram
For Respondents : Mr.Mohamed Imran for
M/s.Ajmal Associates for R2
R1-Labour Court

JUDGMENT

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

Heard Mr.A.Jeyaram, the learned counsel for the appellant and Mr.Mohammed Imran, learned counsel for the second respondent.

2.Heard Mr.A.Jeyaram, learned counsel for the appellant and Mr.Mohammed Iran, learned counsel appearing for the second respondent.



3.This writ appeal filed by the Transport Corporation is directed against the order in W.P.(MD) No.362 of 2017 dated 02.03.2017. The second respondent workman was employed as Conductor in the Tamil Nadu State Transport Corporation and was charge sheeted and ultimately, disciplinary enquiry ended in an order of dismissal passed against him. The workman challenged the order of dismissal by raising dispute before the Labour Court, Trichy in I.D.No.146 of 2002. The Labour Court, by award dated 02.09.2016 set aside the order of dismissal from service and directed reinstatement of the workman, however, denied back wages. The management did not challenge that award passed by the writ Court. However, the workman filed the writ petition and challenge the portion of the award where back wages were denied. The Management resisted the writ petition by contending that the back wages are not payable as there is no specific averment in the claim petition before the Labour Court that the workman was not gainful employee after he was dismissed from service. The Labour Court accepted the said stand. The writ Court pointed out that burden of proof is on the Management to prove that the workman was not gainful employee and this is so because in the evidence, the workman has stated that he was not gainful employee as his wife is employed in the police department and therefore, he was managing with the salary earned by his wife. If there is such an evidence given by the workman, then the burden shifts on management to prove that the said contention was false.

4.The learned counsel for the appellant submitted that there was no proof with regard to the said stand taken by the workman. However, this plea could have been raised before the Labour Court and not in the writ proceedings and a cross examination should have been done on the workman on this aspect. Therefore, it is too late for the management to now to raise all these points by way of this appeal.

5.Thus, we find there is no error in the order passed by the writ Court. Accordingly, the writ appeal fails and the same is dismissed. No costs.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar

To

The Presiding Officer, Labour Court, Trichy.

+1CC to M/s.Ajmal Associates,SR.No. 52416

Judgment made in
WA (MD) No.1158 of 2017
01.03.2018