



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 16.03.2018
DELIVERED ON : 04.07.2018
CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) .Nos.3827 & 8849 of 2016 and
W.M.P. (MD) Nos.3438, 7053 & 12383 of 2016

W.P. (MD) No.3827 of 2016:

N.Tharik Mohamed ... Petitioner

Vs.

1. The Managing Director,
Tamilnadu State Transport Corporation,
Kumbakonam Division II Ltd.,
Periamilaguparai,
Thiruchirappalli -1.

2. The Presiding Officer,
Labour Court,
Thiruchirappalli.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent herein in I.D.No.11 of 2008 dated 18.02.2014, quash the same in so far as denying 75% of backwages and to direct the first respondent herein to pay the entire backwages for the period of non employment with all other benefits.

For Petitioner : Mr.G.Purushothaman

For R-1 : Mr.D.Sivaraman

For R-2 : Labour Court.

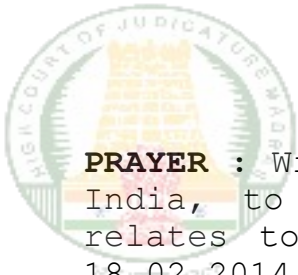
W.P. (MD) No.8849 of 2016:

The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam Division II) Limited,
Periyamilaguparai,
Thiruchirappalli.

... Petitioner/Respondent

Vs.

1. The Presiding Officer,
Labour Court,
Thiruchirappalli.



PRAYER : Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, to call for the records relates to the award passed by the first respondent herein dated 18.02.2014 in I.D.No.11 of 2008 and quash the same.

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For Petitioner : Mr.D.Sivaraman

For R-2 : Mr.G.Purushothaman

For R-1 : Labour Court.

C O M M O N O R D E R

One Tharik Mohamed was employed as Junior Tradesman in Tamil Nadu State Transport Corporation (Kumbakonam Division II) Ltd., Thiruchirappalli. He joined the service in the year 1982.

2. It appears that he had developed some neural ailments. Therefore, he had gone on leave from 23.12.2002 to 22.01.2003. The charge against the workman was that his absence from duty from 23.01.2003 to 01.04.2003 was unauthorized. Even though the workman received notice therein, he did not take part in the domestic enquiry. Therefore, an ex-parte enquiry was conducted and the workman was terminated from service on 16.09.2003. Thereafter, a petition for approval under Section 33(2)(b) of the Industrial Disputes Act was preferred by the Management. The workman gave his consent for grant of approval which was issued on 16.07.2005. Thereafter, the workman raised industrial dispute, after the conciliation talks failed.

3. The matter was taken on file by the Labour Court, Thiruchirappalli in I.D.No.11 of 2008. The workman examined himself as a witness. As many as 46 documents were marked on his side. On the side of the Management, three witnesses were examined. As many as 9 documents were marked on the side of the Management. The Labour Court by the impugned award dated 18.02.2014, held that the punishment of dismissal from service was grossly disproportionate and unjustified. Therefore, the punishment was set aside and reinstatement of the workman was ordered. The Labour Court further directed that the workman would be entitled to 25% of the backwages besides continuity of service and other attendant benefits. This award of the Labour Court has been challenged by the workman by filing W.P.(MD)No.3827 of 2016. The workman is aggrieved by denial of 75% of the backwages. On the other hand, the Management is aggrieved by the direction to reinstate the dismissed workman. Therefore, the Management has filed W.P.(MD)No.8849 of 2016.

4. Heard, Mr.G.Purushothaman, learned counsel appearing for the workman and Mr.D.Sivaraman, learned counsel appearing for the Management.



5. The learned counsel appearing for the workman would point out that the workman was actually suffering from severe neural ailments and that is why he had gone on leave from 23.12.2002 to 22.01.2003. It is his specific case that he had handed over a letter for extension of leave by further one month in person to the superior concerned. According to the learned counsel for the workman, his case is probablized by the fact that he had given a further application dated 08.03.2003 asking for further extension of medical leave. He also would point out that the petitioner/workman was not guilty of any act involving moral turpitude. It is a case of absence on medical grounds. He therefore wanted this Court to view the matter with indulgence. According to him, the Labour Court ought to have directed payment of entire backwages. He therefore requested this Court to allow W.P.(MD) No.3827 of 2016, as prayed for.

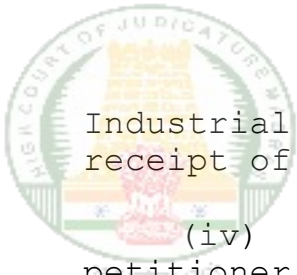
6. But as rightly pointed out by the learned counsel appearing for the Management, the workman was visited with minor punishments on as many as four occasions for similar acts of unauthorised absence. He therefore would call upon this Court that a strict view should be taken in the case of habitual absenteeism. He also pointed out that the approval for dismissing the workman was given on 16.07.2005. The workman did not raise any industrial dispute immediately thereafter. There was a delay of 2 ½ years in raising the Industrial Dispute. He therefore submitted that this aspect also should be taken into account. He also drew the attention of this Court to the specific finding given by the Labour Court that there was no proof that the workman had given an application Ex.W.5 seeking explanation of leave from 23.01.2003.

7. In view of these factors, this Court is of the view that the Labour Court was justified in denying 75% of backwages of the petitioner herein. Therefore, this Court is of the view that both the Writ petitions filed by the workman as well as the Management deserve dismissal. In other words, the impugned award passed by the Labour Court, Thiruchirappalli, in I.D.No.11 of 2008, dated 18.02.2014, is sustained.

i) The workman is yet to be reinstated. He is being paid only the last drawn wages. Therefore, a direction is given to the Management to reinstate the workman within a period of one week from the date of receipt of a copy of this order.

ii) The learned counsel for the workman pointed out that a direction given by this Court to deposit 25% of backwages was not complied with. Hence, it is now specifically directed that the workman shall be paid the said amount within a period of eight weeks from the date of receipt of a copy of this order.

(iii) The workman shall be entitled to arrears of regular wages from the date of award minus wages under Section 17(B) of the



Industrial Disputes Act within a period of eight weeks from date of receipt of a copy of this order.

(iv) Whatever the quantum of amount is deducted from the petitioner's account towards Provident Fund, a deposit of matching level is also to be made by the Management to the Provident Fund Trust. It is needless to mention that the petitioner shall have full continuity of service also.

8. With these directions, the Writ petitions stand dismissed. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Presiding Officer,
Labour Court,
Thiruchirappalli.
2. The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam Division II) Limited,
Periyamilaguparai,
Thiruchirappalli.

+1CC to Mr.G.Purushothaman, Advocate, SR.No. 71171

W.P.(MD).Nos.3827 & 8849 of 2016 and
W.M.P.(MD)Nos.3438, 7053 & 12383 of 2016
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