



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.09.2018

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

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W.P(MD)Nos.6041 and 8756 of 2011

and

M.P.(MD).Nos.1 and 2 of 2011 in W.P.(MD).No.6041 of 2011

Tamil Nadu State Transport Corporation,
(Madurai) Ltd., through its
Managing Director,
Bye-Pass Road,
Madurai -10.

.. Petitioner in
W.P(MD).No.6041/2011
and 2nd respondent in
W.P.(MD).No.8756/2011

Vs.

1.S.Ramaraj

.. 1st respondent in
W.P(MD).No.6041/2011
and Petitioner in
W.P.(MD).No.8756/2011

2. The Presiding Officer,
Labour Court,
Madurai.

.. 2nd respondent in
W.P(MD).No.6041/2011
and 1st respondent in
W.P.(MD).No.8756/2011

PRAYER in W.P.(MD).No.6041 of 2011:

Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records of the order of the Labour Court, Madurai in I.D.No.156 of 2001, dated 26.06.2008 and quash the same.

PRAYER in W.P.(MD).No.8756 of 2011:

Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records from the 1st respondent - Labour Court, Madurai relating to the impugned award, dated 26.06.2008, in I.D.No.156 of 2001, and quash the same insofar as denying backwages and other attendant benefits and consequently direct the 2nd respondent to reinstate the petitioner in service with backwages and continuity of service and all other attendant



For petitioner in
W.P (MD) .No.6041/2011
and 2nd respondent in
W.P. (MD) .No.8756/2011

: Mr.M.Prakash

For 1st respondent in
W.P (MD) .No.6041/2011
and Petitioner in
W.P. (MD) .No.8756/2011

: Mr.S.Arunachalam

COMMON ORDER

The Transport Corporation has filed W.P.(MD).No.6041 of 2011 challenging the award passed by the Labour Court directing the Corporation to reinstate the first respondent herein with continuity of service, but without backwages and other attendant benefits. Questioning the denial of backwages and other attendant benefits, the first respondent has filed W.P.(MD).No.8756 of 2011.

2. Since the issue involved in both the writ petitions are interrelated to each other, both the petitions were heard together and are disposed of by way of this common order.

3. The learned counsel appearing for the petitioner would submit that the first respondent was called for interview for the post of Driver on 17.05.1992, but, he has failed. However, for the emergency purpose and due to the shortage of drivers during festival periods, the first respondent was engaged as casual labour and later on, he was stopped from engagement. But, the Labour Court, without considering the said fact and mere non production of the office files, has passed the award directing the Corporation to reinstate the first respondent with continuity of service. Thus, he prayed to set aside the impugned award passed by the Labour Court and to dismiss the writ petition filed by the first respondent.

4. The learned counsel appearing for the first respondent submitted that after successfully completing the interview and road test, the petitioner has sent a communication dated 22.05.1992 asking the first respondent to pay Rs.1500/- as caution deposit and to join duty on 29.05.1992. However, on 01.06.1992 the petitioner gave employment on casual basis. Though the first respondent rendered more than 240 days of continuous service from 01.06.1992 to 31.01.1993, the petitioner illegally terminated the first respondent. The Labour Court, after considering the oral and documentary evidences, has directed the petitioner to reinstate the first respondent with continuity of service. But, the Labour Court has erroneously denied the backwages and other attendant benefits merely stating that the first respondent could have earned by doing works. Thus, he prayed to set aside that portion of the award and to direct the petitioner to pay the backwages and other attendant benefits.



5. Heard the learned counsel appearing for both sides and perused the records carefully.

6. It is seen from the record that in the counter affidavit filed before the Labour Court itself in paragraph No.5 the petitioner has admitted that the first respondent was engaged as casual employee on daily wage basis from 02.06.1992 to 31.01.1993 intermittently. However, according to the petitioner, he had never worked for 240 days. But, according to the first respondent, he had worked more than 240 days, for which he has produced Exs.P12 series - salary covers and Ex.P14 - notes of petitioner's attendance. The first respondent has also produced other documents in order to substantiate his contention before the Labour Court. But, the petitioner did not produce any oral and documentary evidence in order to substantiate his contention that the first respondent has worked below 240 days. After considering the oral and documentary evidence, the Labour Court has rightly held that the termination of the petitioner cannot be sustained and hence, the first respondent is entitled to get reinstatement with continuity of service. However, the Labour Court has rejected the claim of backwages holding that the first respondent could have earned by doing some other work. It is seen from the record that the first respondent has filed M.P.(MD).No.3 of 2011 in W.P.(MD).No.6041 of 2011, stating that he is not gainfully employed and is suffering without any employment and thereby, requested this Court to direct the petitioner to pay last drawn monthly wages till the disposal of the writ petition and this Court, by order dated 02.01.2013, directed the Corporation to pay wages to the first respondent under Section 17(b) of the Industrial Disputes Act, until further orders, on the basis of the last pay drawn by him.

7. A Division Bench of Hon'ble Supreme Court in Raj Kumar Vs. Director of Education and others, reported in 2016 -II - LLJ 257 (SC), after holding that the appellant therein was illegally retrenched and directing the respondents therein to reinstate the appellant therein, has held in paragraph Nos.36 and 37, with regard to the payment of backwages, as follows:

"36.The termination of the appellant is bad in law for non-compliance with the mandatory provisions of Section 25F of the ID Act and also Section 8(2) of the DSE Act. Further the respondent-school has not produced any evidence on record to show that the retrenchment of the appellant was necessary as he had become 'surplus'. The termination of the appellant was ordered in the year 2003 and he is unemployed till date. The respondents have been unable to produce any evidence to show that he was gainfully employed during that period and therefore, he is entitled to backwages and other consequential



benefits in view of the law laid down by this Court in the case of Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyala (D.Ed.) and others, (2013) 10 SCC 324: LNIND 2013 SC 800, wherein it was held as under:

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"22, The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advertisement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee which is preceded by a finding of the competent judicial / quasi judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full backwages. If the employer wants to deny backwages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of backwages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay backwages including the employments."

37. For the reasons stated supra, we are of the view that the impugned judgment and order dated 28.07.2008 passed by the Delhi High Court is liable to be set aside and accordingly, set aside, by allowing this appeal. The retrenchment of the appellant from his service is bad in law. The



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respondent Managing Committee is directed to reinstate the appellant at his post. Consequently, the relief of backwages till the date of this order is awarded to the appellant, along with all consequential benefits from the date of termination of his services. The backwages shall be computed on the basis of periodical revision of wages / salary. We further makes it clear that the entire amount due to the appellant must be spread over the period between the period of retrenchment and the date of this decision, which amounts to 13 years, for the reason that the appellant is entitled to the benefit under Section 89 of the Income Tax Act. The same must be complied with within six weeks from the date of receipt of the copy of this judgment."

8. As the decision cited supra, in this case also the petitioner has illegally terminated the first respondent and he has not pleaded and proved that during the intervening period, the employee was gainfully employed and was getting the same emoluments. However, in this case, the Labour Court, on assumption, has denied the backwages to the first respondent, which cannot be sustained. A perusal of the records shows that in this case, the first respondent had failed in the interview and on what account, he failed in the interview is not known and even then, he has been given employment for more than 240 days. Considering the above and also considering the facts and circumstances of the case, this Court is inclined to order to pay 50% of the backwages to the first respondent.

9. In the result, (a) W.P.(MD).No.6041 of 2011 is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(b) W.P.(MD).No.8756 of 2011 is allowed and the finding of the Labour Court with regard to denial of backwages alone is set aside and the Transport Corporation is directed to reinstate the petitioner in this writ petition with continuity of service, as directed by the Labour Court and to pay 50% of back-wages to him from the date of his termination, less the amount paid under Section 17(b) of the Act, if any, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(RTI)

/True Copy/



To
1.The Presiding Officer,
Labour Court,
Madurai.

+1 CC to Mr.M.Prakash, Advocate, SR.No.84482
+1 CC to Mr.S.Arunachalam, Advocate, SR.No.84797

gcg
SS/SV/SAR 4/30.11.2018/6P/4C

Common Order made in
W.P(MD)Nos.6041 and 8756 of 2011
17.09.2018