

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.13041 of 2016

The Management,
Tamil Nadu State Express Transport Corporation Ltd.,
Pallavan Salai,
Chennai 600 002.
rep. By its Managing Director.

... Petitioner

vs.

1. The Presiding Officer,
Labour Court,
Salem.

2. T.Yesudasan Samuvel Rajan

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking for the issuance of a writ of Certiorari, to call for the records of the 1st Respondent in I.D.No.105 of 2009, dated 22.04.2015 and quash the Award as illegal.

For Petitioner : Ms.Rajeni Ramadoss

For 2nd Respondent : Mr.R.M.D.Nazarullah

O R D E R

Petitioner/Management has come up with the present Writ Petition challenging the Award dated 22.04.2015 passed by the Labour Court in I.D.No.105 of 2009.

2. According to the Petitioner/Transport Corporation, the 2nd Respondent joined the services of their Management as a Driver on temporary basis and as a casual Driver from 09.11.1994. He underwent training at Driving School at Madurai on 18.11.1994 and he was engaged on temporary basis as a Driver at Salem Depot on 07.10.1995. While in duty, the 2nd Respondent committed a fatal accident on 07.10.1996 and the motorist died. Thereafter, the 2nd Respondent was relieved from service without being granted any further employment, as he had not rendered 240 days of continuous service.

3. Treating the non-employment as an oral termination, the 2nd Respondent raised an Industrial Dispute before the 1st Respondent/Labour Court, Salem in I.D.No.105 of 2009. Though the Petitioner/Transport Corporation filed a counter before the Labour Court stating that the 2nd Respondent was a casual employee and that he had rendered non-satisfactory services in their Management, the Labour Court allowed the claim of the 2nd Respondent, by relying on a few decisions of this Court, that he is entitled to be reinstated with continuity of service with 50% backwages and other attendant benefits. Challenging the Award of the Labour Court, the Petitioner/Transport Corporation is before this Court.

4. Heard the learned counsel on either side and perused the material documents available on record.

5. It is not in dispute that the 2nd Respondent/employee was engaged as a Driver on temporary basis by the Petitioner/Transport Corporation in Salem Depot from 07.10.1995 and that he caused an accident on 07.10.1996, exactly after a year. He was asked to submit his explanation with regard to the accident caused by him and the Report of the Enquiry Officer dated 06.10.2000 would make it very clear that though the 2nd Respondent/employee was disengaged from service verbally, no order of dismissal was served on him by the Management of the Petitioner/Transport Corporation.

6. Further, it is to be noted that the Petitioner/Transport Corporation has not taken a stand in the counter that the 2nd Respondent/employee was dismissed from service on account of the misconduct. However, the Petitioner/Transport Corporation has raised a plea before the Labour Court that the 2nd Respondent/employee was dismissed from service on 27.03.2001.

7. A careful perusal of the Award passed by the Labour Court goes to show that though the Management of the Petitioner/Transport Corporation had issued Show Cause Notice to the 2nd Respondent/employee on 02.02.2001 seeking explanation from him as to the proposed punishment of dismissal, and had terminated the 2nd Respondent/employee from service on 27.03.2001, there is no evidence to show that the said proceedings dated 27.03.2001 had been served on the 2nd Respondent/employee. It is quite clear that the Labour Court, after carefully analyzing the material documents before it, had come to a conclusion that there is no evidence to show that the 2nd Respondent/employee was dismissed from service on 27.03.2001, though he was divested of his duties by the Petitioner/Transport Corporation, verbally on 27.10.1997.

8. Thus, it is clear that when there is a verbal disengagement of the 2nd Respondent's employment in the Petitioner/Transport Corporation, there cannot be an order of his dismissal from service, when the fact remains that he was engaged as a Driver in the Petitioner/Transport Corporation on temporary basis.

9. Further, the contention of the learned counsel for the Petitioner/Transport Corporation that the 2nd Respondent/employee would have been gainfully employed elsewhere and that he had not filed any Application claiming wages under Section 17-B of the Industrial Disputes Act, cannot be accepted, as the burden is on the employer to establish that the employee is gainfully employed. In the case on hand, the Petitioner/Transport Corporation has not discharged its burden by producing any evidence before the Labour Court. Hence, the Labour Court came to the conclusion that the order of dismissal dated 27.03.2001 could not have been served on the employee at all and that there cannot be any enquiry in the eye of law.

10. Learned counsel for the Petitioner/Management pointed out some discrepancies with regard to the discussion made by the Labour Court. However, this Court is not inclined to interfere with the Award of the Labour Court, as it is based on the finding of fact and this Court cannot re-appraise the evidence and come to a different conclusion, in view of the judgment of the Kerala High Court rendered in Instrumentation Employees' Union vs. Labour Court, Kozhikode reported in 1993 (1) LLN 75.

11. It is seen that the Petitioner/Management has not taken a plea of delay in raising a dispute. But, the fact remains that there has been retrenchment of the 2nd Respondent/workman with effect from 27.10.1997. Hence, there cannot be any dismissal order on 27.03.2001, and the said order has been created and produced before the Labour Court for the purpose of defeating the claim of the 2nd Respondent/employee. The 2nd Respondent/employee should have approached the Labour Court immediately after the retrenchment in 1997 and should not have slept over the matter for 12 years, and he had woken up from the slumber to raise the industrial dispute only in the year 2009.

12. Even though the Labour Court has deprived 50% backwages to the 2nd Respondent/employee, taking note of the fact that the employer in the case on hand is a Transport Corporation and that several workers would not have been paid their terminal benefits, this Court is inclined to reduce the backwages ordered by the Labour Court to 30% instead of 50%, and it is accordingly modified. The other portion of the Award of the Labour Court stands unaltered.

13. The Petitioner/Transport Corporation is directed to implement the modified Award within a period of 45 days from the date of receipt of a copy of this order, taking note of the decision rendered by the Apex Court in the case of Tamil Nadu State Transport Corporation vs. Neethivilangan, Kumbakonam reported in (2001) 9 SCC 99, as the order of this Court has replaced the original Award.

In fine, the Writ Petition is dismissed with the above modification. No costs. Consequently, connected W.M.P.No.11385 of 2016, W.M.P.No.6394 and 6395 of 2018 are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

The Presiding Officer,
Labour Court, Salem.

+1cc to Ms.Rajeni Ramadoss, Advocate, S.R.No.68626

+1cc to Mr.K.V.Shanmuganathan, Advocate, S.R.No.68729

W.P.No.13041 of 2016

PPA (CO)
CS/01/10/2019

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