

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.25637 & 35659 of 2003

A.Mohan ... Petitioner in W.P.No.25637 of 2003
and R2 in W.P.No.35659 of 2003

Vs

1. The Management,
Tamilnadu State Transport Corporation,
(Madurai Cottam - 3), Limited,
Rept. by its Managing Director,
Nesamani Nagar,
Ranithottam, Nagercoil,
Kanyakumari District. ... R1 in W.P.No.25637 of 2003 and
Petitioner in W.P.No.35659 of 2003
2. The Presiding Officer,
Labour Court,
Tirunelveli. Respondent in both W.Ps

Prayer in W.P.No.25637 of 2003: Writ Petition filed under Article 226 of the Constitution of India to pass an order of Writ of Certiorarified Mandamus, calling for the records connected with the award passed by the second respondent on 04.03.2003 in I.D.No.126/96 and quash the same insofar as it denied the back wages and continuity of service and other attendant benefits and further direct the 1st respondent to pay the petitioner back wages from the date of dismissal viz. 27.09.1994 till the date of reinstatement and treat the above period for all purpose of seniority, promotion, pension etc.

Prayer in W.P.No.35659 of 2003: Writ Petition filed under Article 226 of the Constitution of India to pass an order of Writ of Certiorari, calling for the records pertaining to the award dated 04.03.2003 made in I.D.No.126 of 96 on the file of Labour Court, Tirunelveli and quash the same.

For Petitioner in
W.P.No.25637 of 2003 and : Mr.S.Arunachalam for
R2 in W.P.No.35659 of 2003 M/s.S.Arunachalam &
Associates

For R1 in W.P.No.25637 of 2003
and Petitioner in
W.P.No.35659 of 2003 : Mrs.Rajeni Ramadoss

COMMON ORDER

As against the award in I.D.No.126 of 96, dated 04.03.2003, the petitioner in W.P.No.25637 of 2003 was directed to be reinstated without back wages and other attendant benefits. While the denial of back wages and other benefits has been challenged by the employee, the Transport Corporation has challenged the award relying to reinstatement in W.P.No.35659 of 2003.

2. Since both the writ petitions arise out of the same award, the writ petitions are being disposed of by a common order. For the sake of convenience, the parties are referred to as the employee and the Transport Corporation respectively.

3. The employee had joined the Transport Corporation as a driver in the year 1986. At the time of joining, the employee had furnished a First Aid Certificate issued by St. Johns Ambulance Association, Chengalpattu, which was verified on 20.11.1986. Subsequently, the service was regularised on 01.01.1988, later confirmed on 01.01.1989. When the petitioner was transferred to Kattabomman Transport Corporation Limited, Tirunelveli, the First Aid Certificate furnished by the petitioner was claimed to be forged on the ground that St. Johns Ambulance Association, Chengalpattu did not function in the year 1979, based on a letter dated 09.09.1988 issued by St. John's Ambulance Association, Chennai. However, as per the Tamilnadu Government Order, the petitioner was directed to furnish a fresh valid First Aid Certificate, which also came to be furnished by the petitioner. Thereafter, the employee was transferred to the Transport Corporation, after which, a charge sheet dated 23.06.1992 came to be issued. Not being satisfied with the reply of the employee, a domestic enquiry came to be conducted and ultimately, the employee was removed from service on 03.02.1993.

4. As against the dismissal order, the employee raised a dispute in I.D.No.126 of 1996 and by an award dated 04.03.2003, the Labour Court, Tirunelveli, ordered for reinstatement without back wages and continuity of service. The award has been challenged by both the Transport Corporation as well as employee.

5. The learned counsel for the employee submitted that there is no justification on the part of the Labour Court in denying back wages and continuity of service, while awarding reinstatement. According to the learned counsel, the reason given by the Labour Court that the Transport Corporation is a Public body which functions with the aid of the Government, is not a justifiable reason. Even otherwise, he would submit that the First Aid Certificate furnished by him was subjected to

verification on three occasions and having found that the certificate was genuine in the initial stages, the Transport Corporation was subsequently not justified in claiming that the certificate is forged.

6. The learned counsel for the Transport Corporation submitted that the St. Johns Ambulance Association, Chengalpattu was not functioning in the year 1979 and therefore, the certificate produced by the employee was a forged one. The learned counsel by reiterating the observations of the Labour Court in his award submitted that the facts of the case pertain to a serious misconduct of forgery and hence the punishment of dismissal from service has been awarded, which is proportionate to the serious misconduct of furnishing a false certificate. According to the learned counsel, in view of seriousness of the charges and findings in the domestic enquiry, the Labour Court ought not to have awarded reinstatement.

7. I have given careful consideration to the submissions made by the respective counsels.

8. The entire case pertains to an enquiry revolving around the letter dated 09.09.1988 of St. Johns Ambulance Association, Chennai stating that their head office did not function in the year 1979. It is also not in dispute that the employee had originally furnished a First Aid Certificate at the time of joining in the Transport Corporation, and the same was subjected to further verification when the services were regularised and confirmed. It is on the basis of the letter dated 09.09.1988 that the Transport Corporation had chosen to issue a Charge Sheet questioning the First Aid Certificate. When such a vital letter is the root cause of action, initiated against the employee herein, it was incumbent on the part of the Transport Corporation to have marked the letter as a document. However, the Management witness had, during his evidence, stated that there is no such letter dated 09.09.1988. As such, the non marking of such a document would be fatal to the Management and would also support the case of the employee.

9. It is further seen that though the First Aid Certificate was questioned by the Transport Corporation, the employee was permitted thereafter to join the Kattabomman Transport Corporation Limited from 03.01.1992 with the direction to produce a fresh valid First Aid Certificate dated 22.02.1992 obtained from St. Johns Ambulance Association, Marthandam Branch. Such a direction was also complied. This Certificate is not disputed by the Transport Corporation. When the Transport Corporation had ratified the alleged act by permitting the employee to produce a fresh First Aid Certificate, it can only be held that the doubts on the genuinity of the original

certificate has been condoned by the Transport Corporation itself.

10. Further, the facts reveal that the certificate is questioned only on the ground that the Head Quarters did not function in the year 1979. In view of the subsequent certificate called for, and the Transport Corporation having failed to mark the letter dated 09.09.1988, which is the foundation for the entire charges against the employee, I am unable to comprehend as to how the Transport Corporation can substantiate the charges that the original certificate is a bogus one. In view of these facts, this Court of the affirmed view that the order of reinstatement has been properly and validly made.

11. Insofar as the denial of continuity of services is concerned, the only reason given by the Labour Court for such denial is that the Transport Corporation is a Public Body functioning with the financial aid of the Government. Here again, this Court is unable to accept such a reasoning given by the Labour Court for denial of back wages and continuity of service. The question of financial stability or the state of the Transport Corporation is irrelevant when illogical orders of punishment are passed by them. In the instant case, there is no justification for the denial of back wages or continuity of service. On the other hand, it is seen that the order of dismissal itself has not been legally made. As such, the employee would be entitled to entire back wages as well as continuity of service from the date of his dismissal from service. It is now brought to the notice of this Court that the employee had reached the age of superannuation and that he is entitled for pension.

12. In the light of the above observations, the award dated 04.03.2003 passed in I.D.No.126 of 1996, insofar as it denies the back wages and continuity of service is concerned, is set aside and the award of reinstatement of the employee into service is affirmed. Consequently, the employee namely A.Mohan shall be entitled to the entire back wages from the date of dismissal till the date of superannuation, along with the monetary benefits accruing, in view of the continuity of service awarded vide this order. The employee shall also be paid his pension. The Tamilnadu State Transport Corporation shall forthwith release the entire arrears of back wages to the employee, within a period of twelve weeks, from the date of receipt of a copy of this order.

13. In the result, the writ petition in W.P.No.25637 of 2003 stands allowed and in W.P.No.35659 of 2003 stands dismissed. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To

1. The Management,
Tamilnadu State Transport Corporation,
(Madurai Cottam - 3), Limited,
Rept. by its Managing Director,
Nesamani Nagar,
Ranithottam, Nagercoil,
Kanyakumari District.

2. The Presiding Officer,
Labour Court,
Tirunelveli.

+1cc to Mr.S.Arunachalam, Advocate SR.No.38761

+1cc to Mr.Rajeni Ramadoss, Advocate SR.No.39279

W.P.Nos.25637 & 35659 of 2003

CP (CO)
GMY (28/06/2019)

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