

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.38390 of 2003
and W.M.P.No.46606 of 2003

The Management,
Tamilnadu State Transport Corporation,
(Villupuram Division II) Ltd.,
Rangapuram, Vellore 9. .. Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Vellore.

2.M.Ranganathan (Deceased)
3.Valliammal
4.Minor Thilaga
5.Minor Saraswathi
6.Minor Santhiya
7.Minor Gopi

... Respondents

(minor respondents 4 to 7 are represented
by their natural guardian and mother, 2nd respondent)

Prayer: Writ Petition is filed under Article 226 of the
Constitution of India, praying for issuance of a writ of
Certiorari calling for the records to the award dated 10.07.2002
made in I.D.No.99 of 1998 on the file of the Labour Court,
Vellore and to quash the same.

For Petitioner : Mr.V.Gunasekar
for Mr.V.R.Kamalanathan

For R2 : Deceased

For R3 to 7 : No appearance

O R D E R

The Writ Petition is filed challenging the award of the
Labour Court dated 10.07.2002 made in I.D.No.99 of 1998 on the
file of the Labour Court, Vellore ordering payment of backwages

to the respondents 3 to 7 and attendant benefits from the date of dismissal to the date of death of the 2nd respondent.

Facts of the case:

2.The petitioner issued a charge memo dated 04.01.1995 to the 2nd respondent alleging that the 2nd respondent unauthorizedly absented himself from 18.12.1994 to 24.01.1995. The petitioner conducted Domestic Enquiry stating that the 2nd respondent did not submit his explanation to the charge memo. The date for hearing of the Domestic Enquiry was fixed as 11.08.1995. Since the 2nd respondent did not attend the enquiry, fresh notice regarding the Domestic Enquiry was ordered to be posted on 05.09.1995. The 2nd respondent sought for an adjournment on the ground that he had fracture. The Enquiry Officer set the 2nd respondent exparte and proceeded with enquiry. The Enquiry Officer submitted his report holding that charges leveled against the 2nd respondent was proved. The petitioner issued a second Show Cause Notice and not being satisfied with the explanation submitted by the 2nd respondent, dismissed the 2nd respondent from service with effect from 20.01.1996.

3.The 2nd respondent raised Industrial Dispute in I.D.No.99 of 1998. Before the 1st respondent, the 2nd respondent did not let in any oral and documentary evidence. The petitioner did not let in oral evidence, but marked 7 documents as Exs.M1 to M7. Pending Industrial Dispute, the 2nd respondent died. The respondents 3 to 7 were impleaded as legal heirs of the 2nd respondent in the said I.D. The 1st respondent considering the oral and documentary evidence, held that the Domestic Enquiry conducted by the petitioner was not fair and proper and the Enquiry Officer has not given sufficient opportunity to the 2nd respondent to participate in the enquiry. Based on such a finding, the 1st respondent set aside the order of dismissal and held that the respondents 3 to 7 are entitled to get backwages and other benefits payable to the 2nd respondent for the period from 20.01.1996 to 25.02.1999 i.e., till the date of death of 2nd respondent. Against the said award, the petitioner has come out with the present Writ Petition.

4.The learned counsel appearing for the petitioner contended that the 1st respondent having held that the 2nd respondent has received charge memo dated 04.01.1995, ought not to have held that ordering Domestic Enquiry without ascertaining the fact that whether the 2nd respondent had received charge memo or not is against law. The date of enquiry was intimated to the 2nd respondent and he did not appear for the hearing on that date. The 2nd respondent failed to prove that he sought for adjournment of the enquiry. The Enquiry Officer set the 2nd respondent exparte as the 2nd respondent failed to appear before the Enquiry Officer for the enquiry and proceeded with the

enquiry. The petitioner provided opportunity to the 2nd respondent, but he did not avail the same. The 1st respondent without considering the fact that notice of Domestic Enquiry was received by the 2nd respondent and he did not appear for enquiry, erroneously held that the Domestic Enquiry was not fair and proper. The 1st respondent erroneously held that the Domestic Enquiry conducted by the petitioner was not fair and proper as the notice for Domestic Enquiry was not sent by the Enquiry Officer. The 1st respondent failed to take note of the fact that the 2nd respondent was habitual absentee prior to enquiry as well as subsequently also. The award of the Tribunal is erroneous and prayed for allowing the Writ Petition.

5. Heard the learned counsel appearing for the petitioner and perused the materials available on record. Though notice has been served on the respondents 3 to 7 and their names are printed in the cause list, there is no representation for them either in person or through counsel.

6. From the materials on record, it is seen that the petitioner has alleged that 2nd respondent unauthorizedly absented himself from 18.12.1994 to 24.01.1995. The petitioner states that a charge memo dated 04.01.1995 with regard to unauthorized absence of the 2nd respondent up to 25.01.1995 was issued. There seems to be some mistake with regard to date of charge memo. The petitioner has not produced the charge memo before the 1st respondent as well as before this Court. Even though the 2nd respondent has stated that charge memo dated 04.01.1995 was issued to him and he sent reply to the charge memo, in the written arguments filed before the 1st respondent-Labour Court, the 2nd respondent has stated that no charge memo was served on him. It is pertinent to note that witness examined by the petitioner before the Enquiry Officer has stated that he is not aware whether charge memo was served on the 2nd respondent or not. That apart, the enquiry was fixed on 05.09.1995. The 2nd respondent did not appear before the Enquiry Officer on that day. The Enquiry Officer set the 2nd respondent exparte and proceeded with enquiry. The Enquiry Officer ought to have given opportunity to the 2nd respondent to participate in the enquiry by adjourning the enquiry to some other day. Even otherwise, when the Enquiry Officer examined the witness of the petitioner on 05.09.1995, could have adjourned the enquiry giving an opportunity to the 2nd respondent to cross-examine the said witness. The petitioner in the counter statement reserved their right to let in evidence to prove the charges if 1st respondent comes to the conclusion that Domestic Enquiry conducted by the petitioner is not fair and proper. From the award of the 1st respondent, it is seen that the petitioner made endorsement that they are not letting in any oral evidence and filed written arguments on merits of the case. In such circumstances, the 1st

respondent after appreciating the materials on record, has rightly held that the Domestic Enquiry conducted by the petitioner was not fair and proper and the 2nd respondent was not given opportunity to participate in the enquiry. The 1st respondent has given valid reason for setting aside the order of dismissal and awarded backwages and other benefits to the respondents 3 to 7 who are the legal heirs of the 2nd respondent. There is no error in the said award warranting interference by this Court.

7. In the result, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

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To

The Presiding Officer,
Labour Court,
Vellore.

+1 CC to Mr. V.R. Kamalanathan, Advocate sr 68142.

W.P.No.38390 of 2003

RR (CO)
SP (23/09/2019)

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