

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2019

Coram

The Honourable Mr.Justice D.Krishnakumar

W.P.No.43946 of 2006

and

M.P.No.1 of 2006 and M.P.No.1 of 2007

State Express Transport Corporation
Ltd. (Tamil Nadu Division -I)
Chennai- 600 002.

...Petitioner

Vs.

1. The Presiding Officer,
III Additional Labour Court,
Chennai.

2. Arjunan

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records in I.D.No.672 of 2000 on the file of the first respondent and to quash the same.

For Petitioner : Mr.G.Muniratnam
For Respondent-1 : Court
For Respondent -2 : No appearance

ORDER

Challenge in this Writ Petition is to the award passed by the Labour Court, Chennai, dated 24.07.2006, in I.D.No.672 of 2000, whereby, the petitioner-Corporation was directed to reinstate the second respondent in service, with backwages, continuity of service and all other attendant benefits.

2. The petitioner, State Express Transport Corporation is the Management and the second respondent is the employee and they shall be referred to as such through out this judgment.

3. The following are relevant facts for disposal of this Writ Petition:-

i) The employee, Arjunan had been working in the Management as Driver from 01.08.1983. However, he absented himself from duty authorizedly w.e.f. 07.03.1995 onwards.

Therefore, a charge memo was issued against the employee containing following allegations;-

a) You were absent for duty unauthorizedly from 07.03.1995 without any prior intimation or submitting any leave letter.

b) Your absence caused dislocation of work.

c) You failed to follow the rules and regulations of the Corporation.

ii) The workman, on receipt of the chargememo, did not submit any explanation. However, the Management proceeded with departmental proceedings, and issued enquiry notices on the following dates, 28.05.1995, 12.06.1995, 24.06.1995 and 20.07.1995. The workman failed to appear for the enquiry. Hence, the Enquiry Officer set the workman ex parte and filed a report, holding that the charges levelled against the workman were proved. Based on the said enquiry report, the Management issued a show cause notice dated 25.11.1995, and the workman submitted explanation denying the charges. The Management not being satisfied with the explanation offered by the workman, dismissed him from service by an order, dated 22.06.1996. Against which, the workman preferred an Appeal and the same was rejected on 10.07.1998 by the Appellate Authority.

iii) The employee aggrieved by the order of dismissal, dated 22.06.1996, raised an industrial dispute in I.D.No.672 of 2000, before the Labour Court.

iv) Before the Labour Court, employee examined himself as W.W.1 and marked 5 documents viz., W.W.1 to W.W.5. On the side of the Management, neither any witness was examined nor document was marked. The Labour Court, based on the pleadings and the documents placed before it, framed the questions as to a) Whether the petitioner is entitled to claim reinstatement in service with continuity of service and backwages and other benefits? and b) to what relief, the employee is entitled to?

v) The Labour Court, after analysing the evidence, came to a conclusion that the Management did not prove that they have followed the principles of natural justice. Therefore, by following the dictum laid down by the Honourable Supreme Court, in the case reported in AIR 1961 1158, AIR 1998 SC 3261 and 2002 SC 758, wherein, it is held that termination order without notice to delinquent is liable to be set aside, set aside the order of dismissal passed against the employee and awarded reinstatement with continuity of service and backwages and all other attendant benefits.

vi) Challenging the said award, the Management has filed the present Writ Petition as already stated above.

4. Mr.G.Muniratnam, the learned counsel appearing for the Management has submitted that the Labour Court was wrong in holding that the the Management did not comply with the principles of natural justice and the employee was not afforded with opportunity of hearing before passing the order of dismissal. The learned counsel submitted that the employee unauthorizedly absented himself from duty and hence, he was issued with a chagememo and despite receipt of the same, the employee did not bother to submit any explanation. Therefore, the Management proceeded with departmental proceedings, and issued enquiry notices on the following dates, 28.05.1995, 12.06.1995, 24.06.1995 and 20.07.1995. The workman, despite receipt of the enquiry notices, failed to appear for the enquiry. Hence, the Enquiry Officer set the workman ex parte and filed a report, holding that the charges levelled against the workman were proved and based on the said enquiry report, the Management issued a show cause notice dated 25.11.1995, to which alone, the workman submitted explanation denying the charges and the Management not being satisfied with the explanation offered by the workman, dismissed him from service by an order, dated 22.06.1996. Against which, the workman preferred an Appeal and the same was rightly rejected on 10.07.1998 by the Appellate Authority.

5. Further, the learned counsel contended that though the employee examined himself as W.W.1 and marked W.W.1 to W.W.5, those documents are nothing but the pay bill for the months of February, 1996 (W.W.1), March, 1996 (W.W.2) and May, 1996 (W.W.3) respectively and the instructions of the Management to the employees (W.W.4 and W.W.5), and all those documents have nothing to do with the case, and it has to be noted that the employee intentionally, did not mark the documents, viz., the charge memo, enquiry notices, enquiry findings, and the second show cause notice issued to him, so as to prove his case that no notice and enquiry was conducted before passing the dismissal order. Therefore, the learned counsel contended that the Management, only after complying with principles of natural justice, passed the order of dismissal and hence, the Labour Court committed an error in setting aside the dismissal order on the ground that termination order was passed without complying with the principles of natural justice.

6. When this Court posed a question to the learned counsel for the Management as to why, the Management failed to mark the documents before the Labour Court to substantiate their stand that they complied with the principles of natural justice, the learned counsel for the Management has brought to the notice of

this Court that the Management entrusted all those documents to a counsel, who was earlier engaged to contest the case, and since the counsel did not contest the case diligently, the Management engaged another counsel, and as there was a change of counsel, earlier counsel did not hand over those documents properly to the latter counsel and hence, such documents were not able to be marked before the Labour Court. However, he submitted that those documents were produced before this Court in the form of typed -set of papers filed in support of this Writ Petition. Hence, the learned counsel pleaded that, for the mistake committed by the counsel, the Management need not be mulcted and sought for remittance of the matter back to the Labour Court for fresh consideration with liberty to them to mark those documents before the Labour Court.

7. Heard the learned counsel appearing for the petitioner and though the second respondent was served and his name is printed in the causelist, none appeared on his behalf. This Court also perused the materials available on record.

8. From the averments set out in the Petition under Section 2 A (2) of the Industrial Disputes Act, it is seen that the employee joined in the service of the Management in 1981, and has put in 14 years of service. However, he unauthorizedly absented himself from duty 07.03.1995. Therefore, he was denied employment in the month of June, 1996. Only when he complained of the same to the Appellate Authority, by way of an Appeal, his appeal was rejected vide order, dated 10.07.1998, whereby, he to know that he was dismissed from service vide order dated 22.06.1996. Since no enquiry was conducted involving him before the dismissal the employee raised industrial dispute. The Labour Court after taking into consideration of the available evidence, came to the conclusion that the Management failed to comply with the principles of natural justice and rightly held that the punishment imposed on the workman was not justified and passed an award, directing reinstatement, with continuity of services, and backwages. Thus, the Labour Court, after having carefully analyzed the evidence held that the order of dismissal was not justified. Thus, in the absence of any perversity or illegality in the findings of the Labour Court, this Court, is not inclined to re-appreciate the evidence available on record and come to a different conclusion.

9. Though the learned counsel for the Management to fortify their stand that the Management complied with the principles of natural justice, produced the documents before this Court in the form of typed-set of papers filed in support of this Writ Petition and explained the reason for not marking those documents before the Labour Court and sought for remittance of the matter back to the Labour Court for fresh

consideration with liberty to them to mark those documents before the Labour Court, and it is a case for remittance to the Labour Court for fresh consideration, considering the fact that the employee was aged about 58 years even at the time of raising the dispute under Section 2(A)-II of the I.D. Act, and by this time, he would already been superannuated from service, the relief as now sought for by the learned counsel for the Management cannot be granted.

10. In the result, the Writ Petition is dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

// True Copy //

Sub Assistant Registrar

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To

The Presiding Officer,
III Additional Labour Court,
Chennai.

+1cc to Mr.G.Muniratnam, Advocate, SR.No.90151.

W.P.No.43946 of 2006

EV (CO)
CSR: 14.02.2020

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