

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.09.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.22531 of 2005

M.Selvaraju

... Petitioner

..Vs..

1.Government of Tamil Nadu,
Rep.by its Secretary,
Department of Transport,
St.Fort George,
Chennai - 600 009.

2.The Managing Director,
Tamil Nadu State Transport Corporation,
Ramakrishna Road,
Salem - 7.

3.The Presiding Officer,
Labour Court, Salem.

... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records from the file of the 3rd respondent dated 09.09.2003, made in I.D.No.543 of 2001 and quash the same in so far as, not granting backwages and further direct the respondents to issue backwages to the petitioner.

For Petitioner : Mr.Ashok Kumar
for Su.Srinivasan

For Respondents: Mr.J.Ramesh (for R1)
Additional Government Pleader

Mr.B.S.Sundaramoorthy for R2

R3- Labour Court

O R D E R

The Award dated 09.09.2003, passed in I.D.No.543 of 2001, is under challenge in the present writ petition.

2. The writ petitioner joined as Driver in Respondent Management dated 18.10.1997 and during the relevant point of time, he was serving in Johnsonpet Branch III. A charge memo was issued to the writ petitioner on 22.08.2000 with an allegation that he was unauthorizedly absent from duty with effect from 06.08.2000. The petitioner states that he was absent on 06.08.2000. However, he had submitted a leave letter subsequently on 05.09.2000 and reported for duty along with the medical certificate. The respondents refused to grant permission to report for a duty, subsequently the departmental enquiry was conducted and the writ petitioner was removed from service on 31.01.2001. The writ petitioner raised an industrial dispute in I.D.No.543 of 2001 before the third respondent, Labour Court, Salem and the Labour Court passed an award with a direction to reinstate the writ petitioner into service and further granted continuity of service. However, the benefit of back wages was denied. Thus, the writ petitioner is constrained to move the present writ petition.

3. The learned counsel appearing on behalf of the respondent disputed the contentions by stating that the writ petitioner was unauthorizedly absent and based on the enquiry findings he was removed from service. Thus, the procedures contemplated were followed while imposing the punishment of dismissal. The Labour Court also considered all these facts and passed an award of reinstatement with continuity of service. The writ petitioner was reinstated into service and he is working for the past 19 years in the Transport Corporation and under these circumstances, the writ petitioner was not entitled to claim backwages as the reasoning given in the award is inconsonance with the settled principles.

4. This Court is of the opinion that the findings of the Labour Court states that the writ petitioner during the relevant point of time was unauthorizedly absent. Though the writ petitioner states that he sent the leave letter, he has not satisfied the date on which such a leave letter was sent to the Competent Authorities. The show cause notice was issued to the writ petitioner and the writ petitioner submitted his explanation. The previous conduct of the writ petitioner states that he was imposed with certain minor punishment on earlier occasions and considering the fact that the writ petitioner were unauthorizedly absent. On account of his allegations, the Labour Court has taken a lenient view and by invoking the powers under Section 11 A of the Industrial Disputes Act. The punishment of removal from service was modified and accordingly, the order of reinstatement with continuity of service was issued. The Labour Court has modified the punishment and not granted backwages alone. Contrarily, the Labour Court ordered for reinstatement with continuity of service and the said modification of

punishment was issued by the Labour Court by invoking the powers under Section 11A of the Industrial Dispute Act. Thus, this Court is of the considered opinion that the Labour Court has adopted a balancing approach and a pragmatic view has been taken considering the nature of allegations and the reasons furnished by the workmen before the Labour Court. Though unauthorized absent was established against the writ petitioner workmen, he had not furnished any document to show that he sent leave letter during the relevant point of time. The Labour Court considered and had taken a lenient view by modifying the punishment. Thus, this Court is of the opinion that there is no infirmity or inconsistency in respect of the modified punishment imposed by the Labour Court and pursuant to the modifications the writ petitioner was reinstated into service along with continuity of service and he is continuing for the past 19 years. Under these circumstances, this Court is not inclined to interfere with the findings of the Labour Court as the same is candid and convincing.

5. Accordingly, the Award passed by the Labour Court dated 09.09.2003, passed in I.D.No.553 of 2001 is confirmed and consequently, the writ petition is dismissed. No costs.

Pns

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Presiding Officer,
Labour Court, Salem.

2.The Managing Director,
Tamil Nadu State Transport Corporation,
Ramakrishna Road,
Salem - 7.

3.The Secretary,
Government of Tamil Nadu,
Department of transport,
Fort St.George, Chennai - 9.

+lcc to the Govt.Pleader vide SR.No.80219

W.P.No.22531 of 2005

Kak(11/11/2019)