

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.23364 of 2005

S.Arumugam

.. Petitioner

.Vs.

1. The Presiding Officer,
Labour Court, Salem.
2. The Management of
Tamil Nadu State Transport Corporation
(Salem - Divison-I) Ltd.,
12, Ramakrishna Road, Salem - 7,
Represented by its Managing Director.

(Formerly known as
Tamil Nadu State Transport Corporation
(Salem - Division-II) Ltd.,
Salem Main Road,
Bharathipuram,
Dharmapuri - 5)

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to I.D.No.358 of 2003 dated 04.10.2004 on the file of the first respondent and quash the same and consequently direct the second respondent to reinstate the petitioner with continuity of service and all other attendant benefits.

For Petitioner : Mr.P.Ganesan
For R1 : Labour Court
For R2 : Mr.R.K.Gandhi

O R D E R

The award dated 04.10.2004, passed in I.D.No.358 of 2003 is under challenge in the present writ petition.

2. The writ petitioner was employed as a trainee driver in the second respondent/State Transport Corporation on 13.05.1997. The petitioner was directed to work in Thenkanikottai Branch of

the Second respondent/Management. The petitioner was dismissed from service by an order dated 07.11.1988. Thus, the petitioner was working from 13.05.1997 to 07.11.1998 for about 18 months. The petitioner states that he is a qualified driver and was possessing the valid driving license and registered his name in the District Employment Exchange. He was sponsored by the District Employment Exchange and accordingly, by participating in the interview, he was selected and appointed to the post of driver. The petitioner was provided with one month training and after the completion of the training period, he was posted in Thenkanikottai Branch.

3. The second respondent/Management had arrived a conclusion that the driving skill of the writ petitioner was not up to the mark and he was sent for further training to improve the skill. However, even after the second training, the Management came to the conclusion that the petitioner was not performing the duty as a driver up to the mark and therefore, the second respondent/Management had issued a show cause notice on 11.08.1998, for which, the petitioner submitted his reply on 31.08.1998. However, the reply submitted by the writ petitioner was not accepted and he was dismissed from service by an order dated 07.11.1998. The petitioner raised an industrial dispute before the Labour Court, Salem in I.D.No.358 of 2003 for reinstatement with back wages, continuity of service and other attendant benefits. However, the Labour Court dismissed the dispute on 04.10.2004. Challenging the said award, the present writ petition is filed.

4. The learned counsel appearing for the petitioner mainly contended that there was no complaint from any person from the public or from the conductors or from any quarters in respect of the driving skill of the writ petitioner. The Labour Court also failed to consider the fact that the writ petitioner had not committed any accident, either minor or major in nature, while he was performing his duties and responsibilities in the post of driver. The Labour Court has not assigned any valid reason, thus, the award is liable to be scrapped.

5. The respondent opposed the contention by stating that the Tamil Nadu State Transport Corporation is a public Transport Corporation and therefore, the assessment of the driving skill is of paramount importance. The Authorities competent, found that the writ petitioner was not possessing the required driving skills and an opportunity was provided to undergo further training. Even after completion of the further training, the writ petitioner had not improved the driving skill and consequently, authorities have arrived a conclusion that he is not fit to continue in the post of driver in the Tamil Nadu State Transport Corporation and a show cause notice was issued

and on receipt of the reply from the writ petitioner, he was dismissed from service.

6. It is further contended that there was not infirmity or otherwise in respect of the order of the dismissal passed against the writ petitioner. The procedures contemplated, were followed. The Labour Court also considered all these issues and arrived a conclusion that the decision taken by the respondent/Transport Corporation is in accordance with the procedures and there is no perversity or infirmity.

7. This Court is of an opinion that Public Transport Corporation is an important one, where large number of public are utilizing the services. The driving skill to be assessed by the Transport Corporation, are undoubtedly important. In the absence of assessing the driving skill, there is a possibility of frequent accident. This apart, in such Public Transport Corporations, the drivers play a pivotal role. Therefore, the assessment of driving skills are to be conducted periodically, so as to improve sufficient level in Public Transport system. Thus, there is no infirmity in respect of the action taken by the authorities competent for assessing the driving skill of the writ petitioner.

8. Admittedly, the writ petitioner was appointed as a driver on 13.05.1997 and after completion of one month training, he was posted to Thenkanikottai Branch. When the authorities found that he was not fit for driving and lacking requisite driving skill, they decided to send him for further training. Even after completion of further training, the writ petitioner had not improve the skill and ultimately, the authorities arrived on a conclusion that the petitioner is not fit to continue in the post of driver in State Transport Corporation and issued a show cause notice and consequently, dismissed him from service.

9. The Labour Court appreciated the documents as well as the evidence. The findings of the Labour Court reveals that sufficient opportunities were granted to the writ petitioner to improve the driving skill, inspite of that, the writ petitioner had not improved and therefore, the decision was taken by the second respondent/Management to terminate the service. In respect of the grounds raised by the writ petitioner that he was selected on merits, the Labour Court found that merely because he was joined after conducting an enquiry that does not mean that the competent authorities cannot assess the driving skill subsequently and if it was not satisfactory then terminate the service. Once the authorities found that the driving skill of the writ petitioner is not satisfactory then they have no option but to remove the driver from the service.

10. Importantly, the Labour Court found that the writ petitioner was terminated from the service on 07.11.1998, however, he filed the Industrial Dispute during the year 2003 after a lapse of five years from the date of termination. Though, there is no limitation, the dispute ought to be raised within a reasonable period of time. In the present case, the writ petitioner was terminated on 07.11.1998 and the Industrial Dispute was raised in the year 2003, after a lapse of five years and therefore, this Court is of the opinion that the order of dismissal of the Industrial Dispute is in consonance with the legal principles and the long delay in raising the Industrial Dispute is also a ground to reject the dispute.

11. On a perusal of the entire findings of the Labour Court, this Court is of the opinion that there is no perversity and further the reasons are candid and convincing. Thus, the award dated 04.10.2004 passed in I.D.No.358 of 2003 is confirmed. Consequently, writ petition stands dismissed. No costs.

dua/sni

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
(Salem - Division-I) Ltd,
12, Ramakrishna Road, Salem - 7.

+1cc to Mr.R.K.Gandhi, Advocate, SR.No.78037

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Kak(31/10/2019)

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