

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.02.2019

CORAM

THE HON'BLE MR.JUSTICE V.PARTHIBAN

W.P.NO.25252 OF 2011

S.Amulnathan

.. Petitioner

Vs

The Managing Director,
Tamil Nadu State Transport
Corporation(Villupuram)Ltd.,
Villupuram

... Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for records pertaining to the Award dated 16.5.2011 in I.D.No.11 of 2008 on the file of the Labour Court, Cuddalore and quash the same in so far as the rejection of relief of continuity of service, back wages and other attendant benefits and direct the respondent to reinstate the petitioner with continuity of service, back wages and other attendant benefits.

For Petitioner .. Mr.R.Subramanian

For Respondent ... Mrs.S.Rajeni Ramadoss

ORDER

This writ petition is directed against the award of the Labour Court, Cuddalore, passed in I.D.No.11 of 2008, dated 16.5.2011, ordering reinstatement without continuity of service and back wages and other attendant benefits of the petitioner/workman.

2.The facts which gave rise to the filing of the present writ petition are briefly set out hereunder:

(i)The petitioner herein was working as a Conductor in the respondent Corporation. He was placed under suspension on 04.05.2006 for an act of misconduct and also charge-sheeted. According to the charge memorandum, the petitioner, while discharging his duty, has not issued tickets properly and thereby cheated the Corporation. The enquiry appears to have been conducted and finally the petitioner was dismissed from

service on 04.01.2007, against which, an industrial dispute has been raised.

(ii)The Labour Court, after adverting to various materials placed on record and the submissions made on behalf of both the workman and the Management, ultimately passed an award by ordering reinstatement of the petitioner herein as a fresh entrant and denying him the continuity of service, back wages and other attendant benefits. The petitioner herein is challenging the denial of continuity of service and back wages and other attendant benefits.

3.According to the learned counsel Mr.R.Subramanian, appearing for the petitioner, the petitioner had been working from 05.05.1985 and by the impugned award, his entire past service has been wiped out and also by virtue of the fact that the petitioner has also retired from the service of the respondent Corporation on attaining the age of superannuation in 2016, he would not be getting any terminal or pensionary benefits.

4.The learned counsel would submit that the Labour Court has found that the charges against the petitioner had not been proved at all in the domestic enquiry conducted against the petitioner and in the absence of any proof, the punishment of dismissal was ultimately set aside by the Labour Court. Once the dismissal order is set aside by the Labour Court, the contents of dismissal order cannot be relied on for the purpose of denying the petitioner the continuity of service, back wages and other attendant benefits. According to the learned counsel, the dismissal order was non est in law and therefore, the Labour Court ought not to have relied on the past mis-conduct committed by the petitioner, which invited some punishment.

5.At this, the learned counsel for the respondent Corporation would submit that the Labour Court had taken into consideration the conduct of the petitioner/workman in the past and rightly denied the continuity of service, back wages and other attendant benefits. The Labour Court, in fact was fair in ordering reinstatement in view of the fact that the charges as framed against the petitioner, which was the subject matter of the dispute, were not established at all. Therefore, the petitioner cannot have any legitimate cause for complaining about the approach of the Labour Court.

6.This Court has considered the rival submissions of the learned counsel appearing on either side.

7.As rightly contended by the learned counsel for the petitioner once the dismissal order was found to be unjustified,

in the absence of any proof of the charges, the Labour Court ought not to have relied on the contents of the dismissal order for denying the benefit of continuity of service, back wages and other attendant benefits. In fact, the Labour Court has given detailed reasons as to how the charges were not established as against the petitioner as far as the present case on hand is concerned. Paragraph No.8 of the award, in which a detailed finding has been rendered by the Labour Court, is extracted hereunder in order to appreciate the approach of the Labour Court.

"8. In this case, in the Checking Inspectors' report Ex.M1 it is stated that the petitioner did not issue tickets to the passengers properly and in the cash bag of the petitioner there was a deficit of Rs.239/-. On the basis of report, the petitioner was suspended from service as per Ex.M6 suspension order. The Ex.M7 charge memo was issued to the petitioner. The petitioner submitted Ex.M8 explanation to the charge memo Ex.M7. In the explanation, the petitioner stated that he issued tickets properly to the passengers, without issuing tickets he did not receive the ticket fare amount from any one of the passengers, the checking inspectors entered the bus before the stage, a sum of Rs.200/- was given for died/injured goat which was injured in the bus accident in which the petitioner worked, and a sum of Rs.30/- was taken for taking dinner. In the domestic enquiry also the petitioner denied all the charges except charge Nos.3,4 and 6. The checking inspectors stated in their complaint that the petitioner did not issue tickets properly. But no statement was given by any one of the passengers. In the domestic enquiry also, no passengers were examined on the side of the management. In deciding the preliminary issue it was held that the domestic enquiry was not conducted in a fair and proper manner. In reality the petitioner does not issue tickets, the checking inspectors would have obtained statements from the passengers who travelled in the bus in which the petitioner was working. But no passengers gave statement regarding the complaint of the checking inspectors. If really the petitioner did not issue tickets after collecting the fare amount there was no chance for less amount in the cash bag. Considering the above facts and circumstances it is understood that the respondent/management has not proved the charges

that the petitioner received the fare amounts and did not issue the tickets. Since the checking inspectors entered the bus before the stage, the petitioner could not have issued tickets properly to the passengers. In these circumstances it is clearly understood that the charges against the petitioner were not proved by the respondent by producing sufficient documents and evidence. In this case no witness was examined on the side of the respondent. Considering the above facts and circumstances it is decided that the charges against the petitioner were not proved by the respondent by sufficient documents and evidence. Hence, it is decided that the charges against the petitioner were not proved. Since the charges against the petitioner were not proved, the dismissal order passed by the respondent/management against the petitioner was disproportionate and it is decided that the dismissal order is not valid in law. Hence, it is decided that the petitioner is entitled for reinstatement."

8. Once the Labour Court has taken a conscious decision to set aside the order of dismissal from service on the ground that the charges were not established in the domestic enquiry, the continuity of service should have been ordered automatically. It is not open to the Labour Court to harp on the post misconduct to punish the petitioner, as that would be contrary to the scheme of Industrial Disputes Act.

9. As regards the grant of back wages is concerned, it is a discretion vested in the Labour Court to grant full back wages or reduce wages or not to grant any wage at all. The denial of back wages by the Labour Court, in the opinion of this Court, appears to be justified in the circumstances of the case. However, the denial of continuity of service and other attendant benefits cannot be justified in the circumstances of the case. Once the Labour Court has set aside the order of dismissal on merits, the continuity of service has to necessarily follow reinstatement.

10. In the above circumstances, the writ petition is allowed and the award of the Labour Court shall stand modified as under:-

The petitioner/workman is entitled to be reinstated with continuity of service without back wages and the petitioner is also entitled to all attendant benefits, which is the consequence of

counting of the entire past service, on his retirement. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

msk

To

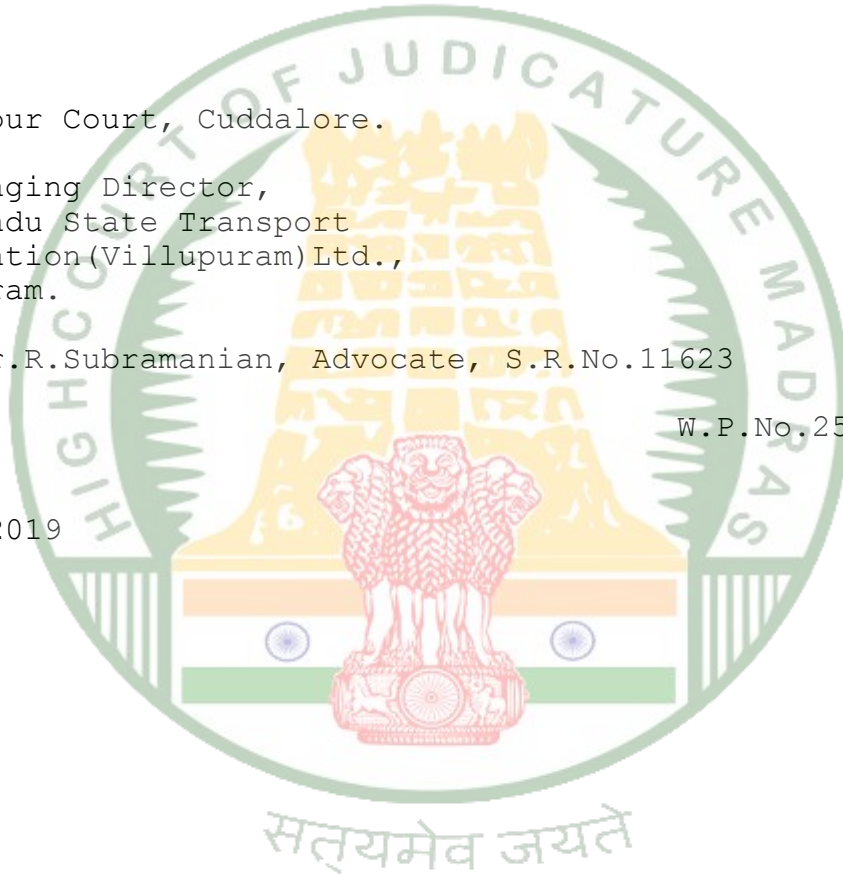
1.The Labour Court, Cuddalore.

2.The Managing Director,
Tamil Nadu State Transport
Corporation(Villupuram)Ltd.,
Villupuram.

+1cc to Mr.R.Subramanian, Advocate, S.R.No.11623

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KAN(CO)
CS/14/02/2019



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