

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.Nos.40048 of 2005, 12791 of 2006 & 17864 of 2012
and M.P.No.1 of 2012

Ravi

.. Petitioner in
W.P.No.40048 of 2005

Tamilnadu State Transport Corporation
(Kumbakonam) Ltd.,
27, Railway Station New Road,
Kumbakonam,
Rep. By its General Manager.

.. Petitioner
in W.P.No.12791 of 2006

The Managing Director,
Tamilnadu State Transport Corporation Ltd.,
(Kumbakonam) Division -I,
Kumbakonam.

.. Petitioner
in W.P.No.17864 of 2012

-Vs-

1.The Presiding Officer,
Labour Court, Cuddalore.

2.N.Ravi

.. Respondents in
W.P.Nos.12791/2006 & 17864/2012

1.The Management,
Tamilnadu State Transport Corporation,
Kumbakonam.

2.The Presiding Officer,
Labour Court, Cuddalore.

.. Respondents
in W.P.No.40048 of 2005

Prayer in W.P.No.40048/2005: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in his proceedings in I.D.No.168 of 1994 dated 09.12.2004 and quash the same in so far as it is against the petitioner in refusing to grant backwages and continuity of service and further direct the respondents to reinstate the petitioner with continuity of service from 28.07.1994 and backwages.

Prayer in W.P.No.12791/2006: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records and quash the award dated 09.12.2004 in I.D.No.168 of 1994 on the file of the 1st respondent, Presiding Officer, Labour Court, Cuddalore.

Prayer in W.P.No.17864/2012: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to C.P.No.258 of 2009 on the file of the 1st respondent and quash the order dated 03.08.2011 made in C.P.No.258 of 2009.

(In W.P.No.40048/2005)

For Petitioner : Mr.S.Sounthar
R2 : Court
For R1 : Mr.D.Venkatachalam

(In W.P.Nos.12791/2006 & 17864/2012)

For Petitioner : Mr.D.Venkatachalam
For R2 : Mr.S.Sounthar
R1 : Court

C O M M O N O R D E R

W.P.No.40048 of 2005 is filed to issue a Writ of Certiorari, calling for the records of the 2nd respondent in his proceedings in I.D.No.168 of 1994 dated 09.12.2004 and quash the same in so far as it is against the petitioner in refusing to grant backwages and continuity of service and further direct the respondents to reinstate the petitioner with continuity of service from 28.07.1994 and backwages.

W.P.No.12791 of 2006 is filed to issue a Writ of Certiorari, calling for the records and quash the award dated 09.12.2004 in I.D.No.168 of 1994 on the file of the 1st respondent, Presiding Officer, Labour Court, Cuddalore.

W.P.No.17864 of 2012 is filed to issue a Writ of Certiorari, calling for the records relating to C.P.No.258 of 2009 on the file of the 1st respondent and quash the order dated 03.08.2011 made in C.P.No.258 of 2009.

2.Writ Petition Nos.40048 of 2005 and 12791 of 2006 arise out of the same award and issue in W.P.No.17864 of 2012 is interlinked and hence, they are disposed of by this common award. The parties are referred to as per their rank in I.D.No.168 of 1994.

3.The petitioner was working as a Driver in the respondent Transport Corporation. The respondent issued a charge memo dated 18.03.1994 to the petitioner alleging that on 11.03.1994, he along with one D.Ambedkar and M.Rajendran printed forged tickets and sold the same through D.Ambedkar and caused heavy loss to the respondent Transport Corporation. The petitioner submitted explanation and denied the charges leveled against him. The respondent conducted Disciplinary Enquiry. The petitioner participated in the enquiry. The Enquiry Officer gave a report, holding that the charges leveled against the petitioner were proved. The respondent after issuing the 2nd Show Cause Notice and considering the explanation submitted by the petitioner, dismissed the petitioner from service by the order dated 28.07.1994.

4.The petitioner raised an Industrial Dispute in I.D.No.168 of 1994 on the file of the Labour Court. Before the Labour Court, the respondent Transport Corporation filed counter statement and contended that the petitioner along with one D.Ambedkar and M.Rajendran printed bogus tickets and sold the same in public and caused loss to the respondent Transport Corporation. The said charges were proved in the Domestic Enquiry. The punishment of dismissal is proportionate for the proved charges supported by the evidence.

5.Before the Labour Court, the petitioner did not let in any oral evidence, but marked five documents as Exs.W1 to W5. The respondent examined three witnesses as M.W.1 to M.W.3 and marked 16 documents as Exs.M1 to M16. The Labour Court considering the pleadings, oral and documentary evidence, held that the respondent failed to prove the charges leveled against the petitioner and held that the order of dismissal is not legal and ordered reinstatement. The Labour Court did not grant continuity of service, attendant benefits and backwages on the ground that the petitioner did not seek the said relief.

6.Against the said award, the petitioner filed W.P.No.40048 of 2005 denying the continuity of service, attendant benefits and backwages. The respondent filed W.P.No.12791 of 2006 challenging the order of reinstatement of the petitioner into service. Challenging the order made in C.P.No.258 of 2009 directing the respondent to pay a sum of Rs.76,625/- as salary to the petitioner for the period from 01.04.2006 to 30.09.2009, the respondent filed W.P.No.17864 of 2012.

7.The learned counsel appearing for the respondent contended that the Labour Court failed to see that in the Domestic Enquiry strict proof of evidence as required in the criminal proceeding is not required and the Enquiry Officer can conclude the enquiry based on preponderance of probability and some evidence being

produced before the Enquiry Officer. The Labour Court considering the materials on record as though deciding the criminal case, failed to see that respondent Transport Corporation has proved the charges by letting in oral and documentary evidence.

8. Per contra, the learned counsel appearing for the petitioner contended that there is no iota of evidence to show that the petitioner along with D.Ambedkar and M.Rajendran printed bogus tickets and caused loss to the respondent. None of the Management Witnesses examined before the Labour Court have deposed to prove the charges leveled against the petitioner. The Labour Court after appreciating all the materials on record in proper perspective, ordered reinstatement of the petitioner into service. The Labour Court having ordered reinstatement, ought to have awarded continuity of service, attendant benefits and backwages. The Labour Court erred in denying the consequential relief on the ground that the petitioner had not sought for such relief. The Labour Court can award such consequential relief and prayed for ordering continuity of service, attendant benefits, backwages and prayed for allowing W.P.No.40048 of 2005 filed by the petitioner and dismissal of W.P.No.12791 of 2006 filed by the respondent.

9. Heard the learned counsel appearing for the petitioner as well as the respondent and perused the materials available on record.

10. The specific case of the respondent is that the petitioner in collusion with one D.Ambedkar and M.Rajendran printed bogus tickets in Andavar Press, Karaikal and sold through D.Ambedkar to the general public and caused loss to the respondent. One Annadurai is the complainant. The said Annadurai was examined as M.W.1, who deposed that the petitioner came to his house on 11.03.1994 at 12.30 A.M along with D.Ambedkar and informed that he knew that D.Ambedkar and M.Rajendran have printed bogus tickets at Sivakasi. M.W.1 has not stated as to why the petitioner and D.Ambedkar came to his house on that day. The case of the respondent is that bogus tickets were printed at Andavar Press, Karaikal, while M.W.1 has deposed that the bogus tickets were printed in a Press at Sivakasi. This contradiction is vital and based on the evidence of M.W.1, the petitioner cannot be held guilty of printing and selling bogus tickets through D.Ambedkar.

10(i) M.W.2, Enquiry Officer in his chief examination had deposed that the petitioner, D.Ambedkar and M.Rajendran admitted that they have printed bogus tickets and gave statement to that effect. The said alleged statements were not produced before the Labour Court. On the other hand, M.W.2 had admitted in the cross

examination that the petitioner gave statement denying the charges leveled against him. From the documents and evidence of M.W.1 to M.W.3 and documents relied on by the respondent, it is clear that there is no evidence to show that the petitioner along with D.Ambedkar and M.Rajendran printed bogus tickets and used the same through D.Ambedkar and caused loss to the respondent Transport Corporation. The complaint given by M.W.1 is contrary to the charges leveled against the petitioner, as M.W.1 has deposed that tickets were printed at Sivakasi by D.Ambedkar.

10(ii) It is well settled that strict proof of evidence as required in the criminal proceeding is not necessary in domestic enquiry. The Enquiry Officer can come to a conclusion based on preponderance of probability and it is enough if some evidence is placed before the Enquiry Officer to prove the charges leveled against the delinquent employee. In the present case, there is no evidence at all to show that the petitioner along with D.Ambedkar and M.Rajendran printed bogus tickets and sold the same through D.Ambedkar to the general public. The petitioner was acquitted in the criminal case initiated against him. The said submission is not disputed by the respondent. The Labour Court appreciating the entire materials placed before it, had concluded that the order of dismissal passed by the respondent is not legal. There is no error or perversity in the said finding warranting interference by this Court.

11.As far as the contention of the learned counsel appearing for the petitioner that the Labour Court ought to have awarded continuity of service, attendant benefits and backwages are concerned, the Labour Court has denied the said relief on the ground that the petitioner did not seek such relief in the Claim Petition. When the Labour Court held that charges are not proved and ordered reinstatement, the continuity of service and backwages are consequential, unless the materials on record proves that worker is not entitled to said relief. In the present case, there is no material before the Labour Court for not awarding continuity of service and attendant benefits. The petitioner is entitled to continuity of service and attendant benefits. As far as backwages are concerned, the petitioner has not pleaded that he was not gainfully employed after order of dismissal and hence, he is entitled to backwages. Considering the fact that the petitioner was dismissed from service without there being evidence against him and he was arrested and faced criminal proceedings, I hold that the petitioner is entitled to 50% backwages. In the result, the W.P.No.40048 of 2005 filed by the petitioner is partly allowed and W.P.No.12791 of 2006 filed by the respondent Transport Corporation is dismissed. No costs.

12.W.P.No.17864 of 2012 filed by the respondent Transport Corporation is challenging the order passed in the Claim

Petition C.P.No.258 of 2009 on the file of the Labour Court, Cuddalore, directing them to pay a sum of Rs.76,625/- as salary to the petitioner for the period from 01.04.2006 to 30.09.2009. In view of the order passed by this Court in the above two Writ Petitions viz., W.P.Nos.40048 of 2005 and 12791 of 2006, this Writ Petition is disposed of, directing the respondent to comply with the order passed by this Court within a period of sixteen weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

gsa

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Presiding Officer,
Labour Court, Cuddalore.

2.The Management,
Tamilnadu State Transport Corporation,
Kumbakonam.

+1cc to Mr.D.Venkatachalam, Advocate, SR.No.63786

+3CCs to Mr.S.Sounthar, Advocate, SR.No.64096 to 64098

W.P.Nos.40048 of 2005,
12791 of 2006 & 17864 of 2012

Kak(18/09/2019)

Kak(08/11/2019)

सत्यमेव जयते

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