

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.24532 of 2013

A.Gunalan

... Petitioner

vs.

1. The Presiding Officer,
Principal Labour Court,
Vellore,
Vellore District.
2. The Management,
Tamil Nadu State Transport Corporation,
(Villupuram Division - II) Ltd.,
Rangapuram,
Vellore - 9.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorarified mandamus calling for the records pertaining to the impugned order made in I.A.D.No.25 of 2001, dated 26.03.2012 from the 1st Respondent and quash the same and consequently direct the 1st Respondent to re-appreciate the evidence and exercise powers given under Section 11-A of the Industrial Disputes Act by remanding I.D.No.25 of 2001 to the 1st Respondent.

For Petitioner : Mr.V.Ajoy Khose

For 2nd Respondent : Mr.K.Kulandaivelu,
for Mr.A.Antony Arokiyaraja

R1 : Court

ORDER

Petitioner, who lost the industrial dispute before the Labour Court has come up with this Writ Petition challenging the Award dated 26.03.2012 made in I.A.D.No.25 of 2001 and for a consequential direction to the 1st Respondent to re-appreciate the evidence and exercise powers under Section 11-A of the Industrial Disputes Act, by remanding I.D.No.25 of 2001 to the 1st Respondent.

2. According to the Petitioner, he was appointed as a Driver in the 2nd Respondent/Transport Corporation on 09.01.1990 and his last drawn pay was Rs.3,000/- per month. The 2nd Respondent/Transport Corporation issued a Charge Memo dated 16.09.1998 to the Petitioner alleging that he had joined duty by producing false School Certificate. The Petitioner submitted his explanation to the said Charge Memo, denying the charges. After conducting domestic enquiry, the 2nd Respondent/Transport Corporation dismissed the Petitioner from service on 29.04.2000, as he had produced false School Certificate. Challenging the order of dismissal, the Petitioner raised industrial dispute before the Labour Court in I.D.No.25 of 2001.

3. Before the Labour Court, the School Certificate of the Petitioner was marked by the 2nd Respondent/Transport Corporation along with the Committee Report including the copy of the Transfer Certificate produced by the Petitioner at the time of joining the service. On the side of the 2nd Respondent/Transport Corporation, three Management witnesses were examined and they have stated that the Transfer Certificate produced by the Petitioner/employee is not genuine, but forged.

4. The Labour Court, after going through the oral and documentary evidence, upheld the punishment awarded to the Petitioner, by an Award dated 26.03.2012. For better appreciation, relevant portion of the Award is reiterated hereunder:

"25. I have also verified the oral and documentary evidence of the parties and it is established by the Management that the Petitioner had submitted forged School Certificate to the Management at the time of joining in service. It is also essential to cite the judgment of the Supreme Court of India reported in 1994 II LLJ P.888 SC. In that case, the Apex Court observed that worker is expected to give correct information as to their qualification. He was over qualified, therefore ineligible to apply for job. Court set aside order of Labour Court. So, workers were expected to give correct information as to their qualification. He failed to do so. They were in fact over-qualified and therefore ineligible to apply for the job. The Petitioner as also the workers are bound by the Common Service Rules with regard to minimum educational qualification regard from

the Driver as per Ex.W1, which had to be given effect to. Over qualification is certainly, in the circumstances, a disqualification, which aspect, the respondent failed to grasp. Therefore, sympathy cannot be given to the Petitioner while awarding punishment for the serious misconduct of the Petitioner.

26. Considering the oral and documentary evidence of the parties and also the arguments of the counsel for both parties, this Court is of the considered opinion that the Respondent Management had established the charge of misconduct against the Petitioner by examining M.W.1 to M.W.3 and by marking Ex.M1 to Ex.M10. The Petitioner also failed to prove the allegation of victimization by the Respondent-Management. So, the punishment awarded to the Petitioner is justified and the same is not disproportionate to the charge of misconduct of the Petitioner. Hence, the Petitioner is not entitled to claim any relief against the Management and the Petition filed by the Petitioner is liable to be dismissed."

5. Heard the learned counsel for the parties and perused the material documents available on record.

6. It is seen that the requisite qualification for the post of Driver in the 2nd Respondent/Transport Corporation is pass in Eighth standard with necessary licence to drive the vehicle. On going through Ex.M1 series, which includes the Transfer Certificate produced by the Petitioner to the 2nd Respondent/Transport Corporation at the time of joining the Management, it is seen that the Petitioner had discontinued his studies while studying 9th Standard.

7. On going through the records, it is further seen that the Headmistress of the School, where the Petitioner studied, has sent a letter dated 06.03.1998 to the 2nd Respondent/Transport Corporation, wherein, it is stated that the Petitioner was detained in 8th Standard in 1975-76 and he discontinued his studies in the year 1976-77. To establish the stand of the 2nd Respondent/Corporation, one Shanthi, Headmistress of G.Varadharajulu Chettiar Higher Secondary School was examined as M.W.3. Thus, the Labour Court, came to the

conclusion that the charge of misconduct against the Petitioner is proved and accordingly, upheld the order of dismissal passed by the 2nd Respondent/Transport Corporation.

8. In view of the foregoing, this Court opines that the plea of victimization has not been established by the Petitioner/employee before the Labour Court. As the School Certificate produced by the Petitioner is a fabricated one, the Labour Court has rightly rejected his case. Hence, this Court does not find any perversity in the Award of the Labour Court, as the conclusion arrived upon is based on the oral and documentary evidence.

Accordingly, the Writ Petition fails and stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

(aeb)

To:

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Vellore, Vellore District.
2. The Management,
Tamil Nadu State Transport Corporation,
(Villupuram Division - II) Ltd.,
Rangapuram, Vellore - 9.

+lcc to Mr.V.Ajaykhose, Advocate Sr.66075

+lcc to Antony Arokiyaraja, Advocate Sr.65080

W.P.No.24532 of 2013

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srg 28/09/2019