

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2019

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THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.34272 of 2013
and
M.P.Nos.1 of 2013 & 2 of 2014

The Management
Tamil Nadu State Transport Corporation (Salem) Ltd.,
Dharmapuri Division,
Rep.by its Assistant Manager (Legal),
Dharmapuri. Petitioner

Vs.

1. The Presiding Officer,
Labour Court,
Salem.
2. L.Mani Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of writ of Certiorari to call for the records of the order passed by the first respondent in I.D.P.No. 20 of 2007, dated 03.01.2013 and to quash the same as illegal.

For Petitioner : Mr.R.K.Gandhi

For Respondent : Mr.K.V.Shanmuganathan for R2

R1 : Court

O R D E R

The Petitioner/Management challenges the Award of the Labour Court dated 03.01.2013 in I.D.No.20 of 2007. The sum and substance of the issue on hand is that the workman had issued tickets of Rs.2/- to 26 passengers and obtained Rs.52/- towards the said tickets, which are found to be already sold and thereby, the employee misappropriated the money. That apart, it has been stated that there was an additional sum of Rs.315.50 in his hand bag. The serious misconduct committed by the employee warrants dismissal from service as he has committed an act causing loss to the corporation and bring down the reputation of the corporation.

2. The Management has contended that the tickets have been punched and the said tickets were reissued to the passengers. However those individual passengers have not been examined. The Labour Court pointed out that statement has not been obtained from all the 26 women passengers, who were issued with expired tickets. Further, one Lakshmi had submitted a letter/complaint with statement obtained from other 10 passengers. It is further pointed out by the Labour court that out of 26 passengers, only 10 passengers have put their signatures in the complaint and therefore, it cannot be held that all the said 26 passengers have been issued with old tickets. It is also held that none of the said passengers have been produced before the court to prove the allegation that the said sold tickets have only been issued to them at the time of occurrence. In such view of the matter, the Labour Court has come to the conclusion that there was a doubt in the act of the Management with regard to the charges framed against the workman, though those charges were held to be proved in the domestic enquiry.

3. The case of the petitioner/Management was that the workman had excess sum of Rs.315/- in his bag. However, no iota of evidence has been produced to show that the employee defrauded the Transport Corporation to the extent of Rs.315/-, since the allegation is that he had issued the sold tickets to the extent of Rs.52 [Rs.2/- tickets to 26 passengers, total comes to Rs.52/-]. Therefore, the allegation that he had excess sum of Rs.315/- in his bag and thereby he defrauded the transport corporation could not be accepted. By selling old tickets at Rs.2/- per ticket, there cannot be excess amount of Rs.315/- in his bag, as the total amount does not tally.

4. The Labour Court came to the conclusion that charges against the employee have not at all been established. The Management would contend that the petitioner had 35 past records and the Labour Court ought not to have interfered with the Punishment. I am not inclined to accept the contention of the Management as the Labour Court after analysing the evidence, came to the conclusion that charges are not at all established. It is no doubt true that the complainant has not been examined. Even though it is not mandatory that the complainant should be examined, even a hearsay evidence is admissible in the domestic enquiry, the Labour Court has disbelieved the version of the Management and found that the charges are not held to be proved. This court, cannot reappraise the evidence and come to a different conclusion. More so, even a wrong finding of fact cannot be interfered with in terms of the judgment of the Hon'ble Kerala High Court in the case of Instrumentation Employees' Union vs Labour Court, Kozhikode, reported in 1993

(I) LLN 75, following the judgment of the Hon'ble Supreme Court in the case of Syed Yakoob vs. K.S.Radhakrishnan (AIR 1964 SC 477), wherein it has been held as under:-

" 16. As pointed out by the Supreme Court in Syed Yakoob Vs. K.S.Radhakrishnan (AIR 1964 SC 477), the jurisdiction of the High Court to issue writ of certiorari or direction under Art.226 or Art.227 of the Constitution of India is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. Findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal has erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which had influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari under Art.226 or Art.227 of the Constitution of India."

5. From the above, it is clear that even a wrong finding cannot be interfered with by this court by issuing a writ of certiorari. That apart in this case, the Labour Court has deprived backwages on the ground that the employee was negligent in his work, which is not at all the charge. However, the employee has not filed any Writ Petition challenging the denial of backwages. In fact, the Labour court has duly safeguarded the interest of the corporation by denying backwages. It has been stated by the learned counsel for the workman that the workman is entitled to get wages under Section 17-B of the Industrial Disputes Act, 1947 during the dispute and as on date, the workman has not been reinstated.

6. As stated supra, since the Labour Court has rendered a finding of fact and deprived backwages and granted reinstatement with continuity of service. I find that there is no perversity or error in the Award and the grounds raised by the Management sans merit. Hence, the Writ Petition is dismissed as devoid of merits.

7. The 2nd respondent/employee is entitled to all the benefits that has been granted by the Labour Court vide its Award dated 03.01.2013. The Award has to be implemented within forty five days from the date of receipt of a copy of the order. In the light of the decision of the Hon'ble Apex Court in the case of Tamil Nadu State Transport Corporation vs. Neethivilangan, Kumbakonam, reported in (2001) 9 SCC 99, it goes without saying that if any complaint is made by the Workman under Section 29 of the Industrial Disputes Act, 1947, persons falling under Section 32 of the I.D.Act, need to be prosecuted and the Government shall sanction prosecution taking note of the decision of Apex Court in the case of Rajkumar Gupta vs. Lt.Governor, Delhi reported in 1997 (1) LLJ 994. Once the prosecution is launched, the appropriate criminal court is expected to take up the matter and it shall proceed with the matter on a day-to-day basis without adjourning the matter beyond fifteen working days at any point of time so as to bring the issue to a logical end. It is made clear that if the admitted amount is not paid, it is open to the workman to seek remedy under Section 33(1) of the Industrial Disputes Act, 1947, in view of the decision of the Apex Court in the case of Fabri Gasosa Vs. Labour Commissioner, reported in (1997) 3 SCC 150 and in case of disputed amount, the computation lies only by invoking Section 33C(2) of the Industrial Disputes Act, 1947.

8. The Hon'ble Supreme Court in the case of The Life Insurance Corporation of India Vs. D.J.Bahadur and Others, reported in 1980 AIR 2181 had held that the Award or the Settlement would continue to be in force till such time the same is substituted by another Award or Settlement and there cannot be a delay in seeking prosecution, as cause of action is continuous one.

9. The Writ Petition is dismissed with the above direction. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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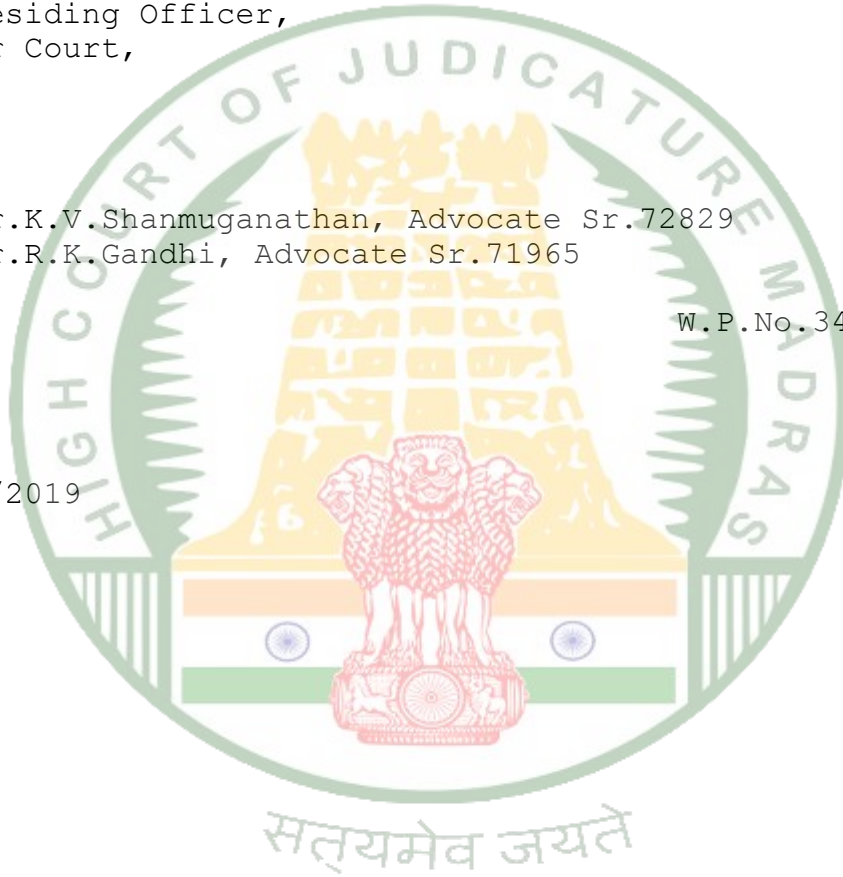
To

1. The Management
Tamil Nadu State Transport Corporation (Salem) Ltd.,
Dharmapuri Division,
Dharmapuri.
2. The Presiding Officer,
Labour Court,
Salem.

+lcc to Mr.K.V.Shanmuganathan, Advocate Sr.72829
+lcc to Mr.R.K.Gandhi, Advocate Sr.71965

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pvs[co]
srg 15/11/2019



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