

In the High Court of Judicature at Madras

Dated : 05.4.2019

Coram

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Appeal No.1217 of 2019 & CMP.No.8401 of 2019

The Chief Administrative Officer
(Construction), Southern Railway,
Egmore, Chennai-8.

...Appellant/Petitioner

Vs

1.E.Harikrishnan

2.The Central Government Industrial

Tribunal-cum-second respondent - Labour Court,
Chennai.

...Respondents/Respondents

APPEAL under Clause 15 of the Letters Patent against the
order dated 04.1.2019 made in W.P.No.15413 of 2011.

Prayer in WP.No.15413 of 2011:

Writ Petition filed under Article 226 of Constitution of
India praying for the issuance of a Writ of Certiorari, to call
for the records relating to the impugned order, dated 22/10/2010
passed in I.D.No.70 of 2009 on the file of the Central
Government Industrial Tribunal cum Labour Court, Chennai and to
quash the same.

For Appellant : Mr.P.T.Ramkumar

For Respondent-1 : Mr.N.G.R.Prasad for M/s.Row & Reddy

Judgment was delivered by T.S.SIVAGNANAM, J

We have heard Mr.P.T.Ramkumar, learned Senior Standing
Counsel for the appellant and Mr.N.G.R.Prasad, learned counsel
appearing on behalf of the first respondent - workman/caveator.

2. This appeal is filed by the appellant challenging an
order dated 04.1.2019 passed by the learned Single Judge in
WP.No.15413 of 2011 filed by the appellant challenging the award
of the second respondent - Labour Court in I.D.No.70 of 2009
dated 22.10.2010.

3. The first respondent herein - workman moved the Central Government questioning his termination from service effected by the appellant - management. The Central Government, Ministry of Labour, by order dated 02.7.2009, passed an order under Section 10(1)(d) of the Industrial Disputes Act, 1947 (for short, the Act) by referring the dispute as to whether the action of the appellant - management in terminating the services of the first respondent - workman was justified and if not, to what relief the first respondent - workman would be entitled.

4. Upon making a reference to the second respondent - Labour Court, the first respondent - workman filed a claim petition under Section 2A(2) of the Act. The appellant - management filed a counter statement resisting the claim made by the first respondent - workman apart from questioning the maintainability of the claim petition before the second respondent. However, the second respondent, by award dated 22.10.2010, held the termination of the first respondent - workman to be illegal and directed reinstatement of the first respondent - workman into service forthwith with back wages, continuity of service and all attendant benefits.

5. The said award dated 22.10.2010 was put to challenge by the appellant - management by filing the said writ petition. When the said writ petition was heard at the time of admission, an order of interim stay was granted on 16.8.2011 subject to a condition that the appellant management had to comply with the provisions of Section 17B of the Act upon the first respondent - workman filing an affidavit before the Competent Authority that he was not gainfully employed elsewhere. The first respondent - workman, having received the notice in the said writ petition, entered appearance and filed MP.Nos.2 to 4 of 2011 seeking to vacate the interim order and for directions to pay the last drawn wages together with back wages in its entirety. The learned Single Judge, by an order dated 15.11.2011, while making the interim order already granted absolute, directed the last drawn wages to be paid at the rate of Rs.8,894/- per month under Section 17B of the Act and also directed the entire back wages to be kept in deposit. It was further directed that the first respondent - workman was entitled to withdraw interest once in three months.

6. As against the order dated 15.11.2011 passed in MP.No.4 of 2011 in the said writ petition, filed by the first respondent - workman to pay the entire back wages, the appellant - management filed an appeal in WA.No.886 of 2012 and the First Bench of this Court, to which, one of us (TSSJ) was a party, by order dated 04.6.2012 in MP.No.1 of 2012, granted an order of stay of the direction to deposit the entire back wages while making it clear that the appellant - management should implement that portion of the order passed by the learned Single Judge directing payment of last drawn wages as provided under Section 17B of the Act.

7. It is submitted by the learned counsel for the appellant - management that the direction to pay last drawn wages under Section 17B of the Act has been complied with till date.

8. In the meantime, the said writ appeal filed by the appellant - management was dismissed on 15.7.2016 for non prosecution. Subsequently, CMP.No.14109 of 2016 was filed and by order dated 23.1.2018, the said writ appeal was restored upon payment of costs. Thereafter, the said writ petition was heard finally and by the impugned order dated 04.1.2019, it was dismissed.

9. Mr.P.T.Ramkumar, learned Senior Standing Counsel for the appellant - management has submitted that by the time the first respondent - workman was regularized as a driver, the service register was opened, in which, the caste/religion of the first respondent - workman was mentioned as Hindu Harijan, a scheduled caste and that the record was signed by the first respondent - workman. It is further contended that the first respondent - workman's brother is also employed as a driver in the railway administration and that in his service register, the community status has been mentioned as a backward community.

10. It is further submitted by the learned Senior Standing Counsel for the appellant - management that when the first respondent - workman was called upon to disclose his community status, he produced a certificate dated 11.4.1997 that he belongs to Hindu Adi Dravidar community. As per the procedure adopted in the Railway Administration, the said community certificate was sent for verification and ultimately, the Competent Authority namely the Scrutiny Committee found that the first respondent - workman did not belong to a scheduled caste community and that the District Collector canceled the said certificate by order dated 06.1.2001. Upon receipt of the said communication, in terms of Board's Circular No.175/1999 dated 24/28th September 1999, the services of the first respondent - workman were terminated forthwith by proceedings dated 17.11.2003.

11. It is submitted by the learned Senior Standing Counsel for the appellant that as against the order of termination, the first respondent - workman filed an appeal petition and parallelly moved the Central Administrative Tribunal (for brevity, the CAT) by filing OA.No.388 of 2004. The said original application was disposed of by the CAT by order dated 27.4.2004 directing the first respondent - workman to exhaust the appeal remedy and after noting that the Departmental appeal was pending, the CAT directed the same to be disposed of within two months. Pursuant to that direction, the Appellate Authority, by order dated 24.6.2004, dismissed the appeal petition. Thereupon, instead of approaching the proper forum, the matter stood referred to the second respondent - Labour Court.

12. It is further submitted by the learned Senior Standing Counsel for the appellant - management that the first

respondent - workman cannot agitate the correctness of the order of termination before the second respondent - Labour Court, that if he is aggrieved, he should have approached the proper forum and that if this procedure is allowed to stand, it will open flood gates before the second respondent - Labour Court. It is further submitted that this point was specifically canvassed by the appellant - management before the second respondent - Labour Court and that was not considered. It is also submitted that the question of issuance of show cause notice would not arise, as the termination was effected in terms of the said Board's Circular, which did not provide for any such procedure.

13. Furthermore, it is contended by the learned Senior Standing Counsel for the appellant that no useful purpose would be served by issuing the show cause notice since the first respondent - workman admitted that he did not belong to scheduled caste community and the certificate had been canceled. In addition to that, the conduct of the first respondent - workman has to be considered because in the year 1997, knowing fully well that he did not belong to scheduled caste community, he produced the certificate that he belongs to Hindu Adi Dravidar community.

14. It is further submitted by the learned Senior Standing Counsel for the appellant - management that the order of termination ought not to have been quashed by the second respondent - Labour Court and that the learned Single Judge committed an error in rejecting the said writ petition and held that the appellant - management had taken six year to terminate the services of the first respondent - workman when action was immediately initiated and the termination order was issued within less than three years from the date, on which, the community certificate was canceled. It is also contended that the learned Single Judge did not consider the jurisdictional aspect, which was raised by the appellant - management in the said writ petition. Alternatively, it is submitted that there had been a delay of six years to raise the dispute and that the Tribunal ought not to have awarded back wages for the period from 2003 to 2009.

15. In that regard, the learned Senior Standing Counsel for the appellant - management has placed reliance on the decision of the Hon'ble Supreme Court in the case of Gurmail Singh Vs. Principal, Government College of Education [reported in 2000 (1) LLJ 1080].

16. Per contra, Mr.N.G.R.Prasad, learned counsel appearing for the first respondent - workman submits that the workman did not secure employment based on his community status and in such circumstances, the said Board's Circular referred to by the appellant - management will have no application. According to the learned counsel, the second respondent - Labour Court rightly held that before termination, no opportunity was granted and that there had been gross violation of the principles of natural justice.

17. Further, according to Mr.N.G.R.Prasad, learned counsel, the first respondent - workman should not be blamed for approaching the second respondent - Labour Court in 2008-09 because he had been pursuing his remedy by filing a mercy petition in the year 2005, that the result of the mercy petition was not made known, that only in the year 2009, after securing information under the Right to Information Act, he came to know that the mercy petition was already dismissed in the year 2006 and that immediately thereafter, he approached the Central Government for referring the dispute before the second respondent - Labour Court. It is further submitted that in terms of Section 2A of the Act, a railway company is an appropriate Government and that the first respondent - workman is entitled to raise a dispute.

18. We have carefully considered the contentions raised by the parties and perused the materials on record.

19. The first objection raised by the appellant - management is with regard to the maintainability of the industrial dispute before the Tribunal.

20. It may be true that the first respondent - workman had initially approached the CAT, but subsequently after rejection of his Departmental appeal petition, he approached the Central Government. In turn, the Central Government, Ministry of Labour and Employment, Government of India considered his application and referred the dispute to the second respondent - Labour Court under Section 10(1)(d) of the Act.

21. The dispute, which was referred for adjudication, was as to whether the action of the appellant - management in terminating the services of the first respondent - workman was justified and if not, to what relief the first respondent - workman would be entitled. Admittedly, the appellant - management did not challenge the order of reference. The Tribunal cannot go beyond the terms of reference. Thus, if one of the issues was with regard to maintainability of the dispute before the second respondent - Labour Court and had it been referred to second respondent - Labour Court for adjudication, the same can be taken up. The same having not been done, the first respondent - workman cannot be non suited for having chosen the remedy under the Act. Therefore, the said contention stands rejected.

22. Consequently, it is contended by Mr.P.T.Ramkumar, learned Senior Standing Counsel that the appellant - management was entitled to terminate the services of the employee forthwith after having found that the community certificate was false. In this regard, the appellant - management referred to the said Circular namely PBC No.175 of 1999 dated 28.9.1999.

23. As rightly pointed out by Mr.N.G.R.Prasad, learned counsel appearing for the first respondent - workman, the said circular can be made applicable and action can be taken against the railway employees, who were found to have secured

appointment by producing false caste/community status certificate. Admittedly, in this case, the first respondent - workman did not secure employment by producing such a community certificate. Furthermore, the first respondent - workman was penalized based on the entry made in the service register, when he was absorbed as a permanent employee. Even before the second respondent - Labour Court, the witness on the side of the appellant - management stated that he did not know as to who filled up the relevant details in the service register though there was a signature of the first respondent - workman.

24. Admittedly, the workman studied upto 8th standard. Therefore, the second respondent - Labour Court was right in its observation that the said document should not have been put against the first respondent - workman and that too, without issuing any show cause notice and without affording any opportunity to the first respondent - workman.

25. With regard to the plea that at least, back wages should have been denied for the period between 2003 and 2009, this aspect had been clearly brought out in the reply statement filed by the first respondent - workman to the counter statement filed by the appellant - management before the second respondent - Labour Court wherein it had been clearly stated that only on 20.8.2009, after obtaining information under the Right to Information Act, the first respondent - workman came to know that his mercy petition had been rejected. Hence, the time taken after the order of dismissal till raising the dispute cannot be put against the first respondent - workman.

26. As pointed out earlier, the appellant - management, having not challenged the terms of reference, is estopped from contending that the second respondent - Labour Court has no jurisdiction. This question could not have been tested by the Writ Court because the Writ Court was testing the correctness of the order passed by the second respondent - Labour Court and the second respondent - Labour Court was required to test the matter referred to it. Therefore, if at all the appellant - management was aggrieved, it should have challenged the order of reference dated 02.7.2009, which was passed by the Central Government, Ministry of Labour and Employment. For the above reasons, we find the award passed by the second respondent - Labour Court to be just and fair.

27. The learned Single Judge had gone into the aspects and found that there was no error in the decision making process. Unfortunately, the jurisdiction of this Court to interfere with the award passed by the second respondent - Labour Court is very limited and unless it is established that there is absolute perversity in the approach of the second respondent - Labour Court, this Court cannot step in and interfere with the award and more so when the award is a reasoned award. The decision in the case of Gurmail Singh cannot be applied to the facts of the present case, which we have elaborately set out in the preceding

paragraphs. For the above reasons, we hold that the appellant - management has not made out any case for interference.

28. Accordingly, the writ appeal is dismissed. No costs. Consequently, the connected CMP is also dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Central Government Industrial Tribunal-cum-Labour Court,
Chennai.

+1cc to Mr.P.T.Ramkumar, Advocate, S.R.No.33761
+1cc to M/s.Row and Reddy, Advocate, S.R.No.33623

WA.No.1217 of 2019&
CMP.No.8401 of 2019

GJ(CO)

RRS(27/05/2019)



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