

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.268 of 2014

The General Manager,
Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Villupuram - 605 602.

... Petitioner

vs.

1. The Special Deputy Commissioner of Labour,
D.M.S.Compound,
Chennai.

2. P.Kasinathan

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorari, to call for the records of the 1st Respondent made in A.P.No.141 of 2010, dated 27.12.2012 and to quash the same as illegal.

For Petitioner : Ms.Rajeni Ramadoss

For 2nd Respondent : Mr.S.T.Varadarajulu
R1 : Court

O R D E R

Challenging the order dated 27.12.2012 passed by the 1st Respondent in A.P.No.141 of 2010, the Petitioner/Transport Corporation has come up with the present Writ Petition.

2. It is seen that the 2nd Respondent was working as a Conductor in the Gingee Depot of the Petitioner/Transport Corporation. While he was on duty on 10.06.2008 in Route No.451/A, Checking Inspectors of the Petitioner/Transport Corporation found that the 2nd Respondent resold used six tickets bearing Nos.MPAE1-0717144 to 71749 to the passengers who travelled in the said vehicle, collected Rs.95/- each and corrected the invoice as 71744, which was originally 71750 and further found an excess amount of Rs.52.50 in the cash bag. For

the said misconduct, the Petitioner/Transport Corporation issued a Charge Memo dated 15.06.2008 to the 2nd Respondent, to which, he submitted his explanation dated 25.06.2008. As the explanation was not satisfactory, the Petitioner/Transport Corporation conducted a Domestic Enquiry and the Enquiry Officer submitted his Report, holding that the charges against the 2nd Respondent are proved.

3. Thereafter, the Petitioner/Transport Corporation issued a second Show Cause Notice dated 29.09.2008 to the 2nd Respondent along with the copies of the findings of the Enquiry Officer and the 2nd Respondent offered his explanation dated 09.10.2008 to the same. According to the Petitioner/Transport Corporation, the said explanation did not contain any valid reasons and hence, they issued a dismissal order dated 28.10.2008 against the 2nd Respondent along with one month wages of Rs.10,694/- as per Section 33(2) of the Industrial Disputes Act, 1947. Simultaneously, Approval of dismissal of the 2nd Respondent was sought by the Petitioner/Transport Corporation in A.P.No.141 of 2010 under Section 33(2)(b) of the Act, before the 1st Respondent/Special Deputy Commissioner of Labour, Chennai. However, the said Approval Petition was rejected on the ground that prima facie case was not made out. Challenging the same, the Petitioner/Transport Corporation is before this Court.

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

5. Though the 2nd Respondent/workman was dismissed from service on 28.10.2008, the Petitioner/Transport Corporation came up with the Approval Petition in A.P.No.141 of 2010, belatedly. As there was non-compliance of the procedures contemplated under Section 33(c) of the Act, the 1st Respondent has rejected the Approval Petition, which cannot be found fault with.

6. Since the Approval Petition was rejected, the 2nd Respondent/workman is deemed to be in service, as, this Court in the case of Tata Iron And Steel Company Ltd. vs G. Ramakrishna Ayyar reported in 1950 LLJ 1043, has held that the order passed by the Labour Court/Tribunal rejecting the Approval Petition is more effective than the order of reinstatement passed in an industrial dispute, as rejection of Approval Petition would mean that the employee is deemed to be in service and that he would be entitled to all the benefits.

7. Taking note of the said decision and considering the fact that the 2nd Respondent/workman has put in nearly 24 years of service, this Court is of the view that he would be entitled to backwages and all other attendant benefits from the date of dismissal from service, i.e. 28.10.2008 till the date of his

superannuation, i.e. 30.06.2011, after adjusting one month wages of Rs.10,694/-, which was disbursed to him as per Section 33(2) of the Industrial Disputes Act, 1947.

8. It is seen that as per the interim order dated 22.07.2015 passed by this Court in M.P.No.1 of 2014 and M.P.No.1 of 2015 in W.P.No.268 of 2014, the 2nd Respondent/workman was permitted to withdraw 25% backwages deposited in A.P.No.141 of 2010. That apart, an Affidavit dated 20.08.2019 has been filed by the 2nd Respondent/workman before this Court today, wherein, he has agreed to receive Rs.3,00,000/- alone for the non-employment period from 28.10.2008 to 30.06.2011.

9. In view of the said Affidavit filed by the 2nd Respondent/workman, the order dated 27.12.2012 passed by the 1st Respondent in A.P.No.141 of 2010 is confirmed, making it clear that the amount already received by the 2nd Respondent/workman shall be deducted from the agreed backwages of Rs.3,00,000/- (Rupees Three Lakhs only) payable to him. It is further made clear that if any excess amount is lying to the credit of the said Approval Petition, the same shall be deposited to the credit of the Petitioner/Transport Corporation. The said exercise shall be completed within a period of 45 days from the date of receipt of a copy of this order.

This Writ Petition is dismissed with the above direction and observation. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

The Special Deputy Commissioner of Labour,
D.M.S. Compound, Chennai.

+1cc to Ms.Rajeni Ramadoss, Advocate, S.R.No.72092
+1cc to Mr.S.T.Varadarajulu, Advocate, S.R.No.71005

W.P.No.268 of 2014

MP(CO)
CS/09/10/2019