



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
23.10.2019	07.11.2019

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CORAM:

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI**

W.A. (MD) No.735 of 2013

K.V.Mani

... Appellant

-VS-

1. The Management of
Tamil Nadu State Transport,
Corporation (Madurai) Ltd.,
Madurai-10.

2. The Presiding Officer,
Labour Court,
Madurai.

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 15.06.2009, passed in W.P.(MD) No.5490 of 2005.

Prayer in WP(MD) . 5490/ 2005 :

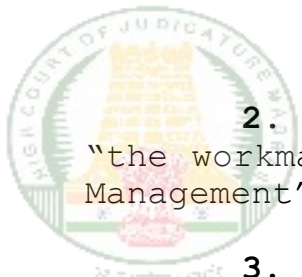
Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of CERTIORARI to call for the records of the 1st Respondent in his Proceedings in No.120/94 dated 16.12.2003 and quash the same.

For Appellant : Mr.S.Arunachalam
For Respondents : Mr.J.Senthil Kumaraiah for R1
R2 - Labour Court

J U D G M E N T

T.S.SIVAGNANAM, J.,

The writ petitioner in W.P.(MD) No.5490 of 2005 is the appellant before us challenging the order dated 15.06.2009, passed in the said writ petition filed by the first respondent herein.



2. In this Judgment, the appellant shall be referred to as "the workman" and the first respondent shall be referred to as "the Management".

3. The Management filed W.P.(MD) No.108 of 2005 challenging the award, dated 16.12.2003, passed by the second respondent herein in I.D.No.120 of 1994. The workman challenged the very same award, insofar as it denies backwages and attendant benefits to him, by filing W.P.(MD) No.5490 of 2005.

4. The writ petition, in W.P.(MD) No.108 of 2005, filed by the Management was dismissed and no appeal has been preferred against the order of dismissal. The writ petition in W.P.(MD) No.5490 of 2005 filed by the workman was also dismissed and this is why, the workman is before this Court by way of this writ appeal.

5. We have heard Mr.S.Arunachalam, learned counsel appearing for the workman and Mr.A.P.Muthupandian, learned counsel appearing for the Management.

6. The case of the workman is that the Labour Court, having set aside the order of dismissal from service passed by the Management, ought to have granted backwages, if not the entire backwages, but at least a portion of the backwages. In this regard, the workman referred to the decision of the Honourable Supreme Court in the case of ***U.P.State Road Transport Corporation and others vs. Shivaji***, reported in ***2007 I CLR 230***, to state that the Labour Court should have at least restricted the backwages to 50%. The learned Writ Court has rightly pointed out that award of backwages is not automatic in the event of reinstatement, but, it depends on the facts and circumstances of each case. Noting that on account of the accident caused by the workman while driving the bus owned by the Management, one pedestrian and one bullock were killed and that the workman having been a driver would have earned his livelihood after the dismissal from service, the Writ Court held that the workman is not entitled for backwages.

7. The case of the workman is that there is no evidence placed before the Labour Court that he was gainfully employed, after dismissal from service by the Management or during the pendency of the dispute before the Labour Court. Further, it is the case of the workman that the learned Writ Court ought to have granted at least a portion of the backwages as denial of backwages will disentitle the workman to count the period of his non-employment as service period to claim the benefit of pension and consequently, he will be put to irreparable loss and hardship.

8. The learned counsel appearing for the workman submitted that the workman, as of now, has agreed that he will not press the claim for backwages, however, if attendant benefits are notionally

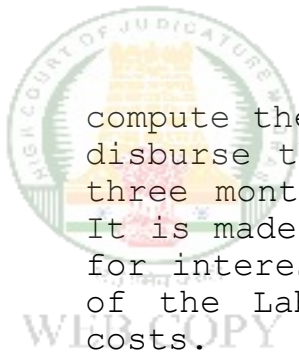


extended, he will be able to get pension and if the attendant benefits are extended, then, while computing the terminal benefits, there will be an advantage to the workman.

9. We have perused the award passed by the Labour Court, dated 16.12.2003, wherein the Labour Court set aside the order of termination, dated 25.09.1993 and held that the workman is entitled for reinstatement with continuity of service and without backwages. The decreetal portion of the award clearly states that the Management should reinstate the workman with continuity of service and without backwages. The Labour Court having granted continuity of service and the award having attained finality, for all purposes, other than the backwages, the workman should be treated as a workman deemed to have been in service during the period of non-employment. The consequence, which will naturally flow from such a direction is that the workman will be entitled for attendant benefits, but, cannot claim backwages as that has been denied by the Labour Court. Therefore, if the Management has understood the award in a different manner, it is incorrect. In other words, the correct interpretation would be to reinstate the workman in service granting continuity of service that would mean that he was deemed to have been in employment and if he is deemed to have been in employment, he would be entitled to backwages and other attendant benefits. But, backwages have been denied by the Labour Court in the award. Therefore, the workman cannot claim backwages, but, can claim all attendant benefits, which flow from the order of reinstatement, which shall be effective from the date of order of dismissal. This would be the correct way of interpreting the award. In fact, the award having been confirmed by the learned Writ Court, in our opinion, the appellant cannot be aggrieved by the finding, especially, when before us the workman has unconditionally given up his challenge to the denial of backwages in this appeal.

10. The learned counsel for the workman submitted that if attendant benefits are notionally extended, then, the Management should be directed to pay the employer's contribution towards the provident fund. In our considered view, such a prayer is reasonable, more so when the workman was terminated from service during 1993, raised the dispute in the year 1994, which was disposed of by the Labour Court in the year 2003, which award was challenged by the Management by filing a writ petition in the year 2005, which was disposed of the learned Writ Court in the year 2009, after which the present writ appeal was filed in the year 2013 and disposed of by us by this Judgment.

11. In the result, the writ appeal is disposed of by directing the respondent Management to reinstate the workman in service in terms of the award of the Labour Court; extend all attendant benefits notionally to him, except backwages; remit the employer's contribution towards provident fund and consequently,



compute the terminal benefits and pension payable to the workman and disburse the same as expeditiously as possible, but not later than three months from the date of receipt of a copy of this Judgment. It is made clear that the workman is not entitled to make any claim for interest as the order of reinstatement is pursuant to the award of the Labour Court, which was affirmed by the Writ Court. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

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To:

1. The Presiding Officer,
Labour Court,
Madurai.
- 2.The Management of
Tamil Nadu State Transport,
Corporation (Madurai) Ltd.,
Madurai-10.

+1 CC to M/s.J.SENTHIL KUMARAI AH, Advocate SR-97062.

JUDGMENT

IN

W.A. (MD) No.735 of 2013

07.11.2019

CS(19.11.2019) 4P 4C