



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.06.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.(MD)No.4260 of 2010

R.Prabhakaran

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Cuddalore,
Tanjore Camp.

2.The Management of Tamil Nadu
State Transport Corporation (Kumbakonam) Limited,
Rep. by its General Manager,
Kumbakonam.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records from the first respondent Labour Court relating to the award dated 23.12.2009 in I.D.No.60 of 2003 of the first respondent, quash the same and consequently, to direct the second respondent to reinstate the petitioner in service with backwages, continuity of service and all other attendant benefits.

For Petitioner : Mr.S.Arunachalam
For R - 2 : Mr.D.Sivaraman

ORDER

The petitioner has filed the above Writ Petition to issue a Writ of Certiorarified Mandamus, to call for the records relating to the award dated 23.12.2009 passed in I.D.No.60 of 2003 on the file of the first respondent and to quash the same and consequently, directing the second respondent to reinstate the petitioner in service with backwages, continuity of service and all other attendant benefits.

2.The learned counsel appearing for the petitioner submitted that the petitioner was appointed as conductor in the second respondent Corporation in the year 1987 and he rendered his service without any blemish. While so, he was dismissed from service by order dated 14.07.1995 on the charge of absence from duty. As he was deprived from his livelihood, the petitioner requested the second respondent to reinstate him in service. Accepting his request, the second respondent agreed to provide employment. Accordingly, as per the settlement dated 21.10.1995 under Section 18(1) of the Employees' State Insurance Act, the second respondent agreed to appoint the



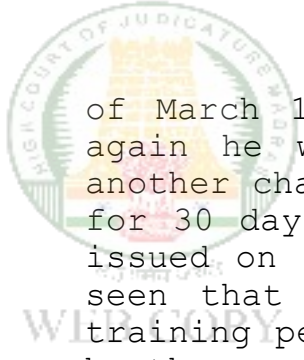
petitioner as fresh entrant as conductor (trainee) with consolidate monthly payment of Rs.1,500/- and a separate order of appointment dated 27.12.1995 was also issued to the petitioner and the training period was for six months. Due to illness, the petitioner was unable to attend the duty from April, 1996 and informed the same to the second respondent.

3.While the petitioner was under treatment, the second respondent issued a charge-memo alleging that he was absent from work for 21 days in March 1996, 31 days in April, 1996 and 30 days in May, 1996. Thereafter, the second respondent, without conducting any enquiry on the charge of absence from duty, discharged the petitioner from service by order dated 14.06.1996. Hence, the petitioner raised an Industrial Dispute under Section 2 of the Industrial Disputes Act, which was taken on file in I.D.No.60 of 2003 before the Labour Court, Cuddalore, the first respondent herein. The Labour Court, Cuddalore, by an award dated 23.12.2009 dismissed the petition holding that the petitioner was not entitled to get any relief. Challenging the same, the petitioner has filed the Writ Petition.

4.The second respondent has filed the counter-affidavit and it is stated that the petitioner was appointed as conductor on 21.08.1989 in the second respondent Corporation. Due to the unauthorised absent of the petitioner, he was dismissed from service on 14.07.1995. The petitioner preferred an appeal and as per the mutual consent of both parties, an agreement was entered into between the parties and the petitioner was appointed as conductor (trainee) as fresh entrant. Again due to his unauthorised absent, the petitioner was dismissed from service by order dated 14.06.1996. The petitioner raised an Industrial Dispute and the same was also dismissed. It is further stated an employee on probation can be terminated summarily. Services of probationer can terminate his services when not found suitable and the object in engaging probationer can terminate his services if found unsatisfactory and the petitioner is not entitled for reinstatement with continuity of service, back wages and other attendant benefits and prayed for dismissal of the Writ Petition.

5.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the second respondent.

6.From the materials available on record, it is seen that the petitioner joined duty as conductor on 21.08.1989 in the second respondent Corporation and due to his unauthorised absence, without obtaining prior permission, the petitioner was dismissed from service by the second respondent on 14.07.1995. Accepting the request of the petitioner to reinstate in service, an agreement was entered into between the parties under Section 18(1) of the Industrial Disputes Act, 1947 on 21.10.1995 and the second respondent by proceedings dated 14.06.1996 appointed the petitioner as conductor (trainee) as fresh appointee. Thereafter, the



of March 1996, for which a charge-memo was issued on 01.04.1996, again he was absent during the month of April, 1996, for which another charge-memo was issued on 30.04.1996 and again he was absent for 30 days during May, 1996, for which third charge-memo was also issued on 03.06.1996. From the evidence available on record, it is seen that the petitioner was absent for three months during the training period, hence, he was dismissed from service on 14.06.1996 by the second respondent.

7. Further, before a probationer is confirmed, the authority concerned is under an obligation to consider whether the work of the probationer is satisfactory or whether he is suitable for the post. In the absence of any rules governing a probationer in this respect, the authority may come to the conclusion that on account of inadequacy for the job or for any temperamental or other object not involving moral turpitude, the probationer is unsustainable for the job and hence must be discharged.

8. In the appointment order issued to the petitioner, dated 27.12.1975, it is stated as follows:

'1. The period of training shall be for six months. He will be paid a sum of Rs.1,500.00 per month as consolidated pay during the training period.

2. After satisfactory completion of six months training, he will be appointed as Conductor on daily wages.

3. The training period will not be taken into account for service.

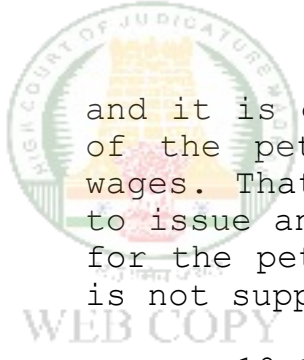
4. He should be prepared to work anywhere in the area of operation of the Corporation. He should observe all the Rules and Regulations and standing orders of the Corporation as prescribed from time to time.

5. If he is involved in any criminal cases or if his character and antecedent are found to be not satisfactory, his services will be dispensed with.

6. If his performance is found to be not satisfactory during the training period, his service will be dispensed with, without assigning any reason.

7. He will not go in litigation with the Management in future for the past service.'

9. The petitioner signed and received the same on 23.01.1996. That being the case, the petitioner has not attended the work for a period of 21 days during the month of March 1996, for a period of 31 days in the month of April 1996 and for a period of 30 days during the month of May 1996. The petitioner has absented for a period of three months during the training period, which is a temporary post and he has also violated the undertaking given by him. The petitioner was appointed as a fresh entrant as Conductor (trainee)



and it is only a temporary post and only after satisfactory conduct of the petitioner, he will be absorbed as a Conductor on daily wages. That being the case, the petitioner cannot claim as a right to issue any notice. The contention of the learned counsel appearing for the petitioner that the petitioner was not allowed to join duty is not supported by any material and the same cannot be accepted.

10. Accordingly, the Court below has rightly found that the petitioner was engaged as a trainee and he has no right to get employment as in the case of permanent employment and as such, the petitioner has deliberately violated the terms and conditions of the Settlement entered into between the Management and the petitioner and he was rightly dismissed from duty. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (Crl Side)

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Sub Assistant Registrar(CS)

Ps

To

1.The Presiding Officer,
Labour Court,
Cuddalore,
Tanjore Camp.

2.The Management of Tamil Nadu
State Transport Corporation (Kumbakonam) Limited,
Rep. by its General Manager,
Kumbakonam.

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-13055[F] dated 03/06/2020)

W.P. (MD) No.4260 of 2010
03.06.2020

KK(10.06.2020) 4P 4C