



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.08.2020
(Reserved on 24.02.2020)

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)Nos.1905 of 2013 and 8104 of 2012
and

M.P(MD)No.2 of 2012, 2 of 2013 and WMP(MD)No.15192 of 2016

The Management through the General Manager,
Tamil Nadu State Transport Corporation,
Raniothottam, Nagercoil,
Kanyakumari District.

... Petitioner in both WPs

vs.

1)The Presiding Officer,
The Labour Court,
Tirunelveli.
2)A.Sornappan

... Respondents in both WPs

Prayer in W.P.1905/2013 : Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records from the 1st respondent Labour Court, Tirunelveli, relating to the impugned Award passed by it in I.D.No.27 of 2009 dated 16.06.2012 and quash the same in so far as the award to reinstate the 2nd petitioner into service and to pay his service benefit alone is concerned.

Prayer in W.P.8104/2012 : Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records from the 1st respondent Labour Court, Tirunelveli, relating to the impugned Award passed by it in I.D.No.27 of 2009 dated 08.05.2012 and quash the same and direct the 1st respondent Labour Court to give opportunity for the writ petitioner Corporation to the delinquent to submit the reply to the charges to furnish copies of the document relied by the Management and opportunity to the writ petitioner Management to examine their witness in the Labour Court itself to prove the charges against the delinquent de hors the absence of such a request by the writ petitioner Management before the Labour Court.



In both writ petitions

For Petitioner: Mr.K.Sathiya Singh

For R2 : Mr.Gnanagurunathan

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COMMON ORDER

W.P.1905/2013 has been filed for issuance of a Writ of Certiorari, calling for the records from the 1st respondent Labour Court, Tirunelveli, relating to the impugned Award passed by it in I.D.No.27 of 2009 dated 16.06.2012 and quash the same in so far as the award to reinstate the 2nd petitioner into service and to pay his service benefit alone is concerned.

2.W.P.8104/2012 has been filed for issuance of a Writ of Certiorarified Mandamus, calling for the records from the 1st respondent Labour Court, Tirunelveli, relating to the impugned Award passed by it in I.D.No.27 of 2009 dated 08.05.2012 and quash the same and direct the 1st respondent Labour Court to give liberty to the writ petitioner Corporation to direct the delinquent to submit his reply to the charges and to furnish copies of the document relied by the Management and opportunity to the writ petitioner Management to examine their witness in the Labour Court itself to prove the charges against the delinquent *de hors* the absence of such a request by the writ petitioner Management before the Labour Court.

3.The writ petitioner transport corporation would submit that the 2nd respondent/workman has raised industrial dispute in I.D.No.27/2009 before the 1st respondent Labour Court with the allegations that he was working as a permanent Conductor in the petitioner transport corporation; he has established a Labour Union; aggrieved by the improper allotment of work to the conductors and drivers in the name of Kamarajar Trade Union, in order to victimise him for his trade union activities, the petitioner transferred him; when one Thirvampalampillai, Branch Manager of the petitioner corporation received the bribe amount, the 2nd respondent made a complaint to the Police; the Police has registered a case against Thirvampalampillai; both the Branch Manager and General Manager insisted the 2nd respondent to withdraw the said complaint; since he refused to do the same, a false charge was framed as though he had not paid the daily collection amount of Rs.4,145.25/- on 12.10.2006 and has misappropriated the said amount. It was further averred in the I.D that in the enquiry, copies of documents relied on by the Management were not furnished to him; 4 Management side witnesses and the 2nd respondent were examined on the same day; no opportunity was given to the 2nd respondent to examine further witness in violation of the principles of natural justice; based on the enquiry



report, the 2nd respondent passed an order terminating the 2nd respondent from service; the 2nd respondent was not given opportunity to submit his explanation to the charges and therefore, he sought to set aside the dismissal order with reinstatement, backwages increment of salary and a sum of Rs.3,00,000/- as compensation.

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4.The writ petitioner transport corporation would further state that before the Labour Court, they filed counter contending that the Management has not victimised the 2nd respondent and he only made a false complaint to the Police as though the Branch Manager Thirvampalampillai has received the bribe amount and the Police after thorough investigation, has found the complaint as false. The petitioner corporation further averred that the 2nd respondent had not remitted the daily collection amount of Rs.4,145.25/- to the transport corporation and he has misappropriated it and therefore, a charge of misappropriation was framed against him. In spite of opportunity given, the 2nd respondent did not submit explanation to the charges and after serving copies of documents and after affording opportunity of cross examining four Management side witnesses, the charges framed against the 2nd respondent were held to be proved and even the domestic enquiry was conducted in the presence of the representative of the delinquent as requested by him and based upon the findings in the enquiry, the 2nd respondent was dismissed from service.

5.The writ petitioner transport corporation would further submit that the Labour Court has framed a preliminary issue whether the conduct of the domestic enquiry was fair and proper and has found that the domestic enquiry was bad for non furnishing of copies of documents and for not providing opportunity to the 2nd respondent to cross examine four Management side witnesses who were examined on the same day. Accordingly, the Labour Court passed the impugned award on the preliminary issue by award dated 08.05.2012 in I.D.No.27/2009 holding that domestic enquiry was bad and since the petitioner corporation did not ask for an opportunity to prove the charges levelled against the 2nd respondent, the Labour Court did not grant such liberty to the petitioner. Thereafter, on 16.06.2012 while deciding the main I.D., the Labour Court held that since the preliminary issue was decided holding that the domestic enquiry was bad, the dismissal order passed based on the defective enquiry report is also liable to be brushed aside and accordingly set aside the dismissal order by award dated 16.06.2012 and ordered reinstatement with other relief prayed in the I.D. Aggrieved by the award passed on the preliminary issue, W.P.8104/12 has been filed by the corporation and challenging the subsequent award setting aside the dismissal order and ordering reinstatement, W.P.1905/13 has been filed by the corporation.

6.Learned counsel for the petitioner corporation would submit that during the pendency of W.P.8104/12 filed before this Court
<https://hcservices.ecourts.gov.in/hcservices/>



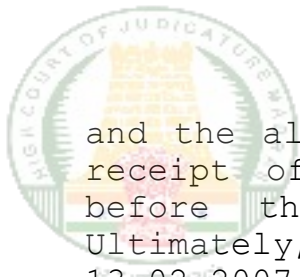
challenging the award passed on the preliminary issue, the Labour Court ought not to have disposed the main I.D based on the interim award which has not become final and binding. He would further state that even though the petitioner corporation did not ask for the opportunity to prove the charges against the 2nd respondent, it is statutory on the part of the Labour Court to provide the same. The Labour Court failed to consider the material fact that copies of documents were furnished to the 2nd respondent and despite opportunity, the 2nd respondent did not submit his explanation to the charges. The Labour Court also failed to note that the delinquent himself has endorsed in writing that the domestic enquiry was conducted by giving full opportunity to him and he did not object to the same. Thus, he would pray for setting aside the impugned awards with consequential prayer.

7.The learned counsel for the 2nd respondent/workman would submit that the Labour Court after considering the oral and documentary evidence on either side, has rightly found that the domestic enquiry was not conducted in a fair and proper manner and therefore, held that the dismissal order passed based on the outcome of such enquiry was also perverse and accordingly set aside the order of dismissal by allowing the I.D as prayed for. Thus, he would pray that the interference of this Court is not necessary.

8.Heard the learned counsel for the petitioner as well as the 2nd respondent.

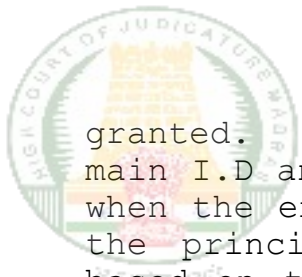
9.Perusal of record shows that the 2nd respondent was working as a Conductor in the petitioner transport corporation. The 2nd respondent would state that he established a labour union which was not liked by the Branch Manager of the petitioner corporation and on the complaint of the 2nd respondent regarding receipt of bribe by one Thiruvampalampillai, Branch Manager of the petitioner corporation, the said Thiruvampalampillai caught red handed and a case was registered against him by the Vigilance and Anti Corruption Department and the corporation authorities insisted the 2nd respondent to withdraw the said complaint and since he refused, he was transferred. Ultimately, in order to wreck vengeance, the petitioner corporation has framed the charge of misappropriation of daily collection amount of Rs.4,145.25/- for 12.10.2006 and finally, terminated the 2nd respondent from service, against which, the 2nd respondent has raised the industrial dispute before the Labour Court. The Labour Court framed a preliminary issue as to whether the enquiry was conducted in a fair and proper manner.

10.Perusal of record further shows that though it was admitted by both sides that a vigilance case had been filed against Thiruvampalampillai, it was closed subsequently which was not disputed by the 2nd respondent. The Labour Court found that there was no nexus between the above allegations made by the petitioner



and the alleged charge of misappropriation. Immediately after the receipt of charge memo, the petitioner has challenged the same before this Court in W.P(MD)No.9632/2006 and obtained stay. Ultimately, the said writ petition was dismissed by order dated 13.02.2007 and thereafter, the 2nd respondent was suspended from service and he was given enquiry notice and he attended the enquiry on 07.03.2007. In the enquiry, the charges were held as proved. Thereafter, the petitioner was issued with a second show cause notice directing him to submit his further representation on the findings of the enquiry officer and after receipt of his reply, he was terminated from service. Though the 2nd respondent contended that his representative was not allowed during the enquiry and the management side witnesses gave evidence by keeping a written paper with the help of the enquiry officer and appropriate questions were not posed against the witnesses, the Labour Court found from the enquiry proceedings that the 2nd respondent has signed the same in each and every page without any objection and therefore, held that the above allegations are baseless and it is only an afterthought.

11.The Labour Court held that it is not explained by the petitioner that after the dismissal of the writ petition of the 2nd respondent challenging charge memo, why they resorted to suspension without seeking for explanation from the 2nd respondent to the charges framed against him. The Labour Court also found from the enquiry report that out of the 9 documents marked, the copies of complaints made by MW2 to MW4 were important to the issue, but there is no proof to show that the same were served on the petitioner. To defend his case, the 2nd respondent should be served with those documents, but without serving the copies of the above complaints, the 2nd respondent was asked to cross examine the management side witnesses and therefore, the Labour Court has held that it has caused serious prejudice to the defence of the 2nd respondent. When the serious charge of misappropriation is levelled against the 2nd respondent, 4 management side witnesses were examined in a single day and on the same day, the 2nd respondent was also examined and the enquiry was concluded as charges proved. It was also the contention of the 2nd respondent that though he informed the enquiry officer that he has further witness to be examined, the enquiry officer did not accept the same and concluded the enquiry. Considering the above sequence of events, the Labour Court held that the enquiry was conducted in violation of principles of natural justice due to non providing of opportunity to the 2nd respondent to submit his explanation to the charges and also for not providing opportunity to examine further witnesses to prove his case. In view of the enquiry being held as bad and since the petitioner corporation did not ask for liberty to prove the charge levelled against the 2nd respondent, the Labour Court did not grant such liberty and accordingly decided the preliminary issue in favour of the 2nd respondent by interim award dated 08.05.2012. Challenging the interim award, the petitioner has filed W.P.8104/12 and there was no order of stay



granted. Thereafter, on 16.06.2012, the Labour Court took up the main I.D and held that there was no new evidence to be examined and when the enquiry conducted has already been decided as violative of the principles of natural justice, the termination order passed based on the outcome of such enquiry also will met the same fate. Accordingly, the Labour Court set aside the order of termination and ordered reinstatement with continuity of service, backwages and all consequential benefits, where I do not find any infirmity to interfere.

12.Hence, both the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2020

Sub Assistant Registrar(CS)

To

The Presiding Officer,
The Labour Court,
Tirunelveli.

+1 CC to M/s.M/S.M.GNANAGURUNATHAN, Advocate (SR-14027[F]

COMMON ORDER MADE IN
W.P(MD)Nos.1905 of 2013 and 8104 of 2012
DATED : 12.08.2020

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SDS (19.08.2020) 6P-3C