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IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 26.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.Nos.29713 of 2005 and 6520 of 2006
(Through Video Conference)

W.P.No.29713/2005

State Express Transport Corporation (Tamilnadu) Ltd.,
Rep. by its Managing Director,
Chennai. ...Petitioner

Vs

1.The Presiding Officer,
Labour Court,
Salem.

2.Balakrishnan ...Respondents

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India to issue a Writ of Certiorari to call for
the records of the first respondent in I.D.No.452/2000 dated
27.10.2004 and quash the same.

For Petitioner : Mr.K.Kathiresan

For Respondent-2 : M/s.V.Ajay Khose

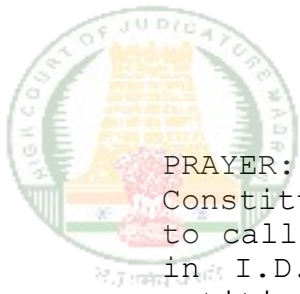
W.P.No.6520/2006

A.Balakrishnan ...Petitioner

Vs

1.The Presiding Officer,
Labour Court,
Salem.

2.State Express Transport Corporation (Tamilnadu) Ltd.,
Rep. by its Managing Director,
Chennai. ...Respondents



PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the award dated 27.10.2004 in I.D.No.452/2000, quash the same insofar as depriving the petitioner entire back wages and consequently direct the 2nd respondent to pay the petitioner full back wages for the period of non-employment together with interest.

For Petitioner : M/s.V.Ajay Khose

For Respondent-2 : Mr.K.Kathiresan

O R D E R

The present writ petitions have been filed by the Management as well as the employee respectively challenging the award of the labour Court in I.D.No.452/2000 dated 27.10.2004.

2. The employee joined the services of the Management in the year 1979 and he was issued with a charge memo on 19.05.1998 on the ground that there was misappropriation of Rs.78/-. The employee had received the said amount for issuance of tickets and that the tickets have not been issued by him. When the Checking Inspector has given a report, the employee had created a drama and tried to shift the burden on the Management. During enquiry, the charges were proved and he was imposed with a punishment of dismissal from service vide order dated 14.03.1999.

3. In the industrial dispute, the labour Court accepted the contention of the employee that domestic enquiry has not been conducted fairly and accordingly, the same has been interfered with. The said finding has not been questioned by the Management and the final award is challenged now. The Management was also not given an opportunity to let in fresh evidence. As the Management did not take a plea in the counter that in case the domestic enquiry has held to be not fair and proper, they must be given an opportunity to let in evidence.

4. Based on the records and that there was no evidence to establish the charges, the labour Court interfered with the punishment and set aside the same and reinstated him without back wages however, with continuity of service and other attendant benefits, which shall be extended to the employee within a period of three months.

5. During the pendency of the writ petition, the employee has attained the age of superannuation.



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6. When the domestic enquiry is set aside, it is open to the Management to let fresh evidence to establish the charges, provided, there is a plea either in the counter statement or in the additional counter statement before the issue with regard to preliminary point is decided on the fairness of the enquiry. However, in this case, no plea was taken.

7. The labour Court has held that the Management cannot be permitted to let fresh evidence and the finding in the said award is supported by the principle laid down by the Apex Court in *Shankar Chakravarti vs. Britannia Biscuit Co. Ltd. and others*, reported in (1979) 3 SCC 371 that the employer should be given liberty to establish the charges before the Labour Court. In the present case on hand, the finding of the labour Court that the employee will not be entitled to back wages, when the charges are not proved, may not be correct.

8. When the matter is taken up for hearing, Mr. Ajay Khose, appearing on behalf of the employee, would submit that insofar as the back wages is concerned, he is willing to give up back wages. However, he would submit that in the subject matter, monetary benefits due by way of pension cannot be deprived and hence, the Management could be permitted to work out the contribution towards the provident fund, so that the employee could get more provident fund.

9. I find much force in this contention. Hence, this Court, while dismissing the writ petition filed by the Management and partly allowing the writ petition filed by the employee, the employee may not be entitled to back wages as contended by the counsel, but however, for the period in question, namely, from the date of dismissal till on attaining the age of superannuation, the provident fund contribution due to the said period shall be remitted to the Provident Fund Trust in order to enable him to receive better pension. The continuous and consequential benefits have not been interfered with. Hence, the wages due to the employee have to be notionally calculated, remitted and gratuity shall be paid. Since the writ petition is pending, there is no need for the Management to pay interest on the gratuity amount, if the same is paid within a period of three months from the date of receipt of a copy of this order, failing which, the gratuity will attract interest at the rate of 10% per annum in terms of Section 7(3) (A) of the Payment of Gratuity Act, 1972, if it is not paid within the time stipulated, Revenue Recovery process to be initiated at the rate of interest at the rate of 15% per annum as per Section 8 of the Provident Fund Act 1972 from the date of superannuation. In case of delay, the interest portion can be recovered from the Officer, who is responsible for disbursement of gratuity. After payment of interest to the employee by the Corporation, recovery



process can be initiated against the officer. The remittance of the provident fund shall be done within the same time stipulated supra. No costs.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

RR

To:

1.The Presiding Officer,
Labour Court,
Salem.

2.The Managing Director,
State Express Transport Corporation (Tamilnadu) Ltd.,
Chennai.

+1cc to Mr.V.Ajoy Khose, Advocate Sr No.35707
+2ccs to Mr.K.Kathiresan, Advocate Sr No.35520

W.P.Nos.29713 of 2005 and 6520 of 2006

PCH (CO)
PR (24/09/2021)