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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2021

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THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.A.No.1678 of 2021
and C.M.P.No.10645 of 2021

The Management
Tamilnadu State Transport Corporation Ltd.,
Villupuram - 605 602.

.. Appellant

Vs

1.K.Shanmugam

2.The Presiding Officer,
Labour Court, Cuddalore,
Cuddalore.

.. Respondents

Appeal filed under Clause 15 of Letters Patent against the order dated 19.08.2019 made in W.P.No.5139 of 2013.

Prayer Of WP.No.5139/2013: 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 2nd respondent made on I.D.No.45/2003 dated 19/03/2012 and to quash the same as illegal and Perverse.

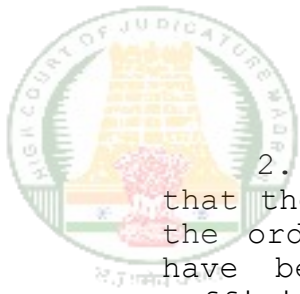
For Appellant : Mr.C.S.K.Sathish

For Respondents : Mr.Subburaj for R1
R2 - Court

JUDGMENT

(Delivered by M.M.SUNDRESH, J.)

This appeal has been preferred against the order of the learned Single Judge, who while confirming the award passed by the Labour Court, modified it with respect to the relief granted by taking note of the fair submission made by the learned counsel appearing for the first respondent/employee that the first respondent is willing to waive 50% of the backwages from the date of award.



2. Learned counsel appearing for the appellant submitted that the finding rendered by the learned single Judge leading to the order of dismissal by the Disciplinary Authority ought to have been reversed by the Labour Court. It is not as if sufficient opportunity was not given to the first respondent. Therefore, the order passed by the learned Single Judge confirming the award requires interference.

3. Learned counsel appearing for the first respondent submitted that the learned Single Judge took into consideration the materials assessed by the Labour Court including the evidence of M.W.I. As there was no perversity in the award, this Court is not expected to re-appreciate it at this stage. The following is the ultimate finding given by the learned Single Judge:-

"12. Though the Labour Court has stated that the Petitioner/Transport Corporation did not file any statement given by the passengers, it is not necessary that the passengers should be examined, when hearsay evidence is admissible. In the case on hand, after setting aside the domestic enquiry, the Labour Court had come to the conclusion that the incident had taken place on account of huge crowd in the Bus and the misconduct alleged against the 1st Respondent/employee could only be minor in nature.

13. As the Labour Court has rendered a finding based on facts, this Court is of the view that there is no need to interfere with the Award in question. As long as there is no perversity in the Award and the evidence let in before the Labour Court is weighed in favour of the 1st respondent/employee, merely because another view is possible, this Court cannot accept the view of the Petitioner/Transport Corporation.

14. As the Labour Court has not only deprived backwages to the 1st Respondent/Employee, but also attendant benefits, in order to give a quietus to the issue, this Court posed a suggestion to the 1st Respondent/employee, who is present before this Court, as to whether he is willing to give up monetary benefits pertaining to backwages. In response, the 1st respondent/employee submitted that he is willing to waive 50% of the backwages from the date of the Award i.e., from 19.03.2012 to till date, excluding the amount drawn under Section 17-B of the Industrial Disputes Act. To that effect, learned counsel appearing for the 1st



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respondent has filed an undertaking affidavit, duly signed by him and the 1st respondent/employee.

15. In view of the submissions made by the 1st respondent/employee, the Award of the Labour is modified as follows:

(i) The 1st Respondent/employee shall be entitled to reinstatement with continuity of service.

(ii) The 1st respondent/employee shall be entitled to 50% backwages and other attendant benefits from the date of the Award till date, and not prior to that.

(iii) 50% Backwages payable to the 1st respondent/employee as in clause (ii) shall be calculated from the date of passing of the Award to till date, less the wages drawn under Section 17-B of the Industrial Disputes Act, and the same shall be paid within 45 days from the date of receipt of a copy of this order, failing which, the amount due would carry interest at 12% per annum, from today.

(iv) Other attendant benefits due to the 1st respondent/employee need to be notionally calculated and paid, subject to condition no (iii) and present wages shall be paid on par with his counter-part, with effect from today.

This Writ Petition is disposed of with the above directions and observation. No costs."

4. The jurisdiction of this Court over the award of the Labour court is akin to the one which can be exercised under Article 227 of the Constitution of India though by way of practice, writ petitions have been filed invoking Article 226 of the Constitution of India. Therefore, we are concerned with the decision making process. Under Section 11A of the Industrial Disputes Act, the Labour Court is entitled to go into the relevant materials and assess the quantum of punishment. The Labour Court did the exercise by passing a speaking award. On a perusal of the award by the Labour Court, we find that the evidence on record both oral and documentary have been taken into consideration. The learned Single Judge while confirming the award of the Labour Court modified it to the benefit of the appellant.

5. Considering the above, we do not find any error in the order passed by the learned single Judge, warranting interference as there is no existence of perversity and the writ



appeal stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

6. Taking into consideration the fact that the award has been passed as early as 19.03.2012, the appellant is directed to comply with the order within a period of eight weeks from the date of receipt of a copy of this judgment.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mmi/ssm

To

The Presiding Officer,
Labour Court, Cuddalore,
Cuddalore.

+1cc to Mr.C.S.K.Sathish, Advocate, S.R.No.34905

+1cc to Mr.R.Subburaj, Advocate, S.R.No.34454

W.A.No.1678 of 2021

GSM(CO)
SB(03/08/2021)