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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.6955 to 6957 of 2015

and

W.P.Nos.5284 to 5286 of 2018

W.P.Nos.6955 to 6957 of 2015:

The Management,
Tamilnadu State Transport Corporation,
(Formerly Thiruvalluvar Transport Corporation Ltd.),
Rep. by its General Manager,
Chennai 2.

... Petitioner in all W.Ps.

vs.

The Presiding Officer,
III Additional Labour Court,
Madras High Court Campus,
Chennai.

... 1st Respondent in all W.Ps.

G.Kuppusamy ... 2nd Respondent in W.P.No.6955 of 2015

P.K.Parameswaran ... 2nd Respondent in W.P.No.6956 of 2015

S.Jawaharlal Nehru ... 2nd Respondent in W.P.No.6957 of 2015

Writ Petitions filed under Article 226 of the Constitution of India, praying to issue writ of Certiorari, to call for the records of the common Award dated 09.04.2014 passed by the 1st Respondent in I.D.Nos.731 of 2001, 28 of 2002 and 108 of 2006, respectively, and to quash the same.

W.P.Nos.5284 to 5286 of 2018:

The Management,
State Express Transport Corporation
(Tamil Nadu) Ltd.,
Rep by its General Manager,
(Formerly Thiruvalluvar Transport Corporation),
Chennai 600 002.

... Petitioner in all W.Ps.



vs.

The Presiding Officer,
III Additional Labour Court,
City Civil Court Annex Buildings,
High Court Compound,
Chennai 600 104.

... 1st Respondent in all W.Ps.

P.K.Parameswaran ... 2nd Respondent in W.P.No.5284 of 2018

Kuppusamy ... 2nd Respondent in W.P.No.5285 of 2018

S.Jawaharlal Nehru ... 2nd Respondent in W.P.No.5286 of 2018

Writ Petitions filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari, to call for the records of the common order dated 03.02.2018 passed by the 1st Respondent in E.A.No.3 of 2018 in E.P.No.229 of 2017, E.A.No.1 of 2018 in E.P.No.227 of 2017 and E.A.No.2 of 2018 in E.P.No.228 of 2017, respectively, and quash the same.

For Petitioner in all W.Ps. : Mr.M.Chidambaram

For 2nd Respondent in all W.Ps.: Mr.Ajoy Khose

C O M M O N O R D E R

The Management of State Express Transport Corporation, Chennai, has come up with W.P.Nos.6955 to 6957 of 2015, challenging the common Award dated 09.04.2014 passed by the III Additional Labour Court, Chennai in I.D.Nos.731 of 2001, 108 of 2006 and 28 of 2002, respectively, and it has filed W.P.Nos.5284 to 5286 of 2018 challenging the common order dated 03.02.2018 passed by the 1st Respondent in E.A.No.3 of 2018 in E.P.No.229 of 2017, E.A.No.1 of 2018 in E.P.No.227 of 2017 and E.A.No.2 of 2018 in E.P.No.228 of 2017, respectively.

2. As the issue involved in all these Writ Petitions is one and the same, cases are taken up for disposal by a common order.

3. The 2nd Respondent in all the above Writ Petitions are employees of the Petitioner/Transport Corporation. As they have violated the Certified Standing Orders, Charge Memo was issued to them. As the explanation submitted by them was not satisfactory, a domestic enquiry was conducted and the Enquiry



Officer held that, the charges framed against the employees are proved without any reasonable doubt. Thereafter, employees herein were terminated from service. Challenging the same, they raised Industrial Dispute before the 1st Respondent/Labour Court.

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4. It was observed by the Labour Court that, the domestic enquiry has not been conducted in a fair and proper manner, as the Management has not examined any witness to prove the charges against the employees. At the time of deciding the preliminary issue, one Asokan, who was working as an Assistant Manager in the Petitioner/Transport Corporation, an interested witness, was examined as M.W.1 and he was also subjected to cross-examination. The Labour Court also observed that, the Management has not sought permission in the counter statement, to lead evidence and they have not made any oral request to cover up the shortcomings in the enquiry. In that regard, the Labour Court has relied on a judgment of this Court rendered in the case of Caterpillar India (Private) Limited, Tiruvellore vs. Presiding Officer, II Additional Labour Court, (2003) 4 LLN 1128 and the decision of the Apex Court in the case of Karnataka State Road Transport Corporation vs. Lakshmidevi (Smt), (2001) 5 SCC 433.

5. The Labour Court also took into consideration the Apex Court decision relied on by the counsel for the employees in the case of Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed), (2013) 10 SCC 324, wherein, it was held that, the Management had not proved that, the Petitioners therein were gainfully employed. After analyzing the oral and documentary evidence, the Labour Court held that, the charges framed against the employees are not proved by the Management, and ordered reinstatement of the employees into service with full backwages and continuity of service with all other attendant benefits.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. In the common Award passed by the Labour Court, it has held that, out of three employees, G.Kuppusamy has crossed the age of retirement and hence, he cannot be reinstated and held that, the other employees viz. S.Jawaharlal Nehru and P.K.Parameswaran are eligible for reinstatement. The Award of the Labour Court is dated 09.04.2014 and as on date, the other two employees also would have attained the age of superannuation.

8. In the case on hand, the Management has not made any plea before the Labour Court that, they need to lead further evidence. The Apex Court in a decision rendered in John D' Souza vs. Karnataka State Road Transport Corporation reported in



(2019) 18 SCC 47 has held that, if the domestic enquiry is not conducted in a fair and proper manner, it is the mandatory duty on the part of the Authority to give an opportunity to the Management to establish the charges in the enquiry, provided there is a plea seeking for an opportunity. This Court, in the case of Management, Tamil Nadu State Transport Corporation (Villupuram) Limited, Kancheepuram Region, reported in 2021-I-LLJ-17 (Mad) has reiterated the ratio laid down by the Apex Court. In view of the same, as there is no plea made by the Management in the case on hand, to let in further evidence, there is no need for the Labour Court or Tribunal to permit them to let in further evidence.

9. The Karnataka High Court in the case of I.T.C. Limited v. Labour Court, Bangalore, (1985) 1 LLJ 243 has held that, the findings rendered with regard to the preliminary enquiry in an Application for approval with regard to the proceedings of the enquiry will not be binding, if an Industrial Dispute is raised. For better appreciation, relevant portion of the said decision is extracted hereunder:

"27. The next question is: Whether the power to grant interim order can be regarded as implicit in the power conferred under Section 33. For the purpose of answering this question, I shall first set out the principle governing interpretation of statutes in order to find out as to whether the authority on whom a statutory power is conferred to pass a final order, without any express provision conferring power to pass a particular type of interim order, has by necessary implication the power to make such an interim order. The Supreme Court has laid down the principle in the case of Shamboo Narain Singh [(1969) 1 SCC 825 : A.I.R. 1970 S.C. 140.] . In that case the question for consideration was whether the power conferred on a designated authority under the U.P. Panchayat Raj Act to remove a Pradhan of a Panchayat from his office included the power to place him under suspension pending inquiry. The Supreme Court answered the question in the negative. Relevant portion of the judgment reads:

"8. It is well recognised that where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means as are essentially necessary to its execution. But



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before implying the existence of such a power the Court must be satisfied that the existence of that power is absolutely essential for the discharge of the power conferred and not merely that it is convenient to have such a power. We are not satisfied that the power to place under suspension an officer is absolutely essential for the proper exercise of the power conferred under Section 95(1)(g). It cannot be said that the power in question cannot be properly exercised without the power to suspend pending enquiry. The mere possibility of interference with the course of enquiry or of further misuse of powers are not sufficient to enlarge the scope of a statutory power. If it is otherwise the mere power to punish an offender would have been held sufficient to arrest and detain him pending enquiry and trial. There would have been no need to confer specific power to arrest and detain persons charged with offences before their conviction."

10. In the light of the above, it is clear that, the Award of the Labour Court cannot be quoted as a precedent, as it cannot operate as resjudicata, when an Industrial Dispute is raised by the employee under Section 2(A) of the Act or by the Union under Section 10(1) of the Industrial Disputes Act, 1947.

11. That being the case, it is the contention of the Management that in the Approval Petition, once the domestic enquiry has been upheld, that becomes a binding precedent in an Industrial Dispute raised by the employee and once the charges are proved in the enquiry, the Labour Court ought not to have granted the relief. In the case on hand, firstly, the order passed under Section 33(2)(b) of the Industrial Disputes Act with regard to the domestic enquiry will not be binding. Even otherwise, the Labour Court has held that, the charges have not been proved and interfered with the punishment imposed on the employees and granted the relief sought for by them.

12. In view of the fact that, the Award passed by the Labour Court is a finding of fact, this Court is not inclined to interfere with the same. As the Award of the Labour Court has not been complied with, the issue has finally landed up in an Execution Petition, which is also the subject matter of the above Writ Petitions.



13. Once the Award passed by the Labour Court in an Industrial Dispute is confirmed by this Court, employees are entitled to the consequential relief. Hence, the question of interfering with the order passed by the Labour Court in an Execution Application in Execution Petition, does not arise. Hence, these Writ Petitions have to be dismissed in limine.

14. The Labour Court is empowered to execute the Award and bring the issue to a logical end. That apart, in the light of the decision of the Supreme Court in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma, (2002) 2 SCC 244, proceedings under Section 33 of the Industrial Disputes Act, 1947 are independent of each other. For better understanding, relevant portion of the said decision is extracted hereunder:

"16. Section 31 speaks of penalty in respect of the offences stated therein. This provision is not intended to give any remedy to an aggrieved employee. It is only to punish the offender. The argument that Section 31 provides a remedy to an employee for contravention of Section 33 is unacceptable. Merely because penal provision is available or a workman has a further remedy under Section 33-A to challenge the approval granted, it cannot be said that the order of discharge or dismissal does not become inoperative or invalid unless set aside under Section 33-A. There is nothing in Sections 31, 33 and 33-A to suggest otherwise even reading them together in the context. These sections are intended to serve different purposes."

15. In view of the above, this Court makes it clear that, the aforesaid provisions are independent of each other and invoking the relief under one provision cannot be quoted as prohibition of proceeding with other provisions of the Act.

16. Dehors the Execution Petition, it is needless to mention that the Award of the Labour Court will be in force, till it is substituted by an Award or Settlement. Hence, the question of limitation not only for execution, but also for sanctioning prosecution and bringing the issue to a logical end by a Criminal Court cannot be curtailed. If any complaint under Section 29 is filed, the Government must sanction prosecution against the persons falling under Section 32 of the Industrial Disputes Act and the Criminal Court which is going to deal with the matter must bring the issue to a logical end.



17. It is made clear that, if any amount has been deposited pursuant to the interim order, the same can be withdrawn and with regard to the remaining amount, Execution Proceedings can go on.

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18. In fine, all the above Writ Petitions are dismissed. No costs. Consequently, connected W.M.P.Nos.6489 to 6491 of 2018 in W.P.Nos.5284 to 5286 of 2018; M.P.Nos.1, 1 & 1 of 2015 and W.M.P.Nos.6140, 6141, 6142, 6146, 6147, 6148, 6550 & 6551 of 2016 in W.P.Nos.6955 to 6957 of 2015 are closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

The Presiding Officer,
III Additional Labour Court,
City Civil Court Annex Buildings,
High Court Compound, Chennai 600 104.

+3ccs to M/s.K.Kathiresan, Advocate, S.R.No.36498

+2ccs to Mr.V.Ajoy Khose, Advocate, S.R.No.36412, 36414

+3ccs to Mr.M.Chidambaram, Advocate, S.R.No.36303, 36304, 36305

W.P.Nos.6955 to 6957 of 2015
and
W.P.Nos.5284 to 5286 of 2018

PPA (CO)
SU(18/10/2021)