



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2021

Coram

The Hon'ble Mr. Justice PARESH UPADHYAY
and
The Hon'ble Mr. Justice SATHI KUMAR SUKUMARA KURUP

W.A.No.2335 of 2021
and C.M.P.No.14787 of 2021

Bharathidasan ..Appellant/2nd Respondent

Vs

1.Tamil Nadu State Transport Corporation Ltd.,
(Villupuram Region) Ltd.,
Villupuram,
Rep. By its Managing Director.
..1st Respondent/Petitioner

2.The Presiding Officer,
Labour Court, Cuddalore. ..2nd Respondent/1st Respondent

Appeal preferred under Clause XV of Letters Patent against
the order dated 26.07.2021 made in W.P.No.37242 of 2005.

Praayer in W.P.No.37242 of 2005:

Writ Petition filed under Article 226 of the Constitution
of India to issue a Writ of Certiorari, to call for the records
of the 1st respondent in I.D.No.103/2001 dated 28.02.2005 and
quash the same.

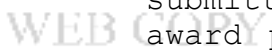
For Appellant .. Mr.R.Muralidharan

For Respondents .. Mr.G.Saravana Kumar
for R1

JUDGMENT

(Delivered by PARESH UPADHYAY, J.)

Challenge in this appeal is made by the workman to the
order dated 26 July 2021 passed by learned Single Judge in
W.P.No.37242 of 2005, allowing the writ petition filed by the
Management - State Road Transport Corporation.



2. Heard the learned advocates.

3. Learned advocate for the appellant (workman) has submitted that, interference by learned Single Judge in the award passed by the Labour Court was not justified, since the Labour Court had, on the basis of the evidence placed on record arrived at the conclusion that, discontinuance of service of the workman was illegal and relief was granted. It is submitted that in the writ petition filed by the Management, learned Single Judge set aside the award inter alia on the ground that the workman had caused accidental death, he was not regular employee and under the wrong premise that the documents are available with the Management, the employee filed the petition and obtained adverse finding against him. It is submitted that the award of the Labour Court could not have been interfered with on these grounds. It is submitted that the order of learned single Judge be set aside and this appeal be allowed.

4. On the other hand, learned advocate for the first respondent / Management (original writ petitioner), at the outset had submitted that, the workman was terminated after due inquiry. When it was asked, what is the date of termination order and the date of inquiry report, if it is on record, it was sought to be canvassed that since the workman had not completed 240 days, it was discharge simplicitor. It is under these circumstances, the case of the workman needs to be examined. Learned advocate for the first respondent / Management has contended that the Labour Court had wrongly shifted the burden on the Management and therefore that part is rightly interfered with by learned Single Judge and no interference be made in this writ appeal. It is submitted that this appeal be dismissed.

5. Having heard learned advocates for the respective parties and having considered the material on record, this Court finds as under:-

5.1. The discontinuance of service of the workman was the subject-matter of reference under the Industrial Disputes Act in I.D.No.103 of 2001 which was allowed vide award dated 28 February 2005.

5.2. We have considered the reasons recorded by the Labour Court, while allowing the said reference. We find that both sides had placed on record material / evidence available with them. The workman had discharged his obligation. The Management could have disputed the said evidence of the workman, by producing appropriate record. The case of the Management before Labour Court was that, the said record is destroyed by them, may be as per Rules. Non-production of evidence by the Management



should not put the concerned workman at the receiving end. The Labour Court, in this factual background, rightly arrived at the conclusion that the workman had discharged his obligation and there was no legally sustainable contest against it. On the basis of this fact and evidence, the Labour Court passed an award granting relief to the workman. We find that the Labour Court can not be said to have committed any error, which would have called for any interference in the writ jurisdiction of this Court. The error in the impugned order recorded by learned Single Judge therefore needs to be corrected.

5.3. We also find that, learned Single Judge has, while setting aside the award inter alia recorded his satisfaction as under:-

4. For that purpose, he has filed a petition to call for the documents from the employer and the employer has filed a counter stating that those documents have been destroyed in terms of the Rules, which has been accepted by the labour Court and the petition for production of the documents has been rejected. Hence, when the employee wanted to shift the burden on the employer and the employer has discharged his obligation by stating that the records are not at all available, which has also been accepted by the labour Court, still drawing adverse inference against the Management may not be correct. ... He has also caused accident by causing death. Under the wrong premise that the documents available with the Management, the employee filed a petition and obtained adverse findings against him."

5.4 If the reasons recorded by learned Single Judge are taken into consideration and reconciled with the submissions of the learned advocate for the first respondent / Management, it becomes undisputed that the real cause to terminate the service of the workman was some accident which was perceived to be misconduct on his part. When this was the case, that could not have been done without affording an opportunity of hearing. The Management can not be permitted to blow hot and cold together when the discontinuance of service was in fact termination for misconduct and at the same time, according to the Management, the workman had not completed 240 days and he was discharged simplicitor. Interference in the writ petition, on these findings recorded by learned Single Judge, according to us, error apparent on face of record which calls for interference. We set aside that part of the order. The resultant effect



thereof is that, no legally sustainable reason remains on record, which may unsettle the award passed by the Labour Court. This appeal therefore needs to be allowed by setting aside the order of learned Single Judge.

WEB COPY

6. We also note that the writ petition by the Management was filed in the year 2005. During the pendency of the said petition, the workman claimed that he be paid the wages under Section 17(B) of the Industrial Disputes Act. Learned Single Judge had passed order to that effect on 24 August 2006. The statutory entitlement of the workman was challenged by the Management by filing W.A.No.935 of 2007. That appeal was dismissed on 21 February 2008 which was in turn challenged before the Supreme Court by filing S.L.P.(C) No. 16039 of 2008 which also came to be dismissed on 15 April 2011.

7. Though the litigant does have right to approach higher forum, the fact remains that the Management has dragged the workman right up to the Supreme Court even for his wages which he was statutorily entitled to under Section 17 (B) of the Industrial Disputes Act.

8. For the reasons recorded above, the following order is passed:-

8.1 This writ appeal is allowed.

8.2 The impugned order passed by learned Single Judge is quashed and set aside.

8.3 The award passed by Labour Court is restored.

8.4 All consequential benefits shall be paid to the workman within a period of four months.

8.5 No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

mmi/7



To

1.The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
(Villupuram Region) Ltd.,
Villupuram.

2.The Presiding Officer,
Labour Court, Cuddalore.

+lcc to Mr.G.Saravana Kumar, Advocate SR. No.63551

+lcc to Mr.R.Muralidharan, Advocate SR. No.63686

W.A.No.2335 of 2021

GPL (CO)
PR (16/12/2021)