



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	01.08.2021
DELIVERED ON	24.09.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.NO.21697 OF 2014

The Management,
Tamilnadu State Express Transport Corporation,
Pallavan Salai,
Chennai 600 002
rep. by its General Manager

... Petitioner

Vs.

1.K.Radhakrishnan

2.The Presiding Officer,
Labour Court,
Cuddalore.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records of the 2nd Respondent made in I.D.No.12 of 2012, dated 09.04.2014 and to quash the same as illegal.

For Petitioner : Mr.K.Kathiresan

For 1st Respondent : Mr.S.Venkidusamy
for Mr.R.Muralidharan

ORDER

Petitioner/Transport Corporation has come up with this Writ Petition challenging the Award dated 09.04.2014 passed by the 2nd Respondent/Labour Court in I.D.No.12 of 2012.



2. According to the Petitioner/Transport Corporation, the 1st Respondent/employee, who was employed as a Conductor in their Corporation, is in the habit of picking quarrel with his co-workers in an inebriated condition. As, the 1st Respondent/employee picked up quarrel with his co-workers in the midst of working hours and thereby delayed the scheduled timing of the operation of the Bus, he was issued with a Charge Memo dated 29.03.2007. As the explanation dated 27.06.2008 submitted by the 1st Respondent was not satisfactory, the Management, after fair enquiry, passed an order dated 04.11.2008, dismissing him from service.

3. Challenging the said order of dismissal, the 1st Respondent/employee raised an Industrial Dispute before the 2nd Respondent herein in I.D.No.12 of 2012, seeking reinstatement along with continuity of service and backwages.

4. The 2nd Respondent/Labour Court vide Award dated 09.04.2014 in I.D.No.12 of 2012 held that, the domestic enquiry has not been properly conducted and hence, directed reinstatement of the 1st Respondent into service with continuity of service and backwages.

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

6. On a perusal of the records, it is seen that, two charges were framed against the 1st Respondent/employee. Firstly, it is alleged that, in the Rest Room in Bangalore Branch of the Petitioner/Transport Corporation, the employee picked up quarrel with his co-workers and abused them in filthy language. Secondly, due to the said act of the 1st Respondent/employee, the Bus trip from Bangalore to Chennai, was delayed.

7. On the side of the Petitioner/Transport Corporation, M.W.1 was examined to establish the charges against the 1st Respondent/employee. The Labour Court came to the conclusion that, M.W.1 did not actually see the employee behave in a rude and obscene manner under the influence of alcohol. It held that, the M.W.1 has stated that, four co-workers have complained verbally, but, their names have not been given. As the co-workers of the 1st Respondent/employee were not examined to speak



on the facts, the Labour Court came to the conclusion that, the said charge against the employee was not proved. As regards the first charge, this Court is willing to accept the finding of the Labour Court, as even hearsay evidence is admissible.

8. As regards the second charge that, due to the said act of the 1st Respondent/employee, the operation of the Bus from Bangalore to Chennai has been delayed and that, an alternative Conductor has been deputed in that Bus, the Labour Court has held that, no documentary evidence viz. Trip Sheet, Time Keepers' Register, have been produced by the Petitioner/Transport Corporation, in support of the said charge.

9. As no vital documents were produced to substantiate the charges alleged against the 1st Respondent/employee, the Labour Court directed reinstatement of the employee into service. It is represented that, the 1st Respondent/employee has been reinstated into service on 27.09.2019 without prejudice to the rights of the parties in the Writ Petition. Thereafter, the 1st Respondent/employee has filed a Petition claiming wages under Section 17-B of the Industrial Disputes Act, 1947 and also to pay arrears of wages.

10. It is represented that, the 1st Respondent/employee is due to retire on 31.12.2022 and that, on reinstatement, he has not been paid the last drawn wages, which, in view of this Court, is completely illegal and impermissible. This Court would like to emphasize that, once an employee is reinstated in service in terms of the Award of the Labour Court, provided, continuity of service is awarded, he should have been paid wages on par with his counter-parts. In any event, it will not be a bar for the 1st Respondent/employee to claim the difference in wages, now.

11. Insofar as wages under Section 17-B is concerned, the employee is entitled to the same from the date of dismissal till the date of reinstatement, apart from claiming parity now during the period when the employer was directed to pay the last drawn wages. Since the employee has been given the benefit of



continuity of service, he will have to be granted all the notional benefits with continuity of service, in order to enable him to get payment of wages on par with his counter-parts.

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12. In view of the foregoing, this Court does not find any perversity in the Award passed by the 2nd Respondent/Labour Court, as the same is a finding on facts.

13. If the Award of the Labour Court is not implemented within a period of three months, it is open to the employee to invoke Section 29, 33(c)(1) read with Section 11-B, 33(c)(2) of the Industrial Disputes Act, 1947, and if a complaint is made, the Government must sanction prosecution, in case, the Award is not implemented.

14. At this juncture, it is worth referring to the Apex Court decision in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma, (2002) 2 SCC 244, wherein, it is held as under:

“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.



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16. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected M.P.No.1 of 2014, W.M.P.Nos.6878 and 6880 of 2018 are closed.

Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

(aeb)

To:

The Presiding Officer,
Labour Court,
Cuddalore.

+1cc to Mr.R.Muralidharan, Advocate, S.R.No.50215

W.P.No.21697 of 2014

PVS(CO)
RLP(12/10/2021)