



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

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W.P. (MD)No.11453 of 2010 and 5171 of 2011
and M.P.Nos.1 of 2010 and 1 of 2011

(Through Video Conferencing)

N.Raja

... Petitioner in

W.P.(MD) No.11453/2010

The Management

Tamilnadu State Transport Corporation

(Kumbakonam) Ltd. Karaikudi Division-3,

Karaikudi

... Petitioner in

W.P.(MD) No.5171/2011

Vs.

1.The Presiding Officer,

Labour Court, Madurai.

...1st Respondents in both W.Ps.

2.The Management of Tamilnadu State

Transport Corporation (Kumbakonam) Ltd.,

Karaikudi Region

Rep. by its General Manager,

Karaikudi, Sivagangai District.

...2nd Respondents in

W.P.NO.11453/2010

2.N.Raja

...2nd Respondent in

W.P.No.5171/2011

PRAYER in W.P.(MD) No.11453/2010: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records from the 2nd respondent Labour Court relating to the award dated 15.12.2008 in I.D.No.47/2001 insofar as denying backwages and other benefits to the petitioner, quash the same and consequently to direct the 1st respondent to give him backwages and all other attendant benefits and award cost.

PRAYER in W.P.(MD) No.5171/2011: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records pertaining to the award dated 15.12.2008 in I.D.No.47/2001 on the file of the 1st respondent and quash the same.

W.P. (MD) No.11453/2010

For Petitioner :Mr.S.Arunachalam

For Respondents :Mr.S.Baskaran for R1



W.P. (MD) No.5171/2011

For Petitioner :Mr.S.Baskaran
For Respondents :Mr.S.Arunachalam for R2

COMMON ORDER

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W.P. (MD) No.11453/2010 has been filed by the workman challenging the award passed in I.D.No.47 of 2001 dated 15.12.2008 insofar denying backwages and other attendant benefits and consequently to direct the Transport Corporation to give him backwages and all other attendant benefits.

2.W.P. (MD) No.5171/2011 has been filed by the Management challenging the award of the labour Court.

3. Since both the writ petitions are arising out of the same award in I.D.No.47/2001 dated 15.12.2008, they were heard together and disposed of by means of this common order.

4. The petitioner in W.P. (MD) No.11453/2010 is the employee of the Management Corporation, hereinafter referred to as 'workman' and the petitioner in W.P. (MD) No.5171/2011 is the Management Corporation, hereinafter referred to as 'Management' for brevity.

5. The case of the workman is that he was appointed as a permanent Conductor in the respondent Management on 16.10.1973. He was working as Senior Conductor in the town Bus that was plying between Rameswaram Bus stand and Rameswaram Temple. The distance between the two points is about 4 km. and there are about six stops and the fare from bus stand to temple was 0.60 paise from 5 am to 9 pm. However, since it is a tourist place, the fare was Re.1/- during night hours, ie., from 9 p.m. to 5.00 a.m. On 02.01.1995, the petitioner was working in the said town bus running between the bus stand and the temple. At that time, it seems 47 passengers got into the bus. However, when they reached the station, where they have to get down, the checking officials came and inspected the tickets. When the checking officials inspected the tickets, they found that 47 passengers were not issued with tickets by the workman. However, it is the workman's case that at the time of getting down, he gave 47 tickets by receiving Rs.50/- and balance of Rs.3/- was also properly given to them. It is the further case of the workman that not believing the workman, the checking officials behaved in a rude manner and torn all the tickets. However, they did not record any statement. Thereafter, when the same 47 passengers returned their trip in the same bus, the workman gave a complaint to the Branch Manager along with the statements of the passengers.

6. On the complaint given by the checking officials, a disciplinary proceeding was initiated and enquiry was conducted. A charge memo dated 10.01.1995 was also issued, wherein, as many as



ten allegations have been levelled against the workman. Since the charges against the workman were proved, accepting the same, the Management issued a second show cause notice asking explanation from the petitioner. Before submitting the explanation by the workman, the Management dismissed him on 03.01.1995. Thereafter, the Management filed approval petition in 87/1995 under Section 33(2)(b) before the Tribunal. Thereafter, the workman raised an industrial dispute in I.D.No.47/2001 before the labour Court, Madurai.

7. Before the labour Court, on behalf of the workman, 4 documents were marked and on the side of the Management, 9 documents were marked.

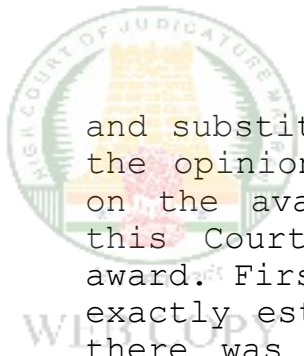
8. After hearing both sides, the labour Court passed an award in favour of the workman, however, declined to pay back wages. Challenging the same, the present writ petitions have been filed.

9. Learned counsel for the workman would submit that though the labour Court arrived at a conclusion that the guilt against the workman is not proved by the Management and accordingly, passed the award in favour of him, however, without back wages is unsustainable in law and the workman is entitled to back wages and accordingly, he prays for allowing the writ petition.

10. However, the learned counsel for the Management would submit that though the workman filed four documents to substantiate his case, however, the Management filed nine documents. However, without discussing about any of the evidence, the award has been passed, he contended. He would further contend that neither the Management nor the workman has examined any witness on their side. The labour Court failed to discuss the documents marked by the Management and mechanically passed the award in favour of the workman, which is unsustainable and hence, the award needs to be interfered with.

11. I have heard the learned counsel for the petitioner workman and the learned counsel for the respondent Management and perused the materials available on record.

12. Before this Court ventures into the merits of the contention raised on either side, it would be first necessary to bear in mind the scope and jurisdiction of this Court under Article 226 of the Constitution of India, while examining the correctness of the award of the Labour Court. The Hon'ble Supreme Court in a catena of decisions has held that normally a writ Court should not interfere with the award of the Labour Court, unless the award is perverse. It has been further held that if the award is not irrational or perverse, the High Court should not interfere with the reasons in the award. Further, it has been held that this Court should not re-appreciate the evidence placed before the Labour Court

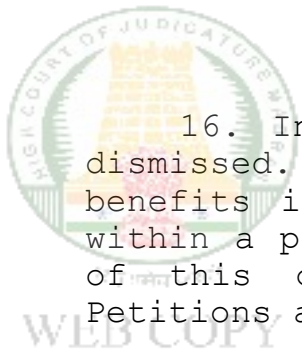


and substitute its own conclusions, merely because this Court is of the opinion that a different conclusion could have been arrived at on the available evidence. Bearing this legal principle in mind, this Court proceeds to examine the correctness of the impugned award. First, it has to be seen, whether the Management was able to exactly establish as to the guilt committed by workman and whether there was evidence to show that the workman concerned is solely responsible for the guilt and the same is affected the reputation of the Management.

13. It is seen from the award of the labour Court that the facts are not disputed. Admittedly, the workman entered into service in the year 1973. He was in service in the year 1995. It is an admitted fact that the employee is a Conductor and promoted as Senior Conductor subsequently. The charge against the workman is that on 02.01.1995, when the town bus is plying between Rameshwaram bus stand to Rameshwaram temple, the workman failed to issue tickets to 47 passengers. The further charge is that the workman could have collected the said charge and could have misappropriated the same and further, the workman threatened the passengers, when they signed in the tickets. When the checking officials sought signature in the unpunched ticket, it was torn by the officials and they tried to snatch them and the workman also assaulted one checking official, thereby caused injuries on him.

14. When these allegations were levelled against the workman as if the workman attacked the checking official and used filthy language against them and further threatened the passengers, in order to substantiate these charges levelled against the workman, the Management not even examined any witness to prove the said allegations. Apart from that, neither the checking officials nor the Driver of the bus was examined to prove the charges. The non examination of the checking officials before the labour Court, which is very crucial for establishing the case against the workman, is fatal to the enquiry proceedings. Though one of the Enquiry officer was examined, the person, who is claimed to be sustained injury, has not been examined before the labour Court. For these reasons, the labour Court was right in accepting the case of the workman and accordingly, passed an award in favour of the workman, which needs no interference at the hands of this Court. The Hon'ble Supreme Court in a catena of decisions held that for non employment period, the workman/employee is not entitled to any backwages/monetary benefits.

15. In such view of the matter, I am not inclined to issue any direction to the Management to pay the back wages and the award passed by the labour Court is perfectly justifiable and does not warrant any interference by this Court.



16. In the result, the writ petitions fail and the same are dismissed. The respondent Management is directed to settle the benefits in favour of the workman as ordered by the labour Court within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (ADII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

RR

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Presiding Officer,
Labour Court,
Madurai.

+1 CC to M/s.S.BASKARAN, Advocate (SR-476[F] dated 07/01/2021)

+1 CC to M/s.THILAK KUMAR, Advocate, SR.No.213 dated 06/01/2021

W.P. (MD)Nos.11453 of 2010 and 5171 of 2011
05.01.2021

TP (CO)

KB (27.01.2021) 5P 4C