



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P(MD)Nos.8648 of 2010 and 2641 of 2018

and

M.P.(MD)No.1 of 2010

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W.P. (MD)No.8648 of 2010:

The Management,
Tamil Nadu State Transport Corporation,
Bye-pass Road,
Madurai-10.

... Petitioner

Vs

1.S.Shajakhan

2.The Presiding Officer,
Labour Court,
Madurai.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records pertaining to the order passed by the Labour Court, Madurai, in I.D.No.152 of 2004, dated 03.12.2008 and quash the same as illegal and invalid.

For Petitioner	:	Mr.M.Prakash
For Respondents	:	Mr.S.Arunachalam for R.1

W.P. (MD)No.2641 of 2018:

S.Shajakhan

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Madurai.

2.The Management,
Tamil Nadu State Transport Corporation,
Bye-pass Road,
Madurai-10.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records from the first Respondent Labour Court relating to the impugned award dated 03/12/2008 in I.D.No. 152 / 2004 of the first Respondent, quash the same insofar as denying the petitioner back wages and other attendant benefits and consequently to direct the



second Respondent to reinstate him in service with back wages and continuity of service and all other attendant benefits and award cost.

For Petitioner : Mr.S.Arunachalam
For Respondents : Mr.J.Senthil Kumarai
Standing Counsel for R.1

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COMMON ORDER

Since the issues involved in both writ petitions are one and the same, both the Writ Petitions are disposed of by this common order.

2. For the sake of convenience, the parties are referred as the petitioner Management and the first respondent workman.

3. The first respondent workman was employed as Conductor in the Tamil Nadu State Transport Corporation(Madurai) Ltd., and while he was in duty as Conductor from Kumbum to Madurai in the bus bearing Registration Number TN-59-N-0983 on 15.07.2002, he collected the fare from three passengers from Chinnamanur to Madurai and tickets had not been issued to them. The Checking Inspectors checked the invoice with passengers and tickets and the attempt of misappropriation was found and the first respondentworkman admitted the same in written. While so, the first respondent workman was placed under suspension and enquiry was conducted by following the natural justice and after conducting enquiry, the Enquiry Officer has drawn a proven minute and based on the report of the Enquiry Officer, the Disciplinary Authority imposed a punishment of dismissal from service on 22.03.2003. Aggrieved by the said order of dismissal, the first respondent workman raised an industrial dispute before the Labour Court, Madurai under Section 2(a)2 of the Industrial Disputes Act, 1947. The Labour Court, after elaborate trial, set aside the dismissal order and issued a direction to the petitioner management to reinstate the first respondent workman into service with continuity of service without back wages. Against the order of reinstatement of the first respondent workman into service with continuity of service, the petitioner Management filed the writ petition in W.P.(MD)No.8648 of 2010 and for denial of back wages, the first respondent workman filed the writ petition in W.P.(MD) No.2641 of 2018.

4. Learned Counsel appearing for the petitioner Management would submit that for proven charges, and that too for misappropriation of public amount, without issuing tickets for the passengers, the first respondent workman was dismissed from service and the said misappropriation was well established before the Enquiry Officer and the Labour Court, without considering the said fact, had erroneously passed the award by directing the petitioner Management to reinstate the first respondent into service, which is



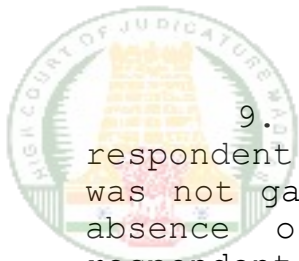
unsustainable one and hence, the learned Counsel would pray for appropriate orders.

5. Learned Counsel appearing for the first respondent workman would submit that the first respondent workman was not a gainful employee, during the period of dismissal, however, without considering the said aspect, the Labour Court denied the back wages, which is *non-est* in law. Pursuant to the order of reinstatement, the first respondent workman was reinstated into service. Accordingly, the learned Counsel would pray for appropriate orders.

6. Heard the learned Counsel appearing for the petitioner Management and the learned Counsel appearing for the first respondent workman and perused the materials placed on record.

7. 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 Employer Transport Corporation was able to exactly establish as to guilt committed by Employee and whether there was evidence to show that the Employee concerned is committed the guilt and the same is affected the reputation of the Employer Transport Corporation.

8. On a perusal of the records, it would reveal that three passengers were travelling in the bus from Chinnamanur to Madurai, wherein the first respondent was in duty as Conductor and the first respondent workman collected the amount from the said passengers, however, he did not issue the tickets to them. Thereafter, in the next stop, the Checking Inspectors boarded into the bus and started to check the passengers by getting tickets to some of the passengers who boarded into the bus and found that for the above said three passengers, tickets were not issued. However, in order to prove the said charges, the alleged passengers, who gave money to the first respondent workman, were not examined before the Enquiry Officer and even the statements were not obtained from the passengers. Merely recording the statements of the Checking Inspectors, is not sufficient to prove the guilt committed by the first respondent



9. With regard to the denial of back wages, the first respondent workman did not adduce any evidence to the effect that he was not gainfully employed during the period of dismissal. In the absence of any documentary evidence to show that the first respondent was not a gainful employee, during the period of dismissal, he is not entitled to get any back wages. The Labour Court, after an elaborate trial only, passed the award by directing the petitioner management to reinstate the first respondent workman into service with continuity of service without back wages, which does not need any interference by this Court. It is also brought to the notice of this Court that pursuant to the order of reinstatement, the first respondent workman was reinstated into service. This Court does not find any illegal or irregularity in the award passed by the Labour Court.

10. For the reasons aforesaid, both the Writ Petitions *san* merit and, accordingly, the same are dismissed. Consequently, connected Miscellaneous Petitions is also dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CSII)

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/ /2021

Sub Assistant Registrar(CS)

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.

W.P(MD)Nos.8648 of 2010 and 2641 of 2018
24.03.2021

PK(CO)
KB(23.04.2021) 4P 2C