



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:25.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)Nos.6360 of 2012 and 159 of 2013

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W.P(MD)No.6360 of 2012:

The Management,
Tamil Nadu State Transport Corporation Ltd.,
Kumbakonam New Railway Station Road,
Kumbakonam,
Thanjavur District.

... Petitioner

Vs.

1. M.Thamzhil Selvan

2.The Presiding Officer,
Labour Court,
Trichirapalli.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of Certiorari, to call for the records of the order of the Labour Court, Trichy, in I.D.No.81 of 2000 dated 31.07.2008 and quash the same.

For Petitioner	:	Mr.S.Baskaran
For Respondent No.1	:	Mr.S.Arunachalam
Respondent No.2	:	Labour Court

W.P(MD)No.159 of 2013:

M.Thamizh Selvan

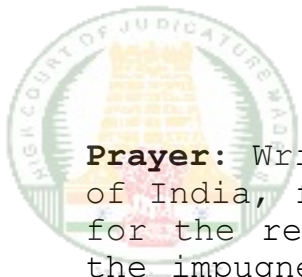
... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Tiruchirappalli.

2.The Management of
Tamilnadu State Transport
Corporation (Kumbakonam Division-I)Ltd.,
now renamed as
Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Kumbakonam Region,
Rep. by its Managing Director,
Kumbakonam.

... Respondents



Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of certiorarified mandamus, to call for the records from the first respondent Labour Court relating to the impugned award dated 31.07.2008 in I.D.No.81 of 2000, of the 1st Respondent insofar as denying the backwages of the petitioner and other attendant benefits, quash the same and consequently to direct the second respondent to reinstate the petitioner in service with backwages and continuity of service and all other attendant benefits and award cost.

For Petitioner : Mr.S.Arunachalam

For Respondent No.1 : Labour Court

Respondent No.2 : Mr.S.Baskaran
Standing Counsel

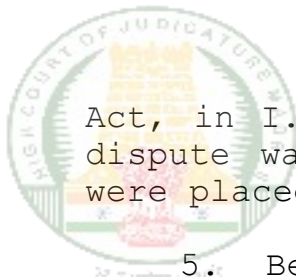
COMMON ORDER

The petitioner in W.P(MD)No.6360 of 2012 is the Tamil Nadu State Transport Corporation Ltd., hereinafter will be referred to as 'Employer' and the petitioner in W.P(MD)No.159 of 2013 is the worker of the Transport Corporation, hereinafter will be referred to as 'Employee'.

2. Since both these writ petitions are interconnected and are arising out of the Industrial Dispute raised by the Employee in I.D.No.81 of 2000 before the Labour Court, Trichy, these writ petitions are heard together and disposed of by way of this common order.

3. The case of the Employer is that the Employee was employed as a driver on 30.03.1999 on the basis of daily wage Labour in the Employer Corporation. The Employee was discharging duty as a Driver on 17.05.1999 in the bus bearing Registration No.TN-49-0927, while the bus was proceedings near Athukudi Road, the Employee has driven the bus in a rash and negligent manner and dashed against a two wheeler came in the opposite direction and due to this impact, the rider of the two wheeler and pillion rider died on the spot. For the above lapses, on 19.05.1999, the Employer orally instructed the Employee not to join duty. Due to the said accident, the Employer was not satisfied with the Employee's activities with regard to the conditions stipulated in the daily wages appointment order issued by the Employer. Since the Employee is worked as daily wages labour, as per the Standing Orders of the Employer Corporation, there is no necessity to initiate disciplinary proceedings against the Employee. Accordingly, the Employee was orally terminated from service.

4. Challenging the oral termination, the Employee raised an Industrial Dispute under Section 2(a)(2) of the Industrial Disputes



Act, in I.D.No.81 of 2000 before the Labour Court, Trichy, and the dispute was tried independently and oral and documentary evidence were placed by the Employer as well as the Employee.

5. Before the Labour Court, on the side of the Employee, Ex.W1 to Ex.W21 were marked and the Employee himself examined as PW.1. On the side of the Employer Ex.M1 to Ex.M3 were marked and one Radakrishnan was examined as management witness.

6. After analysing the documentary evidence adduced on both side, the Labour Court held that the charges levelled against the Employee was not proved and therefore, the Labour Court passed an award of reinstatement with continuity of service, but without back wages.

7. As against the reinstatement ordered by the Labour Court, the State Transport Corporation Employer has filed the writ petition in W.P(MD)No.6360 of 2012 and as against the denial of back wages by the Labour Court, the Employee has filed the writ petition in W.P (MD)No.159 of 2013.

8. The learned Counsel appearing for the Employer would submit that after filing the writ petition, in compliance of the award of the Labour Court, the Employee was reinstated to service without prejudice to his rights. Further, he would submit that while he was employed as daily wages Labour, due to his negligence, two lives were lost and also he caused damages to the corporation bus. Since he was working as daily wages Labour, the Employer did not issue any show cause notice and have not conducted any enquiry. Thereafter, orally terminated the Employee from service. He would further submit that before the Labour Court, in order to prove the case, Ex.M1 to Ex.M3 were marked on the side of the Employer and the above points were not considered by the Labour Court and therefore, the learned Counsel prayed for allowing the writ petition filed by the State Transport Corporation.

9. Per contra, the learned Counsel appearing for the Employee would contend that after analyzing the evidence adduced by both the Employee as well as the Employer Corporation, the Labour Court arrived a conclusion that the order of termination is the violation of natural justice. The Employer has not established the guilt before the Labour Court. On the above said situation, the Labour Court passed the award, however, the denial of backwages is unsustainable one. Hence, he prays for a direction to the Labour Court to pay the contribution of EPF in the absence of backwages.

10. The learned Counsel appearing for the Employee further submitted that the Employee has not involved in any gainful employment in the interregnum period and the management did not establish that the Employee was gainfully employed and in the



employed, denying back wages to the Employee is not sustainable in the eye of law and therefore, the learned Counsel prayed for allowing the writ petition filed by the Employee and thereby ordering for back wages.

11. Heard the learned Counsel on either side and carefully perused the materials placed 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.

13. Therefore, in the absence of any evidence placed by the Employer Corporation, before the Labour Court to show that this Employee alone is responsible for the loss caused to the State Transport Corporation, the reinstatement with continuity of service ordered by the Labour Court cannot be interfered with and subsequently, the Employee was reinstated into service and he continuously working as a driver in the Employer Corporation. Further, in the absence of the Employee proving by letting in evidence that he had not involved in any gainful employment during the interregnum period, the denial of back wages by the Labour Court also cannot be interfered with.

14. In the light of the above discussion, I am not inclined to interfere with the order of the Labour Court, Trichy passed in I.D.No.81 of 2000, dated 31.07.2008 and therefore, both these writ petitions are dismissed. No costs.

Sd/-

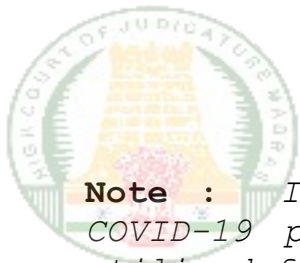
Assistant Registrar(Writs)

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/ /2021

Sub Assistant Registrar(CS)

PJL



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,
Trichy.

+1 CC to M/s.S.BASKARAN, Advocate (SR-7358[F] dated 25/02/2021)

W.P. (MD) Nos. 6360 of 2012
and 159 of 2013
25.02.2021

mj (CO)
TR(26.03.2021) 5P 3C