



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

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W.P. (MD)Nos.10415 of 2017 and 23490 of 2018

and

W.M.P. (MD)Nos.7958 of 2017 and 136 of 2018

W.P. (MD)No.10415 of 2017:

The Management,
Tamil Nadu State Transport Corporation,
(Kumbakonam Division-II) Limited,
Trichirappalli. ... Petitioner/Respondent

Vs.

1.The Presiding Officer,
Labour Court,
Tiruchirapalli.

2.K.Dhakshinamoorthy ... Respondents/Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records relating to the impugned award passed by the first respondent, dated 03.09.2014 in I.D.No.76 of 2004 and quash the same.

For Petitioner : Mr.D.Sivaraman

For Respondents : R.1 Court

: Mr.Ajoy Khose
for M/s A.Rahul for R.2

W.P. (MD)No.23490 of 2018:

K.Dhakshinamoorthy ... Petitioner

Vs.

The Management,
Tamil Nadu State Transport Corporation,
(Kumbakonam Division-II) Ltd.,
represented by its General Manager,
Trichirappalli. ... Respondent



Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records of the impugned award in I.D.No.76 of 2004, dated 03.09.2014, passed by the Labour Court, Tiruchirappalli, quash the same insofar as depriving petitioner's 50% of back wages and consequently issue an order of direction, directing the second respondent to pay petitioner's balance of 50% back wages in addition to relief already granted to the petitioner by the Labour Court and further directing the second respondent to settle the petitioner's terminal benefits by counting the period from the date of dismissal to the date of superannuation as qualifying service for all purposes including for sanction and payment of monthly pension.

For Petitioner : Mr.Ajoy Khose
for M/s A.Rahul

For Respondent : Mr.D.Sivaraman
Standing Counsel

COMMON ORDER

Since the issue arises out of a same award passed by the Labour Court, Tiruchirappalli, in I.D.No.76 of 2004, dated 03.09.2014, both the writ petitions are disposed of by this common order.

2. For the sake of convenience, the petitioner in W.P.(MD) No.10415 of 2017 is hereinafter referred as the petitioner Management and the petitioner in W.P.(MD)No.23490 of 2018 is referred as the second respondent workman.

3. The case of the petitioner Management is that the second respondent workman was working as a Driver in Jeyamkondam Branch of the petitioner's State Transport Corporation and on 21.06.2001, while he was on duty in the bus bearing Registration No.TN-45-N-1557 on Trichy-Chidambaram route, one A.Balusamy was working as a Conductor in the said bus on the said date and at about 09.30 p.m, on 21.06.2001, when the Conductor - Balusamy asked the second respondent Workman to sign in the invoice, the workman snatched the invoice from the Conductor, torn it and attacked him by hand by abusing in filthy language, due to which, the Conductor sustained blood injuries. The said incident was occurred inside the depot and in front of the co-workers.

4. On receipt of the complaints from the Conductor Balusamy, Arjunan-Security Guard and another driver R.Natarajan, the second respondent Workman was issued with a charge memo, dated 29.06.2001, levelling the charges that he attacked and abused the



co-worker in front of other workers inside the depot, which amounts to misconduct under Clause 23(25), 23(22), 23(41) of the Certified Standing Orders. After receipt of the charge memo, the petitioner Management furnished the copies of the complaints and basic reports to the second respondent workman on 05.07.2001. Despite the receipt of the documents, the second respondent Workman did not submit any explanation to the charge memo and an oral enquiry was directed to be conducted by appointing an Enquiry Officer, who conducted the enquiry on 11.12.2001. The second respondent workman participated in the enquiry along with an observer. On behalf of the petitioner Management, one witness was examined and seven documents were produced, whereas the second respondent workman neither examined any witness nor produced any document before the Enquiry Officer. The Enquiry Officer has drawn a proven minute on 21.12.2001 and found that the charges levelled against the second respondent were proved. Based on that, a second show cause notice was issued on 26.12.2001 by furnishing a copy of the enquiry report. The second respondent workman submitted his explanation on 07.02.2002. After considering the earlier punishments suffered by the second respondent workman in his service career, the Disciplinary Authority passed final orders on 11.02.2012 by imposing punishment of dismissal from service.

5. Aggrieved by the said order of dismissal, the second respondent workman raised an industrial dispute before the Labour Court, Trichirappalli in I.D.No.76 of 2004. Before the Labour Court, on behalf of the petitioner Management, two witnesses were examined and ten documents were filed and on the side of the second respondent workman, the second respondent himself was examined as witness and twenty three documents were filed. Based on the oral and documentary evidences, the Labour Court denied 50% back wages in favour of the second respondent workman and passed an award for reinstatement with continuity of service and 50% of back wages. As against the denial of 50% of back wages, the second respondent workman filed a writ petition in W.P.(MD) No.23490 of 2018 and as against the order reinstatement with continuity of service and 50% back wages, the petitioner Management filed a writ petition in W.P.(MD)No.10415 of 2017.

6. Learned Counsel appearing for the petitioner Management would submit that though the charges levelled against the second respondent workman was clearly established before the Labour Court by examining two witnesses and by marking ten documents and the further fact that the petitioner Management has also established before the Enquiry Officer about 32 punishments suffered by the second respondent workman in his service career, however, the Labour without considering the same, has set aside the order of punishment by reinstating the second respondent workman into



service, which is unsustainable one and the same is liable to be interfered with and hence, the learned Counsel appearing for the petitioner Management would pray for appropriate orders.

7. Per contra, the learned Counsel appearing for the second respondent workman would submit that though the petitioner Management would claim that the workman had suffered with 32 punishments in his service career, the same was not established before the Labour Court and no document was produced to establish the same and the order of dismissal is a major punishment. Further, the second respondent workman is a driver and there was a clash in between the workers and in the present case, the alleged victim viz., the conductor was not examined by the petitioner Management and without examining the aggrieved person, the order of dismissal is non-est in law. Further, the second respondent workman established that during the period of dismissal, he was not gainful employee in anywhere and based on the evidence, 50% back wages was awarded, which cannot be interfered with. Further, during the period of unemployment, the second respondent workman faced financial hardship to main two school going children. Further, the denial of 50% back wages by the Labour Court is unsustainable in law. Accordingly, the learned Counsel would pray for appropriate orders.

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

9. The facts in the present case are not in dispute. Admittedly, there was a clash in between the second respondent workman and one conductor Balusamy, for which, the said conductor Balusamy alleged that the workman assaulted him and thereby he sustained grievous injuries. Thereafter, the said Balusamy has given a complaint before the petitioner Management. Before the Enquiry Officer, no witness was examined and no document was marked by the second respondent workman. However, on the side of the the petitioner Management, one witness was examined and seven documents were produced. Though the Labour Court arrived at conclusion that the petitioner Management had not conducted enquiry in a proper manner, allowed both sides to lead evidence. Hence, on behalf of the petitioner Management, two witnesses were examined and ten documents were filed and on the side of the second respondent workman, the second respondent himself was examined as witness and twenty three documents were filed.

10. This Court perused the award passed by the Labour Court and it would reveal that the conductor Balusamy, who was attacked by the second respondent workman, was not examined. The Branch Manager, who was working at the time occurrence was also not



examined. There are contradictory statements in between the complaint as well as in the management witnesses. Therefore, this Court is not inclined to interfere with the order of the Labour Court with regard to reinstatement of the second respondent workman.

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11. Further, with regard to the award of 50% back wages and denial of 50% back wages is concerned, on a perusal of the entire award, it would reveal that the second respondent workman did not adduce any evidence to the effect that he was not gainfully employed during the period of dismissal. However, the Labour Court proceeded to pass award of 50% back wages in favour of the second respondent workman, which is legally unsustainable one. In the absence of any documentary evidence to show that the second respondent was not a gainful employee, during the period of dismissal, he is not entitled to get any back wages. Therefore, the writ petition filed by the second respondent workman seeking 50% back wages is liable to be dismissed. Further the writ petition filed by the petitioner Management is liable to be partly allowed, by setting aside 50% back wages awarded by the Labour Court in favour of the second respondent.

12. For the reasons stated above, the writ petition filed by the second respondent workman in W.P.(MD)No.23490 of 2018 is dismissed and the writ petition filed by the petitioner Management in W.P.(MD)No.10415 of 2017 is partly allowed and the petitioner Management is directed to reinstate the second respondent workman in service and the second respondent workman is entitled to continuity of service and other benefits, except back wages and the petitioner management is directed to settle the said benefits including Provident Fund contribution to the second respondent workman within a period of twelve weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AS)

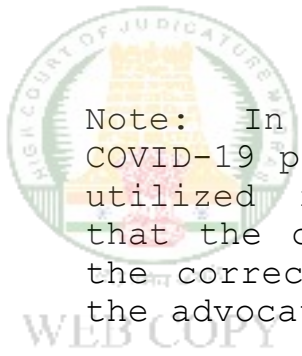
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To
The Presiding Officer,
Labour Court,
Tiruchirapalli.

+1 CC to MR.D.SIVARAMAN, Advocate (SR-6852[F] dated 24/02/2021)

+1 cc to Mr.A.RAHUL , Advocate SR.No.6568

W.P. (MD) Nos.10415 of 2017 and 23490 of 2018
22.02.2021

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