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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.03.2022
Date of Verdict : 01.04.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.Nos.17511 and 2038 of 2012

Venkatesan ...Petitioner in WP.No.17511/2012

The Management,
Tamil Nadu State Transport Corporation Limited,
(Villupuram Division), Villupuram.

...Petitioner in WP.No.2038/2012

Vs.

1.The Management,
Tamil Nadu State Transport Corporation Limited,
(Villupuram Division), Villupuram.

2.The Presiding Officer,
Labour Court,
Cuddalore.

...Respondents WP.No.17511/2012

1.The Presiding Officer,
Labour Court,
Cuddalore.

2.V.Venkatesan ...Respondents in WP.No.2038/2012

Common Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records pertaining to the award dated 31.01.2011 made in I.D.No.286 of 2007 on the file of the Labour Court, Cuddalore and quash the same in respect of the relief relating to payment of back wages and other attendant benefits payable to the petitioner.

In WP.No.17511 of 2012:

For Petitioner : Mr.R.Muralidharan
For Respondents : Mr.G.Saravanakumar for R1
R2 - Court



In WP.No.2038 of 2012:

For Petitioner : Mr.G.Saravanakumar

For Respondents : Mr.R.Muralidharan for R2

R1 - Court

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COMMON ORDER

The Award dated 31.01.2011 passed in Industrial Dispute No.286 of 2007, on the file of the Labour Court, Cuddalore, ordering reinstatement but without back wages, is challenged by both the Management as well as the employee, who was a bus driver.

2. For the sake of convenience, parties herein are referred to as 'Transport Corporation' and 'workman'.

3. The charge against the workman is that he had studied only up to 3rd standard and that he has given a bogus 8th standard School Certificate at the time of his appointment, which was confirmed in the proceedings of the District Elementary Educational Officer (hereinafter referred to as 'DEEO'), Cuddalore, dated 12.12.2002.

4. The Enquiry Officer, on consideration of the evidences before him, including the certificate issued by the DEEO, dated 12.12.2002, had found that the charges against the workman was "not proved". However, the disciplinary authority had deferred from the findings of the Enquiry Officer and by taking into account the past punishments of the workman, imposed the punishment of dismissal from service.

5. Before the Labour Court, the key evidence, namely the certificate issued by the DEEO, Cuddalore, dated 12.12.2002, was not marked as an evidence. However, the record sheet of the petitioner alone was marked as Ex.M2. The Labour Court had analysed all the evidences before it and had found that the Head Master, who had issued Ex.M2, was not examined and on that main ground, had ordered for reinstatement. However, for denial of back wages, no reason has been assigned in the award.

6. The learned counsel for the Transport Corporation submitted that when the DEEO has clearly verified the petitioner's 8th Standard School Certificate and held that there was no entry in their records with regard to the workman, the certificate is deemed to be bogus, and therefore the Labour Court ought not to have ordered for reinstatement.



7. Per contra, Mr.R.Muralidharan, learned counsel for workman submitted that the Labour Court had not assigned any reason for denial of the back wages. According to him, when the Labour Court had found that the dismissal was illegal, they ought to have awarded full back wages together with other attendant benefits.

8. I had given careful consideration to the submissions made by the respective counsels.

9. The main charge against the workman is that he had given a bogus School Certificate, as if he had passed 8th standard. Though the charges were "not proved" before the Enquiry Officer, the disciplinary authority had deferred with the findings of the Enquiry Officer, through the impugned order dated 28.02.2007, by placing reliance on the proceedings of the DEEO, dated 12.12.2002, stating that there were no records to certify that the workman had studied till 8th standard at Co-Athanoor Panchayat Union Middle School.

10. Though the dismissal order placed reliance on the proceedings of the DEEO, dated 12.12.2002, the said proceedings were not marked as a document before the Labour Court. The Transport Corporation had examined MW-2, who is the Assistant Educational Officer, instead of the DEEO's proceedings, a copy of the record sheet dated 31.05.1972, was marked as Ex.M-2. In his deposition, MW-2 deposed that the Head Master, who had issued Ex.M-2 was not examined and further he had also stated that as per Ex.M-2, the workman was promoted to 8th standard on 01.06.1971. In view of the statement of MW-2, the Labour Court had come to the conclusion that the claim of the transport Corporation that the School Certificate of the workman is bogus, cannot be sustained and accordingly, ordered for reinstatement with continuity of service.

11. The DEEO's proceedings dated 12.12.2002 is produced before this Court. When the very foundation of the dismissal order dated 28.02.2007, rested upon the proceedings of the DEEO, the transport Corporation ought to have marked such a document before the Labour Court, to substantiate their case. Having failed to do so, it is now not open to them to produce such records before this Court to establish their case. Since the Labour Court had relied upon the evidence of MW-2 as well as the Ex.M-2 and found that the workman was promoted to 8th standard on 01.06.1971, I do not find any infirmity in such findings of the consequential Award of reinstatement with continuity of service.



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12. The learned counsel for the workman submitted that the workman would be entitled for full back wages, since there is no reasoning in the Award for denial of the back wages. Since the Labour Court had found the dismissal order to be illegal, this submission of the learned counsel for the workman gains significance.

13. In a recent decision of this Court in the case of B.Palaniswamy vs. the Presiding Officer, I Additional Labour Court, City Civil Court Campus, Chennai - 600 104, and another passed in W.P.No.11094 of 2017 dated 24.01.2022, I had placed reliance on the earlier decision of the Hon'ble Supreme Court and held that the award of full back wages required to be ordered, when the termination of workman is found to be illegal. The relevant paragraphs of the order reads as under:

"6. In the case of Deepali Gundu Surwase V. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and Others reported in 2013 (10) SCC 324, the Hon'ble Supreme Court had held that in cases of wrongful termination, reinstatement with continuity of service and back wages is the normal rule. The relevant portion of the order reads thus:-

"38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages."

7. Likewise, in Raj Kumar Dixit Vs. Vijay Kumar Gauri Shanker, Kanpur Nagar reported in 2015 (9) SCC 345, the Hon'ble Supreme Court had held that, once the termination is held to be bad in law, compensation in lieu of reinstatement is impermissible and that such a



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workman will be entitled for all the benefits. The relevant portion of the order reads as follows:-

19. Awarding compensation to an amount of Rs. 2 lakhs to the workman by the High Court in lieu of reinstatement of the appellant-workman along with 50% back wages is once again contrary to the well settled principles of law as has been laid down by this Court in a catena of cases, particularly, the case of Punjab Land Development and Reclamation Corporation. Ltd. v. Presiding Officer, Labour Court, [1] wherein the Constitution Bench held that the order of termination simpliciter has to be held bad in law for non-compliance of the mandatory requirements provided under the Act and further held that the order of termination will be rendered void-ab-initio in law and therefore, the workman is entitled for all benefits for which he is legally entitled to in law.

20. The High Court has exceeded in its jurisdiction in setting aside the Award passed by the Labour Court in awarding reinstatement of the appellant-workman in his post along with 50% back wages which is erroneous in law as the High Court has not noticed the fact that the appropriate Government has referred the dispute to the Labour Court for its adjudication on the points of dispute referred to it. Since, there was non-compliance of the mandatory requirements as provided under the provisions of the Act by the respondent-firm at the time of passing an order of termination against the appellant-workman, therefore, the same has been held to be bad in law and as such it should have awarded full back wages to the workman from the date of termination till the date of passing the Award unless the employer proves that the workman was gainfully employed during the aforesaid period which fact is neither pleaded nor proved before the Labour Court.

8. If and when the aforesaid principles laid down by the Hon'ble Supreme Court is applied to the facts in the present case, the reasoning adopted by the



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Labour Court in denying reinstatement and ordering for compensation, particularly, when it had categorically established and found that the Management had not proved the misconduct of the petitioner, cannot be sustained. Rather, the appropriate award ought to have been for reinstatement with all service and monetary benefits."

14. In the light of the above decisions and by taking into account that the Labour Court had found the dismissal order to be illegal and had also not assigned any reason for denial of the back wages, I am of the view that the workman would be entitled for full back wages.

15. In the light of the above findings, the Writ Petition filed by the Transport Corporation in W.P.No.2038 of 2012, stands dismissed. The Writ Petition filed by the Workman in W.P.No.17511 of 2012 is allowed. Consequently, there shall be a direction to the Management, Tamil Nadu State Transport Corporation Limited (Villupuram Division), Villupuram, to pay full back wages to the workman from 28.02.2007, till the date of actual disbursement, within a period of six weeks from the date of receipt of a copy of this order. No costs.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

Pns

To

1.The Management,

Tamil Nadu State Transport Corporation Limited,
(Villupuram Division), Villupuram.

2.The Presiding Officer,

Labour Court,
Cuddalore.

+2 Ccs to Mr.R.Muralidharan, Advocate sr 22873, 22874

W.P.Nos.17511 & 2038 of 2012

GMR (CO)

SP(12/04/2022)