



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 24.03.2022
PRONOUNCED ON : 02.06.2022
CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**
W.P.(MD)Nos.1915 of 2013 and 17830 of 2014
and
M.P.(MD)No.1 of 2013 and
W.M.P. (MD)No.17452 of 2016

W.P. (MD)No.1915 of 2013:

The Management through the General Manager,
Tamil Nadu State Transport Corporation,
Madurai Division, Ranithottam,
Nagercoil, Kanyakumari District. ... Petitioner

vs.

1.The Presiding Officer,
The Labour Court, Tirunelveli.

2.N.Babu ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records from the 1st respondent Labour Court, Tirunelveli, relating to the impugned award passed by it in I.D No. 31 of 2009, dated 16.06.2012, in so far as it has ordered to reinstate the 2nd respondent and order to continuance his employment and order to pay salary and legally payable benefits concerned alone and to quash the same.

For Petitioner	: Mr.K.Sathiya Singh
For R1	: Labour Court
For R2	: Mr.M.Gnanagurunathan

W.P. (MD)No.17830 of 2014:

N.Babu ... Petitioner

vs.

1.The Presiding Officer,
The Labour Court, Tirunelveli.

2.The Management through the General Manager,
Tamil Nadu State Transport Corporation,
Madurai Division, Ranithottam,
Nagercoil, Kanyakumari District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to calling



for the records relating to the impugned award passed in I.D.No.31 of 2009, dated 16.6.2012, in so far as it relates to the rejection of claim of the petitioner towards back wages and to quash the same and consequently, to direct the 2nd respondent herein to grant back wages to the petitioner till the date of reinstatement of the petitioner in to service.

For Petitioner	: Mr.M.Gnanagurunathan
For R1	: Labour Court
For R2	: Mr.K.Sathiya Singh

COMMON ORDER

The Writ Petition in W.P.(MD)No.1915 of 2013 is filed by the Management and the Writ Petition in W.P.(MD)No.17830 of 2014 is filed by the individual, challenging the order of the Labour Court passed in I.D.No.31 of 2009, dated 16.06.2012.

2.The Labour Court has granted the award, cancelling the dismissal order and directed the management to grant continuity of service and other legally eligible benefits. As far as the back wages in concerned, the same was dismissed.

3.In W.P.(MD)No.1915 of 2013, the second respondent was working as Junior Assistant in Kulithurai Branch during the period from 04.08.2004 to 01.09.2004. The allegation against the employee is that while he was working in Tiruvattar Branch as Junior Assistant for issuance of Free Family Pass to the employees of the Transport Corporation, certain irregularities have been committed by the second respondent. On the basis of the domestic enquiry findings, the charges were proved and the second respondent was dismissed from service on 05.04.2007.

4. The contention of the management is that the second respondent ought to issue Free Family Pass, after the petitioner's approval, then the same ought to be signed the Branch Superintendent and Branch Manager. After satisfying with the genuineness of the request, the Superintendent would direct the Junior Assistant to issue the Free Family Pass. The contention of the respondents is that the delinquent without examining the applications and without getting signature from the Superintendent or the Branch Manager has issued the Family Free pass. The second respondent had not followed any of the procedures and he filled certain forms on his own. The contention of the petitioner is that the only authority to issue the pass is the Branch Manager.

5.In the enquiry report, the Enquiry Officer has stated that the second respondent committed cheating to the tune of Rs.1,42,735.76/-. Based on the enquiry report, the management has dismissed the delinquent from service. Aggrieved over the same, the



delinquent has challenged the same in in I.D.No.31 of 2009. During the preliminary enquiry, the Labour Court has found that the domestic enquiry was not fairly conducted and the management has not given proper opportunity to the delinquent.

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6. The contention of the management is that if the Labour Court had come to the conclusion that the domestic enquiry was not in accordance to the principles of natural justice, then the Labour Court ought to have remitted back the case of the management to conduct denova enquiry by giving opportunity to the delinquent. Since the Labour Court has not remitted back, aggrieved over the same, the management has filed the Writ Petition in W.P.(MD)No.1915 of 2013. The delinquent has filed a Writ Petition in W.P.(MD) No.17830 of 2014, challenging the order of the Labour Court which declined the back wages.

7. Heard Mr.K.Sathiya Singh, learned Counsel appearing for the management and Mr.M.Gnanagurunathan, learned Counsel appearing for the delinquent and perused the records placed before this Court.

8. The contention of the management is that the Labour Court failed to remit the case back to the management to conduct denova enquiry. There is a categorical finding by the Labour Court that there is violation of principles of natural justice in granting opportunity to the delinquent. The said contention of the management was refuted by the learned Counsel appearing for the delinquent stating that if the Labour Court come to the conclusion that there is violation of principles of natural justice, then, it was open to the management to pray before the Labour Court to adduce evidence. Since the management had not submitted any such plea before the Labour Court, the management had lost its right to claim denova enquiry. It is incumbent on the management to rise any other pleadings subsequently, but the management ought to have submitted a petition. Once the preliminary award was passed stating that there is violation of principles of natural justice, when there is no request by the management for leading any fresh evidence, the management cannot allege and claim now that the matter has to be remitted back for denova enquiry.

9. On perusing the records, it is seen that the management has not pleaded before the Labour Court and has submitted any application to adduce fresh Therefore this Court is of the considered view that the management has not pleaded before the Labour Court to adduce fresh evidence when the Labour Court has held in the preliminary award that there is violation of principles of natural justice. Therefore there is no merit in the case filed by the management and hence the writ petition is liable to be dismissed.



10.The delinquent has filed W.P.(MD)No.17830 of 2014 and it is seen that the delinquent was dismissed on 05.04.2007 and the preliminary award was passed on 16.05.2012 and the final order was passed on 16.06.2012. For all these years, the employee had not worked and on the basis of the principles of no work no pay, he is not entitled to back wages. Therefore, the Writ Petition filed by the delinquent also fails. Hence, the Writ Petition W.P.(MD) No.17830 of 2014, is also liable to be dismissed. Hence, both the Writ Petitions are liable to be dismissed. It is made clear that the delinquent is not entitled to any back wages from the date of dismissal until the date of issuance of this order in writ petition.

11.The respondents are directed to reinstate the petitioner in W.P.(MD)No.17830 of 2014 with continuity of service within a period of four weeks from the date of receipt of a copy of this order.

12.With the above direction, the Writ Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

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Sub Assistant Registrar(CS)

Tmg

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,
The Labour Court, Tirunelveli.

+1 CC to M/s.M. GNANAGURUNATHAN, Advocate (SR-24302[F] dated 06/06/2022)

+2 CC to M/s.K.SATHIYA SINGH, Advocate (SR-24306[F] & SR-24306[F] dated 06/06/2022)

W.P.(MD)Nos.1915 of 2013 and 17830 of 2014
02.06.2022

MGJ(10.06.2022) 4P 5C