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W.A.No.1757/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 15-02-2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

W.A.No.1757 of 2021

S.Amulnathan

...

Appellant

-VS-

The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Villupuram.

...

Respondent

Appeal is filed under Clause 15 of the Letters Patent against the order, dated 08.02.2019, passed in W.P.No.25252 of 2011, on the file of this Court.

For Appellant : Mr.B.Ravi

For Respondent : Mr.M.Aswin



JUDGMENT

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This appeal has been preferred by the employee against the order of the learned single Judge, dated 08.02.2019, passed in W.P.No.25252 of 2011, in so far as the rejection of entire back-wages for the period from 04.01.2007 till 16.05.2011, the date of reinstatement.

2. The appellant employee joined the service of the respondent Corporation as a Conductor and was placed under suspension on 04.05.2006 for his misconduct. A Charge Memo was issued to the appellant alleging that he, while discharging his duty, had not issued tickets properly and thereby cheated the Corporation. A detailed inquiry was conducted and the appellant was dismissed from service on 04.01.2007. The Labour Court passed an award in the industrial dispute raised by the appellant, holding that there were no material available before it to establish the charges, but, however, directed the Corporation to reinstate the appellant as a fresh entrant, denying continuity of service, back-wages and other attendant benefits.

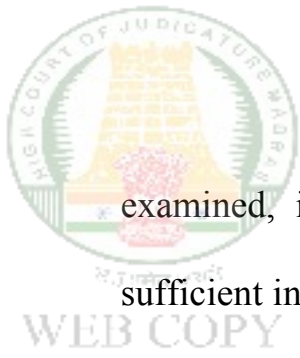
3. Questioning the award of the Labour Court, the appellant preferred the Writ Petition, contending that when the Labour Court had held that the Charges were not proved, it ought not to have awarded reinstatement as a fresh entrant, depriving all



other benefits, and that the said finding runs counter to various decisions of the Supreme Court. In other words, his contention was that when charges were not at all proved in the domestic inquiry and the punishment of dismissal was already set aside by the Labour Court for want of evidence with regard to establishment of charges, denial of reinstatement with continuity of service, back-wages and other attendant benefits was illegal and, therefore, the award needed to be quashed in that regard.

4. The contention of the respondent Corporation was that the appellant committed a series of misconducts; he had collected money by issuance of tickets; there was a shortfall of Rs.239/- in the cash bag, which resulted in framing of charges; the Checking Inspector entered the bus, verified the cash bag and found that the appellant had not issued tickets properly and that there was lesser amount in the cash bag.

5. A reading of the evidence and the award of the Labour Court would make it clear that in case the appellant had collected money from the passengers, there could not be any deficit of Rs.239/- and the amount should be in excess. The appellant stated that there was an accident, in which a goat was injured and a sum of Rs.200/- was paid to the person, who was the owner of the goat, and that he had taken Rs.30/- for the purpose of having dinner. Hence, there was no question of collecting money from the passengers and not issuing tickets. Though it was stated that the passengers were not



examined, it was not necessary to examine those persons, as hearsay evidence is sufficient in the case of domestic inquiry.

6. The Labour Court also held, that, in deciding the preliminary issue, the domestic inquiry was not conducted in a fair and proper manner and the employer was given an opportunity to establish the charges before the Labour Court, and that the management had not proved the charges by filing sufficient documents and evidence. While holding that the charges were not proved, the Labour Court held that the punishment of dismissal passed by the management against the employee was disproportionate and directed reinstatement of the employee as a fresh entrant, denying continuity of service, back-wages and other attendant benefits.

7. The learned single Judge, in the Writ Petition filed by the employee, held that the Labour Court, having taken a conscious decision to set aside the order of dismissal as the charges are not established, ought not to have deprived continuity of service and other attendant benefits. However, the learned single Judge held that the discretion vests with the Labour Court to deprive back-wages or reduce wages or not to grant any wages at all and, therefore, to that extent, the act of the Labour Court in depriving back-wages, was justified. Against that portion of the order, the present appeal has been filed.



8. For the sake of convenience, the relevant portions of the award of the Labour Court in Paragraphs 8,9 and 10, and the order of the learned single Judge in the Writ Petition in Paragraphs 8,9 and 10 are extracted below :

Award of the Labour Court :

"8. In this case, in the Checking Inspectors report Ex.M1, it is stated that the petitioner did not issue tickets to the passengers properly and in the cash bag of the petitioner there was a deficit of Rs.239/-. On the basis of report, the petitioner was suspended from service as per Ex.M6 suspension order. Then Ex.M7 charge memo was issued to the petitioner. The petitioner submitted Ex.M8 explanation to the charge memo Ex.M7. In the explanation, the petitioner stated that he issued tickets properly to the passengers, without issuing tickets, he did not receive the ticket fare amount from any one of the passengers, the checking inspectors entered the bus before the stage, a sum of Rs.200/- was given for died/injure goat which was injured in the bus accident in which the petitioner worked and a sum of Rs.30/- was taken for taking dinner. In the domestic enquiry also, the petitioner denied all the charges except charge Nos.3,4 and 5. The checking inspectors stated in their complaint that the petitioner did not issue tickets properly. But, no statement was given by any one of the passengers. In the domestic enquiry also, no passengers were examined on the side of the management. In deciding the preliminary issue, it was held that the domestic enquiry was not conducted in a fair and proper manner. If really the petitioner does not issue tickets, the checking inspectors would



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have obtained statements from the passengers who travelled in the bus in which the petitioner was working. But no passengers gave statement regarding the complaint of the checking inspectors. If really the petitioner did not issue tickets after collecting the fare amount, there was no chance for less amount in the cash bag. Considering the above facts and circumstances, it is understood that the respondent/ management has not proved the charges that the petitioner received the fare amounts and did not issue the tickets. Since the checking inspectors entered the bus before the stage, the petitioner could not have issued tickets properly to the passengers. In these circumstances, it is clearly understood that the charges against the petitioner were not proved by the respondent by producing sufficient documents and evidence. In this case, no witness was examined on the side of the respondent. Considering the above facts and circumstances, it is decided that the charges against the petitioner were not proved by the respondent by sufficient documents and evidence. Hence, it is decided that the charges against the petitioner were not proved. Since the charges against the petitioner were not proved, the dismissal order passed by the respondent/management against the petitioner was disproportionate and it is decided that the dismissal order is not valid in law. Hence, it is decided that the petitioner is entitled for reinstatement.

9. In the dismissal order, Ex.M18, already 32 punishments were imposed to the petitioner. Hence, the petitioner is entitled for reinstatement as fresh entrant only and the petitioner is not entitled for continuity of service, back wages and other attendant benefits. The point is decided accordingly.



10. In the result, this industrial dispute is allowed in part, the petitioner is entitled for reinstatement as fresh entrant only and the petitioner is not entitled for continuity of service, back wages and other attendant benefits. No costs. An Award is passed accordingly."

Order in Writ Petition :

8. Once the Labour Court has taken a conscious decision to set aside the order of dismissal from service on the ground that the charges were not established in the domestic enquiry, the continuity of service should have been ordered automatically. It is not open to the Labour Court to harp on the past misconduct to punish the petitioner, as that would be contrary to the scheme of the Industrial Disputes Act.

9. As regards the grant of back wages is concerned, it is a discretion vested in the Labour Court to grant full back wages or reduce wages or not to grant any wage at all. The denial of back wages by the Labour Court, in the opinion of this Court, appears to be justified in the circumstances of the case. However, the denial of continuity of service and other attendant benefits cannot be justified in the circumstances of the case. Once the Labour Court has set aside the order of dismissal on merits, the continuity of service has to necessarily follow reinstatement.

10. In the above circumstances, the writ petition is allowed and the award of the Labour Court shall stand modified as under :-

The petitioner/workman is entitled to be reinstated with continuity of service without back wages and the petitioner is also entitled to all attendant benefits, which is the consequence of counting of the entire past service, on



his retirement. No costs."

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9. The contention of the respondent-management is that the appellant-employee has very bad past record and that he is not entitled to any relief, much less one of reinstatement, however, they have reinstated him in service in 2011 and he has since attained the age of superannuation.

10. We do not appreciate the above argument of the respondent management with regard to establishing the charges based on past record. The past record can be looked into for imposing a minor or major punishment, provided the charge levelled against the individual is established in the domestic inquiry or before the Labour Court. In this case, the Labour Court and also the learned single Judge have categorically rendered a finding that the charge against the employee has not at all been proved. We are of the view that in case the appellant employee had collected excess amount from the passengers, there could not be any shortfall in the cash bag and it should be in excess. Since the Labour Court has rendered a finding of fact, holding that the charges have not been proved and that the appellant employee was without employment from 2007 to 2011, the appellant employee would be entitled to entire back-wages. However, we restrict the said back-wages to Rs.2.5 lakhs in order to avoid multiplicity of litigation and to shorten the life of the litigation. The entire period of



service will have to be taken into account for the purpose of gratuity and terminal benefits, such as pension. The employer's and the employee's contribution towards Provident Fund for the period of four years has to be remitted by the employer within a period of four months from the date of receipt of a copy of this order. There is no need to pay interest on the said payment towards Provident Fund deposit within the time stipulated supra. If there is delay in such deposit, it will accrue interest at 12% per annum until it is actually paid to EPF Organisation. The respondent management is expected to release the amount of Rs.2.5 lakhs to the appellant employee towards back-wages, as ordered above, within a period of three months from the date of receipt of a copy of this order, failing which, it will also carry interest at 12% per annum from the date of this order until the amount is paid.

11. Writ Appeal is disposed of accordingly. No costs.

Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking Order
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(S.V.N.,J.) (R.K.M.,J.)
15-02-2023



10/11



W.A.No.1137/2021

To

The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Villupuram.



WEB COPY

11/11



W.A.No.1757/2021

S.VAIDYANATHAN,J.
AND
R.KALAIMATHI,J.

dixit

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