



WEB COPY



WP.No.295 of 2016

In the High Court of Judicature at Madras

Dated : 04.7.2023

Coram :

The Honourable Mr.Justice M.DHANDAPANI

Writ Petition No.295 of 2016

The Management, Metropolitan  
Transport Corporation (Chennai)  
Ltd., Pallavan Illam, Anna  
Salai, Chennai-2.

...Petitioner

Vs

1.Thiru.D.Kumar

2.The Presiding Officer,  
III Additional Labour Court,  
City Civil Court Annexe Building,  
High Court Compound,  
Chennai-104.

...Respondents

PETITION under Article 226 of The Constitution of India praying for

the issuance of a Writ of Certiorari to call for the records pertaining to the  
order passed in I.D.No.314 of 2009 dated 28.8.2015 on the file of the  
second respondent herein and quash the same.

For Petitioner : Mr.V.Ramanlal, AAG assisted by



WP.No.295 of 2016

Mr.M.Chidambaram

For Respondent-1: Mr.V.Ajoy Khose  
ORDER

This is a petition filed by the petitioner seeking to quash the order dated 28.8.2015 in I.D.No.314 of 2009 on the file of the second respondent.

2. The facts leading to filing of this writ petition are as follows :

(i) The 1<sup>st</sup> respondent was appointed as a driver in the petitioner corporation on 03.4.1997. Thereafter, based on an anonymous letter received on 15.11.2002 stating that the 1<sup>st</sup> respondent joined duty after showing a false I.R.T. certificate, a charge memo dated 05.6.2003 was issued and the 1<sup>st</sup> respondent was asked to submit his explanation. The 1<sup>st</sup> respondent also submitted his explanation on 17.6.2003. As the explanation offered by the 1<sup>st</sup> respondent was not found satisfactory, the petitioner corporation ordered for domestic enquiry, in which, it was found that the charges framed against the first respondent were proved.

(ii) The report of the Enquiry Officer was communicated to the first respondent on 22.7.2004. In turn, the 1<sup>st</sup> respondent sent a reply dated



WP.No.295 of 2016

WEB COPY

26.7.2004 stating that the I.R.T. certificate was given to him by his father.

Again, the second show cause notice was issued on 18.10.2004 seeking explanation. Though the 1<sup>st</sup> respondent sent his explanation on 08.11.2004, it was not found satisfactory and hence, the petitioner corporation terminated the 1<sup>st</sup> respondent from service on 21.5.2007.

(iii) Aggrieved by the said order of termination, the 1<sup>st</sup> respondent raised an industrial dispute in I.D.No.314 of 2009 before the 2<sup>nd</sup> respondent. After contest, the 2<sup>nd</sup> respondent allowed the industrial dispute by the impugned award, setting aside the termination order dated 21.5.2007 and further directed the petitioner corporation to reinstate the 1<sup>st</sup> respondent in service, however, without back wages and attendant benefits. Challenging the same, the petitioner is before this Court.

3. The learned Additional Advocate General appearing for the petitioner/management submits that the 1<sup>st</sup> respondent was appointed as a driver in the year 1997. However, based on the anonymous letter received on 15.11.2002, stating that the first respondent joined duty after showing an alleged false I.R.T. certificate, a charge memo dated 05.6.2003 was issued



WP.No.295 of 2016

WEB COPY

to the first respondent. Since the explanation given by the first respondent was not satisfactory, the petitioner / management terminated the first respondent from service on 21.05.2007. Though the first respondent produced an alleged bogus I.R.T. Certificate while joining the duty, the Labour Court without considering the said facts has passed the Award directing the petitioner management to reinstate the 1<sup>st</sup> respondent in service which is *per se* unsustainable.

4. He further submits that the I.R.T Certificate issued by the Institute of Road Transport is very much necessary for the post of Driver. When the certificate produced by the 1<sup>st</sup> respondent itself is bad, he can be removed from service without conducting any enquiry. In support of his contentions, he placed reliance on the decision rendered by this Court in W.P.No.9098 of 2005 dated 31.07.2021. The relevant portion of the said order is extracted hereunder:

*“8. It is not in dispute that the Management had issued a Charge Memo and conducted enquiry, which has been held to be proved. Of course, it s true that an award passed by the Labour Court on the basis of*



WP.No.295 of 2016

*finding of fact cannot be interfered with. But at the same time, when an initial appointment itself is bad, even without conducting any enquiry, an employee can be removed from service, as in this case, the employee/First Respondent entered into service illegally and therefore, his appointment is held to be illegal and irregular. In addition to the above, it is an admitted fact that the employee had joined service with bogus certificate, which is illegal.”*

5. The learned counsel appearing for the 1<sup>st</sup> respondent submits that the basic qualification for the post of Driver is necessarily a driving licence. At any rate, the punishment of dismissal from service is grossly disproportionate and for the post of Driver there is no requirement of I.R.T. Certificate and, therefore, insistence of the respondent on IRT certificate is only with oblique motive. Further, the Labour Court elaborately passed the Award upon appreciating the oral and documentary evidences submitted by the parties, which cannot be interfered with.

6. The learned counsel appearing for the 1<sup>st</sup> respondent, in support of



WP.No.295 of 2016

the aforesaid submissions placed reliance on the decision rendered by the Hon'ble Apex Court reported in **2008 3 CTC 23** in the case of ***P.Sekar Vs.The Registrar, Tamil Nadu Administrative Tribunal, Chennai***. The relevant portion of the said Judgment is extracted hereunder:

*“7. There is no dispute that for the initial post in which the petitioner had been appointed, there was no requirement of passing SSLC. Passing of SSLC is required only for the promotion to the post of Veterinary Livestock Inspector. The Petitioner claims that he had simply forwarded the mark-sheet which he had received. It is not in dispute that a Criminal Case is pending and therefore the question as to whether the petitioner had knowingly utilised the false mark-sheet would be decided in such Criminal Case. Incidentally the post held by the petitioner was very insignificant post to Flock Man.*

*8. Keeping in view the fact that there is no finding nor any material to indicate that the petitioner had knowingly submitted a false mark-sheet and such question would be ultimately decided in the pending Criminal Case and taking into consideration the social strata from which the petitioner comes, we feel*



WP.No.295 of 2016

*in the interest of justice and punishment of termination of service is required to be modified and instead we direct that the petitioner shall be reverted to the post of Flock Man and shall not be considered for promotion to any other post. As a consequence of such order, it is further directed that the period during which the petitioner has not worked, shall not be counted for any purpose.”*

7. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

8. The facts in the present case are not in dispute. While on the side of the petitioner, possession of IRT certificate for the post of driver is mandatory, but it is argued by the respondents that it is not so. However, no material whatsoever has been placed by the learned counsel for the workman to show that possession of IRT Certificate is not necessary for the post of driver.

9. In the aforesaid backdrop, a perusal of the award passed by the



WP.No.295 of 2016

WEB COPY

Labour Court, more particularly, the explanation letter dated 08.11.2004 marked as Ex.W.11, submitted by the 1<sup>st</sup> respondent / workman at the time of the enquiry, reveals that the IRT certificate is a fabricated document, which has been obtained by the father of the workman out of his love and affection for his son. The said fact had been admitted by the workman in the enquiry and he had also tendered his apology.

10. When a certificate is mandatory for the workman to hold a post of driver, merely because the workman holds a valid driving licence cannot be considered sufficiency to hold the post of driver, when the employer mandates the possession of IRT certificate as mandatory for the said post. When a specific mandate is made that for holding the post held by the workman, IRT certificate should be produced, not in possession of such a certificate, the said candidate cannot be considered for the said post. In the case on hand, on the date when the workman was selected for the post, he was not in possession of a valid IRT certificate, as the certificate held by him was a fabricated document, his appointment itself is void. Such being the case, the only conclusion that could be arrived at is that the appointment



WP.No.295 of 2016

WEB COPY

of the workman at the earliest point of time itself is bad and it cannot be cured by any means and, therefore, the termination of the workman from service cannot be said to be erroneous. The decision of this Court in W.P.No.9098 of 2005 dated 31.07.2021, relied on by the learned counsel for the petitioner is squarely applicable to the present case on hand.

11. For the reasons aforesaid, the order passed by the Labour Court is wholly erroneous and unreasonable and the same requires to be interfered with. Accordingly, the order impunged herein, passed by the Labour Court, Chennai, is set aside and this writ petition is allowed. There shall be no order as to costs.

04.7.2023

rap

Index : Yes (or) No

Neutral Citation : Yes (or) No

Speaking Order : Yes (or) No



WEB COPY



WP.No.295 of 2016

M.DHANDAPANI,J

rap

To  
The Presiding Officer,  
III Additional Labour Court,  
City Civil Court Annexe Building,  
High Court Compound,  
Chennai-104.

WP.No.295 of 2016

04.7.2023