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W.A. No. 1050 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2023

CORAM

THE HON'BLE MR.JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. No.1050 of 2023

A. Kumaresan

..Appellant

Vs.

1. The Presiding Officer,
Labour Court, Salem.
2. The Management,
Tamil Nadu State Transport
Corporation Division -II,
Bharathipuram,
Dharmapuri.

..Respondents

Prayer: Writ Appeal as against the order dated 16.03.2023 passed in

W.P. No.17857 of 2012.

For Appellant :: Mr.P.M. Subramaniam,
Senior Counsel for
Ms.S. Girija

For Respondents :: Mrs.C. Sangamithirai,
Special Govt. Pleader for R1
Mr.K. Raja for R2



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J U D G M E N T

(Delivered by S. Vaidyanathan,J.)

The present appeal has been preferred by the workman challenging the order dated 16.03.2023 passed in W.P. No. 17857 of 2012 by which the relief sought by the workman to quash the award of the Labour Court and to direct the 2nd respondent Management to reinstate him with full backwages in service with all attendant benefits has been rejected, thereby confirming the award passed by the Labour Court.

2. The appellant/employee was employed as a Driver in the 2nd respondent Corporation and on account of his unauthorised absence from duty for a period of 97 days, disciplinary action was initiated and he was dismissed from service on 26.08.1998. Questioning his dismissal, an industrial dispute was raised in I.D. No. 32 of 2002, which was taken up by Labour Court, Salem and an award was passed on 04.12.2002 in the said industrial dispute directing the Management to reinstate the employee into service without continuity of service, without backwages and without other reliefs, and on the basis of the present full pay, within two months from that date. The relevant portions of the said award, namely, paragraph Nos. 10 and 11 are extracted below:



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“10. Under these circumstances, I am of the view that the punishment imposed on the petitioner is not justified and the punishment is modified to the extent indicated below. The petitioner is entitled to reinstatement on the basis of the present full pay, but without continuity of service, backwages and other benefits. The issues are answered accordingly.

11. In the result, award is passed holding that the punishment imposed on the petitioner is not justified. The punishment imposed on the petitioner is modified to the extent indicated below. The respondent is directed to reinstate the petitioner into service without continuity of service, without backwages and without other reliefs, and on the basis of the present full pay, within two months from this date. No costs.”

3. Aggrieved by the award passed by the Labour Court, Salem, denying the entire benefits for the absence of 97 days, except reinstatement, the writ petition was filed by the appellant/workman and the learned Single Judge, by the order under challenge, has confirmed the award holding as follows:

“15. Taking note of the conduct of the petitioner, the Labour Court, by taking a lenient view, set aside the harsh punishment and modified the same. Hence, in the considered opinion of this Court, the petitioner is not entitled to any continuity of



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service and other benefits. Therefore, this Court finds no merit

to interfere with the award passed by the Labour Court in

I.D.No. 32 of 2002 dated 04.12.2002.”

Insofar as the Management is concerned, the award had become final and there was no writ petition filed by them. Challenging the dismissal of the writ petition, the present writ appeal has been preferred by the workman.

4. Heard the learned counsel on either side.

5. In the present appeal, the workman has confined his relief with regard to the pensionary benefits as according to the workman, pursuant to the award dated 04.12.2002, he should have been reinstated within a period of 2 months from that date, as per the award passed by the Labour Court, ie., on or before 03.02.2003. However, the employee has been reinstated in service on 14.08.2003. The Management has reinstated the employee on 14.08.2003 by which time the Old Pension Scheme had been abolished on 31.03.2003 and the new Contributory Pension Scheme had been introduced with effect from 01.04.2003. In any event, it is the date of the award that has got to be taken into account to determine whether the employee would come under the Old Pension Scheme or not. Once the award is published in



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terms of Section 17A of Industrial Disputes Act, 1947, it will have effect from the date of the award passed by the Labour Court. .

6. Taking note of the totality of circumstances, we are of the view that the employee has been given the relief as a new entrant as could be seen from the award dated 04.12.2002 and he is entitled to all the benefits and the employee would be covered by the Old Pension Scheme which was in existence prior to the abolition of the same on 31.03.2003 and not by the new Contributory Pension Scheme introduced with effect from 01.04.2003. Hence, while confirming the award of the Labour Court. as has been done by the learned Single Judge in the writ petition, we observe that the employee would be entitled to the benefit of Old Pension Scheme which was in existence on the date of the award dated 4.12.2002 and the Labour Court had also directed the Management to reinstate the employee within two months from that date, which means that the employee should have been reinstated on or before 03.02.2003 on which date the Old Pension Scheme was in existence.



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nv

7. With the above observation, the writ appeal stands disposed of.

No costs.

nv

(S.V.N.J.) (K.R.S.J.)
05.06.2023

To

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