



W.P.No.13922 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.13922 of 2017

and W.M.P.No.15118 of 2017

The Managing Director,
Tamilnadu State Transport Corporation
(Kumbakonam Division I), Limited,
Railway Station Road,
Kumbakonam

.. Petitioner

Vs.

1.C.Chelladurai

2.The Presiding Officer,
Labour Court,
Cuddalore.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari or any other appropriate Writ, Order to call for the records of the 2nd respondent made in ID.No.3 of 2004 dated 27.02.2014 and to quash the same.

For petitioner : Mr.C.Senapathi

For Respondents : Mr.G.Purushothaman for R1



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ORDER

Aggrieved by the award passed by the Labour Court in I.D.No.3 of 2004, the petitioner is before this Court.

2. It is the case of the petitioner that the 2nd Respondent/Workman was appointed as a Conductor in the Petitioner Corporation. While he was in duty in the bus proceeding from Thiruthuraipoondi to Nagapattinam, it was found by the Checking Inspectors of the Petitioner Corporation that the 2nd respondent has received a sum of Rs.14/- from 4 passengers and has not issued tickets to 3 passengers and that there was a shortage of Rs.21.50/- in the cash bag. Hence, he was issued with charge memo dated 21.04.2003 calling upon his explanation to the said misconduct. After conducting enquiry, the enquiry officer submitted his report holding the charges proved against the 2nd respondent. Since, there was no response from the 2nd respondent, he was issued with second show cause notice seeking his explanation in respect of the conclusion arrived by the enquiry officer. After considering his reply, un-convinced by the same, the workman was dismissed from service. Challenging the said dismissal, the workman raised



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an Industrial Dispute before the 1st respondent/Labour Court in I.D.No.3 of 2004, wherein, the Labour Court ordered reinstatement, backwages with continuity of service and attendant benefits. Challenging the same, the petitioner Corporation is before this Court by way of this Writ Petition.

3. Learned counsel for the petitioner corporation submitted that the 2nd Respondent workman is a habitual offender since he had already committed misconducts on multiple occasions, for which he was caught red handed by the officers and this is the fourth time he has committed the very same offence. The said fact was clearly established in the domestic enquiry by examining the passengers as witnesses. Taking into consideration his past misconducts, the workman was dismissed from service. Though the aforesaid facts were disclosed before the Labour Court while passing the impugned award, however, without considering the same, the Labour Court has mechanically passed the impugned award in favour of the Workman by setting aside the punishment of dismissal with the direction for reinstatement with continuity of service and 50% backwages which is not sustainable. He further submitted that the workman has attained the age of



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superannuation even in the year 2017 and therefore, the award passed by the

Labour Court ordering reinstatement cannot be sustained.

4. Per Contra, learned counsel for the 2nd respondent workman submitted that though it is alleged that the workman has failed to issue tickets to the passengers despite collecting ticket fares, however, at the time of domestic enquiry, the petitioner has failed to examine the necessary witnesses. The petitioner having failed to conduct the enquiry in a free and fair manner, cannot claim the award passed by the Labour Court to be perverse. Since the aforesaid facts, have been elaborately considered by the Labour Court while passing the impugned award, there is no perversity in the impugned award and hence, the Writ Petition is liable to be dismissed

5. This Court heard the learned counsel appearing for the petitioner as well as the 2nd respondent and perused the materials available on record.

6. Admittedly, in the case on hand, the 2nd respondent workman having collected money from four passengers had failed to issue tickets to



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three passengers. For the said misconduct, after conducting a domestic enquiry and the charges being proved against him, he was dismissed from service. The workman raised a dispute before the Labour Court with regard to said dismissal resultantly, the present impugned award has been passed by setting aside the punishment of dismissal imposed by the petitioner on the ground that necessary witnesses have not been examined during the course of enquiry.

7. The Labour Court has considered all the materials placed before it and has come to the conclusion that requisite witnesses were not examined to speak about the misconduct committed by the workman. However, taking into consideration the delinquency committed, the Labour Court, finding the order of dismissal disproportionate to the proved charges, has modified the order of dismissal to that of stoppage of increment for a period of two years with cumulative effect with further direction to reinstate the workman with continuity of service and 50% of backwages.



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8. A perusal of the impugned award reveals that, no averments have been made by the workman with regard to him not being in gainful employment during the period of dismissal. In the absence of any pleading in the claim petition relating to gainful employment during the non-employment period, the Labour Court was not justified in ordering payment of backwages. It is the duty of the workman to prove that during the period of non-employment he was not under gainful employment. However, as aforesaid, the workman having not pleaded and not placed any substantive materials to prove that he was not in gainful employment, the order of grant of 50% backwages, ordered by the Labour Court is perverse and shows the mechanical manner in which the said order has come to be passed, which cannot be sustained. However, insofar as the order of reinstatement of the workman is concerned by modifying the punishment, the same cannot be said to be perverse or unreasonable, as the punishment should in proportion to the delinquency committed by the workman.

9. However, at the time of arguments, it was brought to the notice of this Court that the workman has attained the age of superannuation in the



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year 2017 and, hence, the question for reinstatement does not arise at this point of time. Therefore, the question of reinstatement does not arise.

However, the workman would be entitled to continuity of service for the purpose of computation of terminal benefits.

10. Accordingly, this writ petition is disposed of and the award passed by the Labour Court stands modified as follows :-

(i) the modification of punishment from dismissal to stoppage of increment for a period of two years with cumulative effect passed by the Labour Court is confirmed.

(ii) however, in view of the superannuation of the workman in the meantime, reinstatement does not arise, but the workman would be entitled to continuity of service and the Petitioner Corporation is directed to compute and pay all the terminal benefits as if the petitioner had continued in service and superannuated on attaining the age of superannuation to the workman, within a period of four (4) weeks from the date of receipt of a copy of this order;

(iii) the workman is not entitled for any back wages from the date of dismissal till the date of attaining superannuation.

Consequently, the connected miscellaneous petitions are closed. No costs.

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Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
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M.DHANDAPANI, J.

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To

The Presiding Officer,
Labour Court,
Cuddalore.

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