



W.P.No.32279 of 2018
and
W.M.P.No.37520 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2023

CORAM:

THE HON'BLE MR. JUSTICE M.S.RAMESH

W.P.No.32279 of 2018

and

W.M.P.No.37520 of 2018

The Management,
Tamil nadu State Transport Corporation(Salem)
Limited,
Vellore Region,
Vellore-9,
Rep.by its General Manager.

.. Petitioner

/versus/

1.Mr.A.Gopalakrishnan

2.Special Deputy Commissioner of Labour,
Chennai.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records relating to the Order dated 27.03.2018 passed by the Special Deputy Commissioner of Labour, Chennai in I.D.No.18/2017 and to quash the same.

For Petitioner

: Mr.R.Venkatesaperumal

For Respondents

: Mr.J.Pradeep for R1

Mr.D.Gopal, G.A for R2



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ORDER

The first respondent herein had joined the duty as Conductor in the petitioner Corporation on 05.03.1987. Through the charge memo dated 05.04.2008, he was alleged to have been in unauthorized absence from 11.06.2008 onwards. In the enquiry, the charge against the first respondent was held to be proved and by an order dated 22.11.2016, the first respondent was dismissed from service. Challenging the same, he had raised a dispute in I.D.No.18 of 2017 before the Principal Labour Court, Vellore.

2. The Principal Labour Court, while holding that the enquiry was not conducted in a fair and proper manner, passed the impugned award dated 27.03.2018 by holding that the petitioner Corporation, though had revoked the suspension order, it had not properly communicated the revocation of the suspension order dated 07.06.2008, which was marked as Ex.M3 neither by registered post nor in person to the first respondent. Having failed to establish that the revocation order was not served on the first respondent herein, it had held that the punishment of dismissal was illegal. However, since the first



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respondent had reached the age of superannuation on 03.11.2016 itself, it had awarded backwages together with the continuity of service in lieu of reinstatement. Challenging the said award, the present Writ Petition has been filed by the petitioner Corporation.

3. The learned Counsel appearing for the petitioner Corporation submitted that the Principal Labour Court had not considered the fact that the revocation of suspension order dated 07.06.2008 was displayed on the Notice Board of the Corporation and therefore, the first respondent cannot plead ignorance of the revocation order totally. According to the learned counsel, the finding of the Enquiry Officer was not perverse and that the proportionality of punishment was also not gone into.

4. Per contra, the learned counsel appearing for the first respondent submitted that the main defense taken by them in the Enquiry with regard to his absence was because of the fact that they had not received the order revoking the suspension order and therefore, there is no infirmity in the finding of the Principal Labour Court, while displaying the service of their revocation



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of suspension order on the notice board.

5. I have carefully considered the submissions made by the learned respective counsels.

6. Before the Principal Labour Court, the petitioner Corporation had not examined any witnesses. Though the copy of the suspension order dated 05.04.2008 and the copy of the revocation of suspension order dated 07.06.2008 were marked as Ex.M2 and Ex.M3, they had not let in oral evidence to substantiate the content of these two documents, particularly, Ex.M3. When the very defence of the first respondent herein for the charge of unauthorized absence was that he was not aware of the revocation of suspension order, the petitioner Corporation ought to have let in oral evidence to substantiate that the notice of revocation of suspension order was duly served on the first respondent herein.

7. The Hon'ble Supreme Court in ***Roop Singh Negi v. Punjab National Bank and others*** reported in ***[(2009) 2 SCC 570]*** has held that during the course of the enquiry, the contents of the documents perused therein



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requires to be substantiated through oral witness and in the absence of the same, no credence could be attributed to the document itself. The relevant portion of the order reads as follows:-

“14. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The enquiry officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the investigating officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the enquiry officer on the FIR which could not have been treated as evidence.”

8. This apart, the Principal Labour Court had also observed in its award that there was no evidence to substantiate that the revocation of the suspension order was served by the petitioner Management to the first respondent herein neither by registered post nor in person and mere display of such notice in the Notice Board will not alone suffice. Prior to displaying the



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same, the Management ought to have taken efforts to serve such notice on the concerned workman and in the failure of such attempt, they would be justified to display the order on the notice board. The Principal Labour Court had also taken into account that the Management had not produced the acknowledgment card or postal receipt to show that it had attempted to serve revocation order on the first respondent herein. In this background, the Principal Labour Court ordered for payment of entire backwages together with continuity of service.

9. This Court is of the view that there is no perversity in the finding of the Principal Labour Court and therefore, no interference is required to the same. Accordingly, this Writ Petition stands dismissed.

10. At this juncture, the learned counsel appearing for the petitioner Corporation submitted that 50% of the backwages had been deposited before the Principal Labour Court, Vellore, out of which, the first respondent herein had also withdrawn 50% of the same. In this background, the petitioner Corporation is directed to pay the balance 50% of the award amount ordered



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by the Principal Labour Court, Vellore, to the first respondent herein. The first respondent herein is also granted liberty to make a proper application before the Principal Labour Court for withdrawal of the balance of the amount lying in deposit before the Principal Labour Court in I.D.No.18 of 2017 dated 27.03.2018 and on receipt of the same, the Principal Labour Court shall pass appropriate orders, permitting the first respondent herein to withdraw the entire amount lying in deposit in the I.D. Account. The Principal Labour Court shall pass such orders on the application, preferably on the same day. No costs. Consequently, connected Miscellaneous Petition is closed.

19.01.2023

Index : Yes / No
Speaking order/non speaking order
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To

The Special Deputy Commissioner of Labour,
Chennai



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M.S.RAMESH. J.

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