



W.P.No. 19533 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2024

CORAM :

THE HONOURABLE **DR. JUSTICE D.NAGARJUN**

W.P.No. 19533 of 2015

G.Vijayakumar

... Petitioner

Vs.

1. The Presiding Officer,
Labour Court, Salem.
2. The Management,
TNSTC, Salem Region,
12, Ramakrishna Road,
Salem- 636 007.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records connected with the award dated 18.08.2008 made in ID No. 59/2005, passed by the first respondent and quash the same in so far as it relates to the particular aspect of denial of continuity of service and other attendant benefits arising from the date of the petitioner's initial appointment on 10.12.1996 as Conductor and also the subsequent period upto the date of his rejoining as Office Assistant on 18.12.2009 and consequently direct the Respondent/Management to grant the incidental service benefits arising thereof and count the said period and thereby protect the interest of the petitioner for being eligible for pension.

For petitioner : Mr.Girija



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For R1 : Labour Court
For R2 : Mr.M.Aswin

ORDER

This writ petition is filed seeking for Certiorarified Mandamus for direction to quash the award in ID No. 59/2005, dated 18.08.2008 passed by the first respondent in so far as it relates to the denial of continuity of service and other attendant benefits arising from the date of the petitioner's initial appointment on 10.12.1996 as Conductor and also the subsequent period upto the date of his rejoining as Office Assistant on 18.12.2009 and consequently direct the Respondent/Management to grant the incidental service benefits arising thereof and count the said period and thereby protect the interest of the petitioner for being eligible for pension.

2. The facts and briefs as per the affidavit enclosed in the writ petition is as follows:-

2.1 The petitioner has joined second respondent/transport corporation as a conductor on 10.12.1996. On 27.03.2000, the petitioner has received



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notice in respect of unauthorised absence, for which he has submitted explanation and requested the second respondent to permit him to rejoin the duty by condoning the absence. However, the respondent proceeded with the Disciplinary proceedings and ultimately dismissed the petitioner from service.

2.2. The respondent was promised him that he will be reinstated. Petitioner raised an industrial dispute in ID No. 59 of 2005 before the first respondent/Labour Court which was allowed on 18.08.2008, directing the respondents to reinstate the petitioner in the lower post as Office Assistant (peon) by forfeiting all the service benefits of previous service and rejected the claim of the petitioner for reinstatement as conductor with continuity of service.

2.3 In response to the orders of award in I.D.No. 59 of 2005 of second respondent dated 18.12.2009, the petitioner was posted as Office Assistant. Accordingly, the petitioner has joined as Office Assistant without prejudice to his right of challenging the award. Accordingly, aggrieved by the orders passed in I.D.No. 59 of 2005, this writ petition is filed.



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3. It is submitted by the learned counsel for the petitioner that the petitioner was permitted to join the duty with effect from 02.04.2000 thereby the charge of continuous absence from 17.02.2000 mentioned in the charge memo has been subsequently modified as absence of duty from 17.02.2000 to 02.04.2000 in the disciplinary proceedings, however the Labour Court has failed to take note of the fact that the petitioner was rejoined the duty on 02.04.2000 with proper Medical Certificate.

4. It is further submitted by the learned counsel for the petitioner that the penalty of dismissal from service was highly disproportionate and since the dismissal was found to be irregular, the Labour Court while ordering for reinstatement should have directed the respondents to post as a Conductor not as a Office Assistant with continuity of service.

5. No counter affidavit is filed by the second respondent. However, the learned counsel for the second respondent has submitted that the grounds raised by the petitioner in this writ petition have already been raised before



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the Labour Court and submitted further that previously also number of occasions the petitioner was absent and on account of which the bus services of the second respondent/Corporation were affected causing inconvenience for the public at large. It is also submitted by the learned counsel for the second respondent that the Labour Court has considered all the facts came to the conclusion of directing him for reinstatement as office Assistant and as a fresh candidate. It is further submitted by the learned counsel for the second respondent that the petitioner has not filed any evidence before the Labour Court either orally or documentary thereby there was no option for the Labour Court except to pass the impugned order.

6. Considering above, it is to be examined whether the orders passed by the Labour Court directing the second respondent to reinstated the petitioner as a Office Assistant (Peon) instead of conductor, forfeiting previous service as a conductor was justified for his alleged unauthorized absence from 17.02.2000 to 02.04.2000 for a period of 45 days.

7. Heard both sides and also perused the materials available on record.



8. The petitioner has challenged the award in ID.No. 59 of 2005, dated 18.08.2008 passed by the first respondent/Labour Court mainly on the ground that the punishment awarded was disproportionate. There is no dispute that the petitioner was absent unauthorisedly as a conductor of the second respondent/Transport Corporation for a period of 45 days commencing from 17.02.2000 to 02.04.2000. According to the petitioner, he fell sick and was suffering from typhoid fever thereby there was no possibility for him to report the same to his superior officers and that subsequent to taking treatment, he rejoined the duty along with the medical certificates and that he was allowed to work from 03.04.2000 onwards.

9. An enquiry was conducted under Clause 19(1)(f) of the standing orders for the absence of the petitioner from 07.02.2000 to 02.04.2000 (i.e) for a period of 45 days. Enquiry was initiated for his absences by framing three charges:-

1. Absence from duty without prior intimation and prior permission.
2. Acting in a manner without a sense of duty, irresponsibly and arbitrarily.
3. Causing unnecessary trouble to the Corporation.

After concluding the enquiry, the petitioner was dismissed from service. The



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petitioner has raised an industrial dispute in ID.No. 59 of 2005 before the first respondent/Labour Court.

10. The labour Court having come to the conclusion that removal of the petitioner from his service by the second respondent management as irregular has reinstated him back in service in lower grade as Office Assistant (Peon) as a fresh candidate. Once the Labour Court comes to the conclusion that dismissal of the petitioner from service is not justified, normally the petitioner should have been reinstated back in the same position from where he was in dismissed. The Labour Court in his award has not specifically mentioned the reason for not reinstating him as a conductor. However, the Labour Court has observed the conduct of petitioner as a chronic absentee and directed for reappointment in lower grade as Office Assistant (Peon) as a fresh candidate by forfeiting his previous service as a conductor.

11. On perusal of the charges framed, it is clear that there is no charge framed against the petitioner in respect of his alleged previous periods of absence from the duty. Charges were framed only in respect of his absence for a period of 45 days from 17.02.2000 to 02.04.2000.



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12. The Labour Court has gone beyond the charges framed and took serious view of the fact that the petitioner was previously absent for total number of 229 days in 10 different occasions. The Labour Court was not expected to take into consideration of the previous periods of absence, on the basis for directing the second respondent/Transport Corporation to reinstating the petitioner in lower grade as Office Assistant (Peon) instead of conductor without there being no charge in respect of previous periods of absence. Had there been any charge in respect of previous periods of absence the petitioner would have got opportunity to explain about his alleged periods of previous absence.

13. Further, it is not clear from the records whether any disciplinary proceedings have been initiated in respect of previous periods of absence by the petitioner. If disciplinary proceedings have been initiated earlier in respect of previous periods of absence by the petitioner, the Labour Court cannot consider previous misconduct, for refusal to reinstate the petitioner in the same position. If no disciplinary proceedings have been initiated against the petitioner for his previous periods of absence, those periods could have been



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condoned by the Transport Corporation, in which case also the department is not expected to raise such a plea before the labour court and even if such plea was taken by the second respondent, the labour Court could have ignored them and could not have considered the same while passing an award. Therefore, the findings of the Labour Court that on account of the previous absence of the petitioner, the petitioner has to be reinstated as in the lower grade as Office Assistant(Peon) is totally perverse.

14. In view of the above, the impugned award in ID.No. 59 of 2005, dated 18.08.2008 is set aside in part in so far as the direction given to the second respondent/Transport corporation for reinstating the petitioner in a lower grade of service as Office Assistant (Peon) by forfeiting all the service benefits previously rendered by him. Consequently, the second respondent/Transport Corporation is directed to reinstate the petitioner as Conductor with continuity of service from the date of initial appointments of the petitioner with effect from 10.12.1996 and for the subsequent period until his retirement. The petitioner though entitled for continuity of service as a conductor from 10.12.1996 until 18.12.2009 he is not entitled for monetary benefits during the said period which he has not worked.



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15. In view of the above, this writ petition is allowed. Costs made easy.

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Internet: Yes

Index : Yes/No

Neutral Citation: Yes/No

Speaking/Non Speaking order

DR. D.NAGARJUN,J.

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To

1. The Presiding Officer,
Labour Court, Salem.
2. The Management,
TNSTC, Salem Region,
12, Ramakrishna Road,
Salem- 636 007.



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