



W.A. (MD) No.160 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 08.02.2024

PRONOUNCED ON : 22.02.2024

CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

W.A(MD).No.160 of 2024

P.Chelliah

.... Appellant / Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Tirunelveli.

2.AD.Jalaja

... Respondents/ Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent, to allow the appeal and set aside the order of this Court made in W.P(MD).No.8403 of 2016 dated 10.11.2022.

For Appellant : Mr.K.Guhan

For Respondents : Mr.M.Jerinmathew for R2



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JUDGMENT

(Made by **R.VIJAYAKUMAR,J.**)

The petitioner in the writ petition is the appellant herein. The petitioner had filed I.D.No.31 of 2007, challenging the order of dismissal before the Labour Court, Tirunvelveli. The Labour Court, by its award dated 29.01.2015 had allowed the said dispute only with regard to backwages for the period covering 01.05.2010 to 10.03.2011. The said award was challenged before this Court in W.P.(MD)No.8403 of 2016. The Writ Court was pleased to dismiss the said writ petition. Challenging the same, the present Writ Appeal has been filed.

2. According to the learned counsel appearing for the writ petitioner, while he was working as a driver in the transport corporation, he was held to be responsible for an accident that took place on 22.07.2015. Without properly conducting an enquiry, he was terminated from service on 23.07.2005. Challenging the same, the petitioner had filed I.D.No.31 of 2007 before the Labour Court, Tirunelveli. The Labour Court directed the Management to re-instate the petitioner. This order was challenged before this Court. This



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Court by order dated 15.02.2010 had remitted this matter back to the Labour Court for fresh consideration.

3. The Petitioner had further contended that after remand, the petitioner has not insisted for re-instatement. The Labour Court arrived at a finding that the petitioner was gainfully employed during the period of non-employment with the transport corporation and therefore, restricted the backwages only for the period from 01.05.2010 to 10.03.2011. According to the learned counsel appearing for the petitioner, when the petitioner has been terminated on 23.10.2005, he is entitled to backwages during the entire period of non employment and therefore, the order of Labour Court was not legally sustainable. Hence, he had challenged the same before this Court in W.P. (MD)No.8403 of 2016. The Writ Court by an order dated 10.11.2022, had confirmed the findings of the Labour Court and dismissed the Writ Petition.

4. The Petitioner had further contended that the Writ Court ought to have considered the fact that no such direction was issued by this Court in W.P.No.6105 of 2010 restricting the backwages, but, the Labour Court misconstrued the order of this Court and the same has been sustained by the



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Writ Court. Hence, he prayed for allowing the Writ Appeal.

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5. Per contra, the learned counsel appearing for the second respondent had contended that the petitioner had admitted during his cross examination that he was employed elsewhere and for a particular period of time, he was also employed in transport corporation. Since the petitioner was not able to establish that he was not gainfully employed during the entire period of non employment, the Labour Court as well as the Writ Court had rightly rejected the right of the writ petitioner for backwages for entire period. Hence, he prayed for dismissal of the writ appeal.

6. We have carefully considered the submissions made on either side and perused the materials available on records.

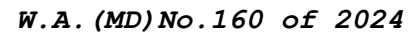
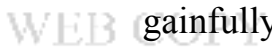
7. The appellant, who is the driver, working with the second respondent private transport operator, was dismissed from service on 23.07.2005. The appellant had challenged the same before the Labour Court, Tirunelveli, in I.D.No.31 of 2007. The Labour Court, by its award, dated 15.02.2010, had directed the management to re-instate the petitioner with entire



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backwages and continuity of service. Challenging the same, the private management had filed W.P.(MD)No.6105 of 2010. This Court, by an order dated 15.10.2010, had set aside the award and remitted the matter back to the Labour Court. While the matter was pending before the Labour Court, the petitioner had filed a memo to the effect that he is not insisting upon the prayer for re-instatement. Therefore, the only issue before the Labour Court was the issue relating to payment of backwages. The Labour Court, categorically found that the appellant, in his cross examination, had admitted about his employment in transport corporation during the relevant point of time. On the said findings, the Labour Court had restricted the payment of backwages for the period between 01.05.2010 to 10.03.2011 at the rate of Rs.4,500/- per month. These facts are not in dispute.

8. The Labour Court, in paragraph No.11 of the award, had categorically found that during cross examination, the appellant had admitted that he was working in another Bus company from 12.04.2007. The Labour Court had further found that it has been proved that the appellant was employed in State Transport Corporation from 11.03.2007 onwards. Based upon these findings, the Labour Court had restricted the backwages for the period from



9. Therefore, we are not able to accept any one of the contention of counsel appearing for the writ petitioner / appellant. There are no Writ Appeal. Hence, the Writ Appeal stands dismissed. No costs.

(R.V.J.,)

22.02.2024

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**D.KRISHNAKUMAR, J.
AND
R.VIJAYAKUMAR, J.**

LS

Pre-delivery Judgment made in

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