

(2011) 09 MAD CK 0079

Madras High Court

Case No: Writ Petition No"s. 5285 of 2009 and 12587 of 2010

The Management, The Tamil
Nadue State

APPELLANT

Vs

The Presiding Officer Labour
Court and M. Selvaraj

RESPONDENT

Date of Decision: Sept. 15, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226
- Industrial Disputes Act, 1947 - Section 11(A), 17(B), 2(A)(2)

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: M. Ravibharathi, in W.P. No. 5285 of 2009, Lakshmi and M.K.V. Shanmuganathanin, in W.P. 12587 of 2010, for the Appellant; M. Ravibharathi in W.P. No. 12587 of 2010, Lakshmi and M.K.V. Shanmuganathanin, in W.P.5285 of 2009, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.

Challenging the same award passed by the Labour Court, Salem in I.D. No. 343 of 2000 dated 28.05.2008, these two writ petitions have been filed. By the impugned order, the Labour Court directed reinstatement of the workman with continuity of service, but without backwages.

2. While the management which is a State owned Corporation was aggrieved by the direction by the Labour Court to reinstate the workman into service, has filed the Writ petition being W.P. No. 5285 of 2009.

3. That writ petition filed by the management was tagged along with some other writ petitions and was admitted and an interim stay was granted on 01.04.2009. Aggrieved by the grant of interim stay, a vacate stay application was filed by the workman. He also filed an application for direction to pay backwages. Those two applications were heard together and a common order was passed on 08.10.2009 directing the management to pay the last drawn wages to the workman in terms of Section 17B of the Industrial Disputes Act. Thereafter the workman filed the writ petition challenging that portion of that award declining backwages and it was admitted on 17.06.2010.

4. Since both the writ petitions were filed seeking to challenge the same award, they were tagged together and a common order is passed.

5. Heard the arguments of Mr. M.Ravi Bharathi learned Standing Counsel for the Transport Corporation and Ms. Lakshmi learned Counsel appearing for Mr. K.V.Shanmuganathan for the workman.

6. The facts leading to the filing of the writ petitions are as follows:

6.1. The workman was employed as a conductor since 1994 in the management of the Corporation. While he was working in Anthiyur depot he was serving the bus in the route Bhavani-Anthiyur Road. On 14.06.1999, the bus was checked at Parvachi Village by two checking inspectors and they found that while there were 42 passengers, one passenger was not given ticket. The workman was accused of not collecting Rs. 3.50 from the passenger who was travelling from Bhavani-Anthiyur. When confronted as to why the said passenger was not given ticket was the stand of the workman that the said passenger was wearing a "Khaki" uniform and posing as a policeman, he did not buy the ticket and he therefore did not insist him to buy the ticket; but the checking inspectors did not find any identify card on the said passenger and the stand taken by the workman was concocted.

6.2. The management conducted an enquiry and after conducting enquiry, the workman was issued with a show cause notice and he was dismissed from service by an order dated 26.11.1999. Thereafter, the workman raised a dispute u/s 2-A(2) of the Industrial Disputes Act before the Conciliation officer. The conciliation Officer, after due notice to the management could not bring about any compromise between the parties and gave a failure report. On the strength of the failure report, the workman filed a claim statement before the Labour Court, Salem. The Labour Court took up the dispute as I.D. No. 343 of 2000 and issued a notice to the management. The management filed a counter statement dated Nil(August 2001). In the counter statement, in Paragraph 14, the Respondent reserved its right to lead oral evidence in case, any necessity arises. The validity of the enquiry held against the workman was tried as a preliminary issue, the Labour Court held that the enquiry was not fair and proper and therefore in the light of the request made by the management, they were given opportunity to lead fresh evidence. The

preliminary award of the Labour Court is not under challenge.

6.3. Pursuant to the opportunity given by the management, it transpires that the management examined one S.Jayaraman as RW1 and marked 12 documents as Ex.R1 to R12 and the workman had also examined himself as PW1. The Labour Court found that the checking inspectors did not conduct their checking properly and the cash bag of the workman was not checked to verify the cash balance. No. attempt was made to tally with the amount shown in the invoice. If really the workman had collected Rs. 3.50 from one passenger who was proceeding without a ticket, then certainly the cash bag would have contained the extra money. Though there was a dispute regarding the identity of the passenger as to whether he was wearing a police uniform or not, the Labour Court held that the management on being given an opportunity, did not lead proper evidence to convince the Court that the workman had committed a misconduct.

6.4. It was admitted before the Labour Court that normally in town buses, the travelling policemen were not asked to buy tickets and there was No. evidence to show that the bus in which the workman was plying on a town route or a mofussil route. The Labour Court found that the passenger's signature was not obtained in the check report. In that view of the matter, it had directed the reinstatement of the workman, but however, without backwages by its award dated 28.05.2008.

7. The contention of the management of the Transport Corporation was that the Labour Court should have taken note of the special report of the Checking Inspectors and the Labour Court was wrong in assuming that the passenger was found in a police uniform. The past conduct of the workman was also not taken note of.

8. In the present case, it is an admitted fact that the Labour Court had set aside the domestic enquiry conducted by the management. Once it was set aside and if fresh opportunity was given to the management to lead evidence, then the evidence let in should satisfy the Labour Court and the standard of proof available, a domestic enquiry is not the same in a Court of law. The evidence must satisfy the Labour Court. If the Labour Court on an appreciation of evidence found that the evidence let in is not sufficient or legal evidence, the Labour Court can get certainly render a finding on its own on the misconduct alleged. The Supreme Court has held that vide judgment in [The Workmen of Firestone Tyre and Rubber Co. of India \(Pvt.\) Ltd. Vs. The Management and Others](#), that if the enquiry is held to be intact, then the finding recorded by the domestic enquiry officer cannot be lightly disregarded. But once the enquiry is held to be vitiated and evidence was allowed to be let in, then the satisfaction of the evidence is that of the Labour Court and not that of the employer.

9. In the present case, the management had failed to satisfy the Labour Court on the evidence let in by them. The Supreme Court also held that once the enquiry is set

aside on a preliminary finding, then No. part of the vitiated enquiry can be relied upon by the Labour Court as held in [Neeta Kaplish Vs. Presiding Officer, Labour Court and Another](#), . But in this case, Exs.R1 to R12 marked by the management was only the documents which were filed in the enquiry. Therefore the Labour Court was right in stating that No. proof with reference to the misconduct of the workman was forthcoming and hence it was ordering reinstatement. Hence, there is No. case is made to interfere with the award ordering reinstatement.

10. But, on the question of backwages to be paid, it will have to be seen whether the award was proper. The workman claim that he was eligible to get full backwages also will have to be considered, which is raised in the second writ petition filed by the workman. It must be noted that the objection in the counter statement, filed before the Labour Court, the management had raised an issue that there was a delay in raising the dispute and for more than 6 to 7 years the workman did not agitate his claim. Ultimately in the matter of grant of backwages though the Labour Court has got wide discretion, it must exercise such discretion judiciously. Even while exercising the power u/s 11A of the Industrial Disputes Act, the Labour Court cannot exercise its jurisdiction widely. This position of law has been held by the Supreme Court in [Laxmi Rattan Cotton Mills Ltd. Vs. State of U.P. and Others](#), . In the present case, the Labour Court while ordering continuity of service, declined to grant backwages. This Court is not inclined to interfere with that portion of the award declining backwages which is in accordance with law.

11. Hence, both the writ petitions are dismissed. The management is directed to reinstate the Petitioner within 12 weeks from the date of receipt of copy of this order and pay his wages from the date of the award till the date of his reinstatement, after giving due credit to the amounts paid to him in terms of Section 17B of the Industrial Disputes Act.

12. With the above directions, both the writ petitions will stand dismissed. No. costs. Consequently, connected miscellaneous petitions are closed.