

(2013) 02 MAD CK 0023

In the Madras High Court

Case No : W.A. No"s. 1904 and 1905 of 2011 and M.P. No. 1 of 2011

R.K. Ramasamy

APPELLANT

Vs

Presiding Officer and Another

RESPONDENT

Date of Decision : 22-02-2013

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2013) 2 LLJ 682

Hon'ble Judges : M.M. Sundresh, J;M. Jaichandren, J

Bench : Division Bench

Advocate : S. Periyasamy for Ms. S. Girija, for the Appellant; P. Paramasivadosh, for the Respondent

Judgement

M. Jaichandren, J.—The above writ appeals arise out of the common order passed by the learned single Judge, dated 7.9.2011, in W.P.

Nos. 28553 of 2003 and 28071 of 2005. The above writ petitions, in W.P. Nos. 28553 of 2003 and 28071 of 2005, had arisen out of the award

passed by the Labour Court, Salem, dated 24.7.2002, in I.D. No. 565 of 1998. The appellant in the above appeals was a driver working in Tamil

Nadu State Transport Corporation (Salem Division-I) Limited. While so, three charge memos, dated 6.7.1989, 18.7.1989, and 27.7.1989 had

been issued by the second respondent Corporation.

2. Based on the charge memos issued by the second respondent Corporation, an enquiry had been held. The enquiry officer had given a finding

that all the charges levelled against the employee had been found to be proved. Based on the reports submitted by the enquiry officer, the second

respondent Corporation had passed the order of dismissal from service against the employee, on 4.3.1990. Challenging the said order passed by

the second respondent Corporation, the employee had filed I.D. No. 565 of 1998, before the Labour Court, Salem. The Labour Court, Salem, had passed an award, dated 24.7.2002, in I.D. No. 565 of 1998, directing re-instatement of the employee into service, without continuity of service and back wages. The Labour Court had found that the order of dismissal passed against the employee was excessive in nature and therefore, it had exercised its discretion, u/s 11-A of the Industrial Disputes Act, 1947, to set aside the order of dismissal of the employee and had directed the reinstatement of the employee in service.

3. Challenging the award of the Labour Court, Salem, dated 24.7.2002, made in I.D. No. 565 of 1998, denying continuity of service and back

wages, the employee had filed a writ petition before this Court, in W.P. No. 28071 of 2005. The Management of the second respondent

Corporation had filed the writ petition, in W.P. No. 28553 of 2003, challenging the award of the Labour Court, dated 24.7.2002, reinstating the

employee into service. This Court had passed the common order, dated 7.9.2011, in the said writ petitions, allowing the writ petition filed by the

respondent Management, in W.P. No. 28553 of 2003, and dismissing the writ petition filed by the employee, in W.P. No. 28071 of 2005.

Challenging the said common order, the appellant has filed the present writ appeals before this Court.

4. At this stage of the hearing of the writ appeals, the learned counsel appearing on behalf of the appellant had submitted that he is not pressing the

relief prayed for by the appellant, with regard to the issue relating to the continuity of service and back wages. However, the learned counsel

appearing on behalf of the appellant had submitted that the award of the Labour Court relating to the reinstatement of the employee into service

ought to be sustained. He had further submitted that the Labour Court had rightly exercised its discretion, u/s 11-A of the Industrial Disputes Act,

1947, and had ordered re-instatement of the employee, as the punishment of dismissal from service imposed by the respondent Management was

excessive in nature.

5. Per contra, the learned counsel appearing on behalf of the second respondent Management had submitted that, when all the four charges

levelled against the employee had been proved in the enquiry, it would not be

open for the Labour Court to exercise its discretion, u/s 11-A of the Industrial Disputes Act, 1947, without giving cogent reasons for altering the punishment imposed on the employee. As such, the award of the Labour Court, Salem, dated 24.7.2002, re-instating the employee into service, is erroneous and therefore, it is liable to be set aside. He had relied on the decision of the Supreme Court, in Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc., to state that the discretion vested with the Labour Court, u/s 11-A of the Industrial Disputes Act, 1947, ought not to have been exercised when the employee is found to have used filthy language against his superior officers.

6. In the present case, it is noted that there is no charge against the employee stating that he had used filthy language against the superior officers, as the charge memo states that he had used inappropriate language. In such circumstance, the decision of the Supreme Court cited by the learned counsel appearing on behalf of the second respondent Corporation would not be applicable to the facts and circumstances of the case on hand.

7. The learned counsel had further submitted that the employee concerned had committed misconduct, repeatedly, by not wearing his uniform and the driver's badge and he was not in possession of the driving licence at the relevant time. He had also submitted that he had caused an accident, on 16.6.1989, and he had not intimated the details of the said accident to the authorities concerned. In such circumstance, the charges levelled against the employee are of serious in nature and therefore, the second respondent Corporation had imposed the punishment of dismissal from service on the said employee. Further, the learned counsel appearing on behalf of the respondent had submitted that the Labour Court, while exercising its discretion, u/s 11-A of the Industrial Disputes Act, 1947, has not given cogent reasons for modifying the punishment of dismissal from service imposed on the employee concerned, reinstating him in service. As such, the common order passed by the learned single Judge, dated 7.9.2011, in W.P. Nos. 28553 of 2003 and 28071 of 2005, is to be sustained. Therefore, the writ appeals filed by appellant are devoid of merits and they are liable to be dismissed.

8. In view of the submissions made by the learned counsels appearing on behalf of the appellant and the second respondent Corporation, we are

of the considered view that the Labour Court has rightly exercised its discretion u/s 11-A of the Industrial Disputes Act, 1947, and had passed the award, dated 24.7.2002, in I.D. No. 565 of 1998, setting aside the order of dismissal passed by the second respondent Corporation against the employee and reinstating the employee into service, without continuity of service and back wages.

9. It is also noted that there is no charge framed against the employee that he had used filthy language against the superior officers. In fact, the charge framed against the employee shows that he had used inappropriate language. Further, none of the other charges framed against the employee are serious in nature. In such circumstances, it cannot be held that the discretion exercised by the Labour Court, u/s 11-A of the Industrial Disputes Act, 1947, is erroneous.

10. Even though the Labour Court had not given cogent reasons for setting aside the order of dismissal passed against the employee, it had found that the punishment of dismissal from service imposed on the employee is disproportionate and excessive in nature. The Labour Court, Salem, has also considered the other factors before passing the award, dated 24.7.2002, ordering reinstatement of the employee into service, without continuity of service and back wages.

11. As such, we find it appropriate to set aside the common order passed by the learned single Judge, dated 7.9.2011, made in W.P. Nos. 28553 of 2003 and 28071 of 2005, confirming the award of the Labour Court, dated 24.7.2002, made in I.D. No. 565 of 1998. The writ appeals are allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.