

(2008) 11 MAD CK 0149

In the Madras High Court

Case No : Writ Petition No's. 13214 of 1999 and 22837 of 2006

State Express Transport Corporation, formerly known as
Thiruvalluvar Transport Corporation and P.C. Johnson

APPELLANT

Vs

The Presiding Officer, Industrial Tribunal

RESPONDENT

Date of Decision : 27-11-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(2), 33C(2)

Citation : (2008) 11 MAD CK 0149

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : V.R. Kamalanathan, for the Appellant; Ajay Khose, for the Respondent

Judgement

K. Chandru, J.—W.P. No. 13217 of 1999 is filed by the State owned Transport Corporation against the refusal to grant approval by the first respondent Industrial Tribunal in Approval Petition No. 52 of 1994 filed u/s 33(2)(b) of the Industrial Disputes Act, 1947 (for short "ID Act").

2. The writ petition was admitted on 04.8.1999. On the same day, an interim stay was granted. Subsequently, when the vacate stay application was filed by the second respondent workman, this Court recorded that since the second respondent had already been reinstated and since the Tribunal refused to grant approval, no interim stay can be granted. Thus, the interim stay already granted was vacated.

3. It is seen from the records produced by the petitioner Corporation that the second respondent was reinstated by an order dated 06.9.1997. The second respondent had also joined the service. As the second respondent had reached the age of his superannuation, with effect from 31.1.2002 he was also retired from service vide an order dated 28.1.2002.

4. Since this Court refused to grant interim stay, the second respondent moved

the Labour Court with a computation petition u/s 33(C)(2) of the ID Act claiming the backwages payable pursuant to the order of the Tribunal in Approval Petition No. 52/94 dated 13.12.1996. The said petition was taken on file as C.P. No. 782 of 1997 by the Labour Court.

5. The Labour Court issued notice to the petitioner Corporation. The petitioner Corporation filed a counter statement, dated ""nil" (September 2000) before the Labour Court. In that statement, they had admitted that the workman was entitled to get a sum of Rs. 1,41,140/- together with a sum of Rs. 11,696/- in respect of Provident Fund. Therefore, the workman filed a memo before the Labour Court agreeing to receive the said amount. The Labour Court, on the basis of the pleadings of the parties and the admission made by the Transport Corporation, computed a sum of Rs. 1,52,836/- as payable by its order dated 23.5.2005.

6. As stated already, the second respondent workman got retired on 31.1.2002. It was claimed that he was paid pension at the rate of Rs. 1500/- for few months and subsequently that was also stopped. Since there was no stay granted against the Approval Petition in W.P. No. 13214 of 1999 and the Transport Corporation not implementing the order of the Labour Court in C.P. No. 782 of 1997 and did not pay the admitted amounts, the second respondent filed W.P. No. 22837 of 2006 seeking for a direction to the Transport Corporation to pay the amount computed by the Labour Court. That writ petition was directed to be posted along with earlier writ petition. The learned Counsel for the petitioner Corporation took notice in the said writ petition. In view of the interconnectivity between the two writ petitions, they were heard together. The petitioner Transport Corporation was also directed to produce the original records filed before the Tribunal, which was duly circulated by the learned Counsel for the Corporation.

7. It is seen from the records of the first respondent Industrial Tribunal that the workman though was working as a driver in the Transport Corporation, a complaint was received from one Pathrose that he had received Rs. 40,000/- promising to get him a job in the Tamil Nadu Electricity Board. He cheated him by giving some forged documents as if they were the orders passed by the Tamil Nadu Electricity Board. The Tribunal held that since the Standing Orders of the Corporation only enumerated ""theft, fraud or dishonesty in connection with the employer's business or property", the allegation against the second respondent may not be a misconduct, over which the Transport Corporation can take disciplinary action.

8. Admittedly, as the misconduct had taken place outside the premises of the Corporation and those misconducts are not enumerated under the Standing Orders, no action can be taken against the second respondent workman. Reliance was placed on the judgment of the Supreme Court in Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut and Others, . The Tribunal held that only if a misconduct is committed within the premises of the employer, during working hours and in connection with the employment, then alone, action

can be taken. It was in that view of the matter, the Approval Petition filed by the Corporation was negated by the Tribunal.

9. Though the Tribunal has held that Standing Order 16(c) will not apply to the case on hand, it must be stated that Standing Order 16(d) sets out the following as a misconduct :

Taking or giving bribes or any illegal gratification whatsoever;

10. In the present case, even after records were produced about the second respondent having taken bribe from one Pathrose promising him employment and that such a misconduct will squarely cover the action of the workman, Standing Order 16(d) was not kept in mind by the Tribunal.

11. In the light of the above, the order of the Tribunal is liable to be set aside as it had committed an error of jurisdiction. When an employee of a Public Transport Corporation takes money from some other person for getting employment, even though it may not be under that Corporation, but such an act has been proved in an enquiry, it cannot be said that it is not a misconduct within the meaning of para 16 of the Certified Standing Orders. In the present case, instead of fighting the case, the petitioner Corporation itself had reinstated him in the year 1999. Subsequently, he had also retired from service with effect from 31.1.2002. Hence, this Court is not able to send the case back to the Tribunal as it would not serve any purpose. Under such circumstances, the only way open to this Court is to pass appropriate orders in the writ petition itself.

12. Once it is held that the workman is guilty of the misconduct and the Tribunal having failed to grant approval and this Court having disagreed with the order of the Tribunal, then any claim based upon such order is not justified. Therefore, the Labour Court's order in the Claim Petition No. 782 of 1997 computing a sum of Rs. 1,52,832/- payable to the workman vide order dated 23.5.2005 is illegal. Hence, the order in the Claim Petition will stand set aside.

13. In view of the Tribunal's order in Approval Petition No. 52 of 1994, dated 13.12.1996 being set aside, the question of entertaining the writ petition in W.P.22837 of 2006 will also not arise. Hence, the writ petition will stand dismissed. No costs.

14. However, since the Transport Corporation itself had reinstated the workman in service though it was stated that such a reinstatement was without prejudice to their right in pursuing the writ petition, it was really wrong on the part of the Transport Corporation to have reinstated such a person in service. Having extracted his service for a period of 12 1/2 years, and also having allowed him to retire him from service in the normal course, this Court is inclined to grant all the terminal benefits to which the workman is entitled to. Therefore, while the order of the Tribunal is set aside, the same is not remanded for any fresh disposal by the Tribunal. Having regard to the facts and circumstances of the case, this Court is of the view that the workman is entitled to get all the terminal benefits

including pension as are available to him as if the workman was retired from service on 31.1.2002.

15. While W.P. No. 22837 of 2006 will stand dismissed, W.P. No. 13214 of 1999 will stand allowed to the extent indicated above. However, there will be no order as to costs.