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W.P.No.4616 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2023

CORAM

**THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN**

W.P.No.4616 of 2020

R.Chinnasamy

....

Petitioner

Vs

Tamil Nadu State Transport  
Corporation (Salem) Ltd.,  
Represented by its General Manager,  
12, Ramakrishna Road,  
Salem – 7.

....

Respondent

**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the Labour Court, Salem in I.D.No.8 of 2013 dated 20.07.2016 and quash the same and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages.

For Petitioner : Mr.D.Soundar Raj

For Respondent : Mr.R.Babu  
Standing Counsel

### **ORDER**

This Writ Petition has been filed for issuance of Writ of Certiorarified Mandamus to call for the records of the Labour Court, Salem in



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I.D.No.8 of 2013 dated 20.07.2016 and quash the same and consequently direct the respondent to reinstate the petitioner into service with continuity of service with back wages.

2. The case of the petitioner is that he joined in the respondent/Corporation as Conductor on 28.03.1988 and a staff number was allotted to him as 2384. He was dismissed from service vide order dated 27.02.2012 and his date of superannuation was 31.05.2012.

3. The case of the respondent is that the petitioner proceeded on leave from 21.05.2011 without giving any proper intimation and without any permission from the authority concerned.

4. The learned counsel appearing for the petitioner would submit that he proceeded on leave from 21.05.2011, after giving proper intimation to the Branch Manager, Erumapalayam Branch-II, in oral as well as in writing, for taking treatment for Jaundice and also to take care of his ailing wife, who was admitted in the hospital. Without considering the leave letter of the petitioner, the Branch Manager framed charges against the petitioner and issued



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a Memo dated 02.06.2011. The enquiry was conducted by the Enquiry Officer and he has given a report in favour of the respondent. Based on the respondent's instruction and also taking advantage of the illiteracy and innocence of the petitioner, the Enquiry Officer had issued report dated 03.08.2011, which was received by the respondent/Corporation, who in turn had issued 2<sup>nd</sup> show cause notice to the petitioner on 24.12.2011 and his services were dismissed by the respondent vide order dated 27.02.2012, before two months of his retirement from service. The punishment imposed against the petitioner was not proportionate to his misconduct and he raised a dispute before the Labour Officer, Salem and the conciliation proceeding ended in failure. Hence, he was forced to raise disputes in I.D.No.8 of 2013 before the Labour Court, Salem and the same was dismissed by an Award dated 20.07.2016 and the Labour Officer, Salem, vide his letter dated 28.11.2017, informed that the Award came into force from 28.05.2017.

5. The learned counsel for the petitioner further submitted that the Labour Court had not taken into consideration the leave letter of the petitioner given to the Branch Manager, Erumapalayam Branch- II, who had refused to accept the same and he did not inform the same before the Enquiry



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Officer. The petitioner would also submit that he had informed about his leave to the Controller of Erumapalayam Branch – II and during the enquiry, the petitioner has also informed the same to the authority concerned, but he was not given a chance to enquire the Controller to ascertain the truth and the Branch Manager has not submitted his leave letter before the Enquiry Officer.

6. The Enquiry Officer had recorded the enquiry conducted on 03.08.2011 that the petitioner refused the charges and subsequently, the enquiry officer corrected the report and had stated that the petitioner had accepted the charges. This was not taken into account by the Disciplinary Authority, who accepted the report in toto. The Labour Court, Salem, has also not considered the same and decided the Industrial Dispute in favour of the respondent. When there was non operation of buses, while the petitioner was on leave and the respondent had not permitted him to join duty and also when the petitioner requested the respondent to permit him to join duty, the same was not considered and rejected. The Branch Manager and Controller had corrected the date in the basic report of the year 2010 as 2011 with the motive behind in the basic report. As per model standing order, basic report was given for taking disciplinary action against the delinquent employees, who had been absent



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from work for more than 11 days. The provision was not amended and the respondent with predetermined mind issued the charge memo within 10 days of his date of proceeding on leave. That apart, the respondent threatened the petitioner that he will be dismissed from service, if he insists for cross examination of the Branch Manager. Only due to that, he lost his chance to cross examine the Branch Manager, which is against the principles of natural justice and accordingly, prayed for allowing the writ petition by setting aside the award passed.

7. The respondent had not filed any counter. The learned counsel appearing for the respondent argued that the petitioner was a habitual absentee and the petitioner was punished for his absenteeism on many occasions. According to them, on 30 occasions, he was punished, which are as follows :-

| வ. எண் | நாள்       | குற்றத்தின் தன்மை                                      | தண்டனை விபரம்                                            |
|--------|------------|--------------------------------------------------------|----------------------------------------------------------|
| 1      | 03.07.1989 | பயணக்கட்டணம் பெறாமலும், பயணச்சீட்டு வழங்காமலும் வந்தது | எச்சரிக்கப்பட்டது                                        |
| 2      | 27.07.1989 | மோட்டார் வாகன சட்டத்தை மீறியது                         | எச்சரிக்கப்பட்டது                                        |
| 3      | 24.06.1990 | பயணக்கட்டணம் பெறாமலும், பயணச்சீட்டு வழங்காமலும் வந்தது | ஊதிய உயர்வு 3 மாதம் திரண்ட பயனின்றி தள்ளி வைக்கப்பட்டது  |
| 4      | 26.03.1991 | பயணக்கட்டணம் பெறாமலும், பயணச்சீட்டு வழங்காமலும் வந்தது | ஊதிய உயர்வு 1 வருடம் திரண்ட பயனின்றி தள்ளி வைக்கப்பட்டது |



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| வ. எண் | நாள்       | குற்றத்தின் தன்மை                                      | தண்டனை விபரம்                                            |
|--------|------------|--------------------------------------------------------|----------------------------------------------------------|
| 5      | 09.03.1993 | பயணக்கட்டணம் பெறாமலும், பயணச்சீட்டு வழங்காமலும் வந்தது | ஊதிய உயர்வு 6 மாதம் திரண்ட பயனின்றி தள்ளி வைக்கப்பட்டது  |
| 6      | 16.04.1995 | பயணக்கட்டணம் பெறாமலும், பயணச்சீட்டு வழங்காமலும் வந்தது | ஊதிய உயர்வு 3 மாதம் திரண்ட பயனின்றி தள்ளி வைக்கப்பட்டது  |
| 7      | 27.09.1994 | பணிக்கு ஆஜராகாதது 5 நாட்கள்                            | எச்சரிக்கப்பட்டது                                        |
| 8      | 30.05.1996 | பணிக்கு ஆஜராகாதது 3 நாட்கள்                            | எச்சரிக்கப்பட்டது                                        |
| 9      | 04.05.2002 | பயணக்கட்டணம் பெறாமலும், பயணச்சீட்டு வழங்காமலும் வந்தது | ஊதிய உயர்வு 6 மாதம் திரண்ட பயனின்றி தள்ளி வைக்கப்பட்டது  |
| 10     | 04.03.2002 | பயணக்கட்டணம் பெறாமலும், பயணச்சீட்டு வழங்காமலும் வந்தது | ஊதிய உயர்வு 1 வருடம் திரண்ட பயனின்றி தள்ளி வைக்கப்பட்டது |
| 11     | 31.01.2003 | பணிக்கு ஆஜராகாதது 12 நாட்கள்                           | ஊதிய உயர்வு 3 மாதம் திரண்ட பயனின்றி தள்ளி வைக்கப்பட்டது  |
| 12     | 10.09.2003 | பணிக்கு ஆஜராகாதது 20 நாட்கள்                           | ஊதிய உயர்வு 3 மாதம் திரண்ட பயனின்றி தள்ளி வைக்கப்பட்டது  |
| 13     | 01.04.2004 | சிறு விபத்து                                           | ஊதிய உயர்வு 3 மாதம் திரண்ட பயனின்றி தள்ளி வைக்கப்பட்டது  |
| 14     | 05.07.2004 | உயிரிழப்பு விபத்து                                     | ஊதிய உயர்வு 1 வருடம் திரண்ட பயனுடன் தள்ளி வைக்கப்பட்டது  |
| 15     | 18.02.2005 | பணிக்கு ஆஜராகாதது 59 நாட்கள்                           | ஊதிய உயர்வு 2 வருடம் திரண்ட பயனுடன் தள்ளி வைக்கப்பட்டது  |
| 16     | 05.08.2005 | பணிக்கு ஆஜராகாதது 23 நாட்கள்                           | ஊதிய உயர்வு 3 மாதம் திரண்ட பயனின்றி தள்ளி வைக்கப்பட்டது  |
| 17     | 10.03.2006 | பணிக்கு ஆஜராகாதது 42 நாட்கள்                           | ஊதிய உயர்வு 6 மாதம் திரண்ட பயனின்றி தள்ளி வைக்கப்பட்டது  |
| 18     | 05.01.2007 | பணிக்கு ஆஜராகாதது 48 நாட்கள்                           | ஊதிய உயர்வு 3 மாதம் திரண்ட பயனின்றி தள்ளி வைக்கப்பட்டது  |



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| வ. எண் | நாள்       | குற்றத்தின் தன்மை             | தண்டனை விபரம்                                           |
|--------|------------|-------------------------------|---------------------------------------------------------|
| 19     | 25.06.2008 | பணிக்கு ஆஜராகாதது 44 நாட்கள்  | ஊதிய உயர்வு 6 மாதம் திரண்ட பயனின்றி தள்ளி வைக்கப்பட்டது |
| 20     | 04.04.2008 | பணிக்கு ஆஜராகாதது 23 நாட்கள்  | ரூ.100 அபராதம் விதிக்கப்பட்டது.                         |
| 21     | 07.11.2008 | பணிக்கு ஆஜராகாதது 55 நாட்கள்  | ஊதிய உயர்வு 2 வருடம் திரண்ட பயனுடன் தள்ளி வைக்கப்பட்டது |
| 22     | 03.02.2009 | பணிக்கு ஆஜராகாதது 39 நாட்கள்  | ஊதிய உயர்வு 2 வருடம் திரண்ட பயனுடன் தள்ளி வைக்கப்பட்டது |
| 23     | 08.02.2008 | சிறு விபத்து                  | ஊதிய உயர்வு 6 மாதம் திரண்ட பயனின்றி தள்ளி வைக்கப்பட்டது |
| 24     | 04.06.2009 | பணிக்கு ஆஜராகாதது 42 நாட்கள்  | ஊதிய உயர்வு 3 வருடம் திரண்ட பயனுடன் தள்ளி வைக்கப்பட்டது |
| 25     | 01.09.2009 | பணிக்கு ஆஜராகாதது 36 நாட்கள்  | ஊதிய உயர்வு 3 வருடம் திரண்ட பயனுடன் தள்ளி வைக்கப்பட்டது |
| 26     | 27.10.2009 | பணிக்கு ஆஜராகாதது 15 நாட்கள்  | ஊதிய உயர்வு 3 வருடம் திரண்ட பயனுடன் தள்ளி வைக்கப்பட்டது |
| 27     | 25.11.2009 | பணிக்கு ஆஜராகாதது 97 நாட்கள்  | ஊதிய உயர்வு 3 வருடம் திரண்ட பயனுடன் தள்ளி வைக்கப்பட்டது |
| 28     | 01.04.2010 | பணிக்கு ஆஜராகாதது 65 நாட்கள்  | ஊதிய உயர்வு 5 வருடம் திரண்ட பயனுடன் தள்ளி வைக்கப்பட்டது |
| 29     | 25.09.2010 | பணிக்கு ஆஜராகாதது 20 நாட்கள்  | ஊதிய உயர்வு 2 வருடம் திரண்ட பயனுடன் தள்ளி வைக்கப்பட்டது |
| 30     | 06.11.2010 | பணிக்கு ஆஜராகாதது 189 நாட்கள் | ஊதிய உயர்வு 3 வருடம் திரண்ட பயனுடன் தள்ளி வைக்கப்பட்டது |



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8. According to the respondent, on 19 occasions, totally 837 days, the petitioner has not attended duty, without seeking any permission and absented himself without any intimation, for which he had received a maximum punishment of stoppage of increment for 5 years with cumulative effect and hence the Labour Court has correctly passed an order and there is no error committed by the Labour Court and prayed for dismissal of this writ petition.

9. On going through the typed set of papers, it is found that the petitioner raised an Industrial Dispute before the Labour Court, wherein he has made allegations against the management/respondent and in Para No.4 he has stated that the petitioner was not absent unauthorizedly, he has sought for permission and gave a letter to that effect and only after giving information, he did not report for duty. According to him, his wife was not well and she was admitted in the hospital. He had to be with his wife and therefore, he approached the Branch Manager, and only after giving intimation on 21.05.2011, he did not report for duty and also he had hip pain and due to which, he had to take appropriate treatment. Hence, he had given information through phone and also through his co-workers seeking for extension of leave.



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But, the respondent/Management has not considered all these aspects but proceeded only for dismissing the petitioner from service. He further submitted that the conciliation proceedings also ended in failure and the submission made by the respondent would show that the petitioner has absented from duty without any proper intimation or permission. Due to the above act, the respondent corporation has to undergo various difficulties and they had to arrange for other conductors for plying the said vehicle.

10. It is further submitted that on 02.06.2011, the respondent sent a charge memo to the petitioner by RPAD and asked for explanation. The petitioner received the same and he did not give any reason. Therefore, a domestic enquiry was conducted and he appeared before the enquiry officer and he did not produce any material to show that he has already informed the authorities regarding his absenteeism and also failed to prove with evidence to defend himself. Then again, on 07.11.2012, a letter was sent to him seeking for further explanation. Again on 24.12.2011, he was sent another show cause notice, but he has not sent any reply or explanation for the same. Hence, the respondent had passed final order, dismissing the petitioner from the service. They have also stated before the Labour Court that absenteeism cannot be



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condoned, as the transport corporation is working for the general public, and the employee cannot go on leave unnecessarily without making any arrangements by any information to the respondent earlier. He also stated in the counter that if there is any irregularity found in the domestic enquiry they are also agreeable for enquiry.

11. The Labour Court, after considering all these aspects and the fact that the petitioner had not attended duty from 21.05.2011 and had not even given any explanation regarding his absenteeism and also he has been given a chance before the enquiry officer as well as in the domestic enquiry for giving his explanation regarding the absenteeism, found that the documents produced by the authorities would show that the Authority acted appropriately and followed the procedure established under law. It is also seen that when the petitioner was cross examined on 21.05.2011, he himself admitted that he had not given any information, which is marked as Ex.R6, and only after he received the enquiry report, show cause notices were also issued to him. In spite of issuance of the same, he has not given any explanation and only after giving an opportunity on 27.12.2012, appropriate order was passed by the Authority.



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12. The petitioner submitted that during the domestic enquiry conducted on 10.02.2014, the petitioner had participated and the original document would show that the petitioner was read over regarding the answers given by him and that he had not given any letter in writing seeking leave and also in cross examination of Management witnesses he has stated that he cannot now come and raise all these issues when he has admitted in the cross examination of the said enquiry and also during trial, when he signed the same. The petitioner himself admitted on 21.05.2011 that he did not appear for work and stated that his wife was not well and he was also not well during the cross examination and was suffering from Jaundice and could not come to report for duty and had been taking Siddha treatment and no documents were produced. Hence, contrary stand taken by the petitioner was also considered by the Labour Court and came to the conclusion that if his wife was not well he should have immediately approached the Authority or he informed that his wife was not well and he has also not taken any steps to send a letter through someone or through the post for his absent. It is also considered by the Labour Court that the petitioner has acted on whims and fancies and given false allegations for his absenteeism. No documents were produced for his wife's treatment and also his treatment.



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13. Hence, this Court finds that the petitioner has acted on his own and the difficulties undergone by the respondent/Management was also taken into consideration by the Labour Court, which held that there was an irresponsible act by the petitioner and confirmed the dismissal order passed by the Authority.

14. In view of the above said facts and circumstances, it is seen that the petitioner had taken dubious stand before the Authority as well as before the Labour Court, wherein, in his own hand writing he had given a letter to the authority concerned that he has read over all the documents on his own appearance in the domestic enquiry. In the statement, he has stated that he was suffering from Jaundice but later on he stated that his wife was not well. There are contradictory statements. It is also clear that the petitioner has not come to this Court with clean hands. There is no injustice caused as the conduct also proved that the petitioner is a habitual absentee in his service. Hence, this Court is not inclined to interfere with the order passed by the Labour Court. Accordingly, the Writ Petition is dismissed. No costs.

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Index : Yes/No  
Neutral citation : Yes/No  
Speaking/Non Speaking order  
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To  
The General Manager,  
Tamil Nadu State Transport Corporation (Salem) Ltd.,  
12, Ramakrishna Road,  
Salem – 7.



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