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W.A.Nos.2424 and 925 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

W.A.Nos.2424 and 925 of 2023
and
C.M.P.No.9244 of 2023

W.A.No.2424 of 2023

S.Mahendran

..

Appellant

..VS..

1. Tamil Nadu State Transport Corporation,
Rep. by its Managing Director,
Head Office,
Vellore.

2. The Presiding Officer,
Labour Court,
Vellore.

..

Respondents

W.A.No.925 of 2023

The Tamil Nadu State Transport Corporation,
Rep.by its Managing Director,
Head Office, Vellore.

..

Appellant

..Vs..



1. N.Mahindran,

2. The Presiding Officer,
Labour Court, Vellore.

..

Respondents

Writ Appeals filed under Clause 15 of the Letters Patent to set aside the order dated 19.01.2022 passed by the Single Bench in W.P.No.18192 of 2004.

For Appellant:

(in W.A.No.2424/2023) : Mr.V.Ajay Khose

(in W.A.No.925/2023) : Mr.M.Aswin

For Respondents

(in W.A.No.2424/2023) : Mr.M.Aswin (R1)

(in W.A.No.925/2023) : Mr.V.Ajay Khose (R1)

COMMON JUDGMENT

(Judgment of the Court was delivered by **S.VAIDYANATHAN, J**)

Challenging the order passed by the learned single Judge dated 19.01.2022 in W.P.No.18192 of 2004, the Workman has preferred W.A.No.2424 of 2023 and the Management has preferred W.A.No.925 of 2023.

2. For the sake of convenience and clarity, the parties are referred to as Workman and Management.



3. The facts in nutshell could be stated thus:

(i) The Workman who joined the services of the Transport Corporation on 10.02.1986, was issued with a Charge Memo dated 28.11.1997, pursuant to which an enquiry was conducted and in the enquiry, charges were held to be proved and hence, he was dismissed from service on 28.08.2000.

(ii) Aggrieved by the said dismissal order, the Workman raised an Industrial Dispute before the Labour Court, Vellore and the same was taken on file as I.D.No.229 of 2001. The Labour Court, by an Award dated 22.07.2003, dealt with the preliminary issue with regard to fairness of the enquiry and also on merits and thereafter, came to the conclusion that the domestic enquiry was conducted in a fair and proper manner and the charges were duly proved in the enquiry and therefore, the dismissal order passed by the Management/Corporation need not be interfered with.

(iii) Aggrieved, the Writ Petition in W.P.No.18192 of 2004 was preferred by the Workman and the learned Single Judge, *vide* order dated 19.01.2022, set aside the Award of the Labour Court and held that the workman is deemed to have continued in service from 28.08.2000 onwards till his date of superannuation. The operative portion of the order passed by the learned Single Judge is extracted hereunder:

"7. In the light of the above observations, the impugned



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award passed by the Labour Court, Vellore in I.D.No.229 of 2001 dated 22.07.2003, as well as the dismissal order dated 28.08.2000, is quashed. Consequently, the petitioner herein is deemed to have continued in service from 28.08.2000 onwards till his date of superannuation and hence the Management shall extend continuity of service together with other attendant benefits for such period. However, the petitioner shall not be entitled for any back wages for the period of his non-employment. The Management shall pay the employer's contribution of the Provident Fund for the period of his non-employment. The respondent herein shall endeavor to pass appropriate orders, retiring the petitioner from the services and consequently disburse the retirement benefits, including the pensionary benefits, within a period of four weeks from the date of receipt of a copy of this order. The Writ Petition stands allowed accordingly. There shall be no order as to costs."

(iv) Aggrieved by the aforesaid order of the learned Single Judge, the present Writ Appeals have been preferred by the Workman and the Management respectively.

4. W.A.No.2424 of 2023 has been preferred by the Workman on the ground that when the Single Bench has held that the domestic enquiry was not held in a fair and proper manner, the Bench ought to have granted the entire relief, more so, when the charges are not proved.

5. W.A.No.925 of 2023 has been preferred by the Management on the ground that the Labour Court, after considering all the materials available on record, has rightly dismissed the industrial dispute raised by the Workman, but, the Single Bench, without considering the same, has set aside the award of the Labour Court.



6. According to the learned counsel for the Workman, despite repeated requests made by the workman at every stage, documents sought by him were not furnished by the Management. He further submitted that without furnishing the documents sought by the Workman or without making any reference to the request made by the Workman in his explanation to the 2nd Show Cause Notice, he was dismissed from service on 28.08.2000.

7. The learned counsel for the Management would contend that the charges levelled against the Workman were proved in the enquiry and based on the enquiry report, the punishment of dismissal was imposed. He further submitted that the Labour Court has framed a preliminary issue, *i.e.*, whether the domestic enquiry was conducted following the rules and principles of natural justice, and rendered a finding that the domestic enquiry was conducted in a fair and proper manner and only thereafter, proceeded to render its finding on merits and therefore, the question of rendering a separate order by the Labour Court on the preliminary issue would arise only if the domestic enquiry is set aside by the Labour Court, in which event only, the Management should be given an opportunity to put forth evidence, both oral and documentary, to establish charges. He further submitted that in paragraph 9 of the counter claim filed by the Management before the Labour Court, the Management has taken a plea that they must be given an opportunity to put forth the submission in order



to establish the charges.

8. In response, Mr.Ajay Khose, learned counsel for the Workman, submitted that the matter will have to be remanded to the Labour Court for fresh consideration on merits as the Labour Court has rendered an incorrect finding, with regard to fairness of the enquiry which is not reflected in the documents produced.

9. Though the parties produced the documents which are said to be exchanged between them, particularly, a letter admitting the documents was not at all produced before the Labour Court by either of the parties. That apart, the workman is also in need of certain documents sought by him to establish that great prejudice is caused to him with regard to fairness of the enquiry. The 1st charge against the Workman is that in the trip sheet for Rs.17/-, though the last serial number of the ticket is shown 937, in the trip sheet, he has written as 924 in a doubtful manner. The 2nd charge against him is that on inspection of the cash bag, it was found that the cash bag was containing a sum of Rs.23.50 less than that of the actual (collection) amount and the 3rd charge against him is that he behaved with the passenger in a disturbing manner.

10. The Labour Court, after analysing the evidence on record, apart from holding that the domestic enquiry is proper, on merits, came to the conclusion that the



charges are proved. That apart, the Labour Court while dealing with question nos.2 and 3, has observed as follows:

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"மனுதாரர் தரப்பில் மேற்கண்ட குற்றச்சாட்டுக்களுக்கு பதில் அளிக்கும் விதத்தில் சில ஆவணங்களை கேட்டதாகவும் சில ஆவணங்களை தரும்படி கேட்டும் ஆவணங்கள் தரப்படவில்லை என்றும் மனுதாரர் தரப்பில் மனுவில் கூறப்பட்டுள்ளதில் அவ்வாறு கடிதங்கள் எழுதப்பட்டது என்பதற்கு இந்த வழக்கில் எவ்வித ஆதரவுகளும் தாக்கல் செய்யவில்லை. மேற்கண்ட குற்றச்சாட்டுக்களுக்கு மனுதாரர் தரப்பில் விளக்கமளிக்காத நிலையில் சுமார் 1-1/2 வருடம் கழித்து 24/3/99ல் உள்துறை விசாரணை நடத்த உத்தரவிடப்பட்டுள்ளது என்பதை அறிய முடிகின்றது. 1-1/2 வருடங்கள் வரை விளக்கமளிக்காத நிலையில் ஆவணங்கள் கேட்டும் கடிதம் எழுதாத நிலையில் விளக்கம் அளிக்காததின் காரணமாகவோ குற்றச்சாட்டுக்கள் உண்மை என ஒப்புக்கொண்டதாக அனுமானிக்கலாம்."

11. The finding of the Labour Court that not giving an explanation, would amount to acceptance of the charge, may not be correct, for the reason that there should be specific admission in order to enable the Labour Court to come to such a conclusion. In the case on hand, no evidence is let in and hence, we are of the view that a separate order is required in the said preliminary issue, only if the domestic enquiry is not fair and proper and not otherwise. Though we have held that non giving of explanation alone cannot be taken into account as acceptance of charge, the Labour Court has gone into other aspects and come to the conclusion that the charges are proved.

12. The learned Single Judge, taking into consideration, the totality of circumstances, interfered with the Award of the Labour Court and granted the relief as



could be seen from the paragraph 7 extracted *supra*.

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13. Though it has been vehemently contended by the learned counsel for the Workman that the matter has to be remitted to the Labour Court for fresh consideration, we are not inclined to accept the said contention for the reason that firstly, the litigation will not come to an end even after a decade, as there will be one more round of writ petition and writ appeal. Be it noted, the Workman joined services on 10.02.1986 and was dismissed from service on 28.08.2000 and attained the age of superannuation in September 2013. The reason as to why a litigant approaches the Court is to have a quietus to the issue and not to protract the litigation eternally. As this Court is vested with wide powers under the extraordinary jurisdiction of Article 226 of the Constitution of India, we modify the order dated 19.01.2022 of the learned Single Judge into one of compulsory retirement and the actual services rendered shall be taken into account for the purpose of granting Gratuity and pensionary benefits. The arrears of pension and gratuity on actual services rendered shall be released to the workman within a period of two months from the date of receipt of a copy of this judgment. The monthly pension due to the workman shall be paid from November 2023. Earned leave encashment and Provident Fund of the Workman shall be paid by the Employer for the actual services rendered.



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14. Mr.Aswin learned counsel for the Management, produced a communication of the Management dated 05.08.2023, giving break-up details of the terminal benefits payable to the Workman and the said communication is scanned and re-produced below for the sake of ready reference:

**TAMILNADU STATE TRANSPORT CORPORATION (VPM) LTD.,
VELLORE REGION : VELLORE**

Letter No.18525/L1/TNSTC(VPM)Ve.RCR./2004

Date: 05.08.2023

To:
Thiru.M.Aswin,
No.427, New Law Chambers,
High Court, Chennai - 600 104.

Sir,

Sub: TNSC (VPM) Ltd. Vellore Region - Legal -Court matter -
W.A.No.925/2023 filed Corporation against W.P.18192/2004 -
(S.Mahendran) - court order dated 26.06.2023 - regarding
compulsory retirement - approval - forwarding - Reg.

- Ref: 1. The orders of the Hon'ble High Court of Madras in
W.A.No.925/2023 dated 26.06.2023
2. Your Letter dated 18.07.2023.

Against the 2nd ref. cited, you have requested the Management consent to
provide compulsory retirement on the date of dismissal in respect of
Thiru.S.Mahendran, Ex Cond. Staff No.08739.

In this connection, it is to state that we have given consent for compulsory
retirement on the date of removal (i.e.28.08.2009).

Terminative Commitment if we give compulsory retirement:-

Pensionable Service: 11 years 10 Months 17 days

TERMINAL BENEFITS	
Gratuity	Rs. 39,387/-
Leave liability (Excess Leave Availed)	Rs. Nil
I.R.T. Contribution	Rs. 4,360/-
PF Amount as on 31.03.2022	Rs. 1,69,496/-
Less : Recovery Amount	Rs. 25,241/- (-)
TOTAL COMMITMENT	Rs. 1,88,002/-

Hence, we request you to communicate the above decision taken (i.e. date of
removal taken as compulsory retirement) to Hon'ble High Court of Madras on next
hearing.

For T.N.S.T.C. (VPM) Ltd.,
Vellore Region.

GENERAL MANAGER



The amount mentioned in the aforesaid communication, without recovery, shall be paid within a period of one month from the date of receipt of a copy of this judgment.

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15. It is brought to the attention of this Court by the bar that there is no procedure prescribed for deciding the fairness of enquiry. We make it very clear that in case, domestic enquiry is questioned, it is the duty of the Labour Court to pass preliminary order as to whether domestic enquiry is fair and proper. However, the parties are at liberty to let in evidence, which may not be touching the merits of the matter like whether the person is a Workman or not, whether the Management is an Industry or not, whether the workman is subjected to victimisation, discrimination and unfair labour practice and the like. In case, the Workman is not questioning the fairness of enquiry, he shall file a Memo to that effect and the Labour Court/Tribunal must insist on such a Memo to be filed by the learned counsel or endorsement need to be taken in the docket. While passing final Award, the Memo or the endorsement made will have to be reflected in the final Award. We also make it very clear that whenever a claim petition is filed, details such as date of birth of the workman and his correct address where communication has to be sent need to be mentioned. In case of change of address of the parties, the same shall be informed to the Court and the otherside by means of a separate memo. That apart, the employee shall also furnish his mobile number.



16. In pending matters, the Tribunal / Central Government Tribunal/ Industrial adjudicators dealing with labour matters under various labour enactments are expected to get the aforesaid particulars and keep them in file. A copy of this judgment is directed to be communicated to the Commissioner of Labour, who, in turn, shall communicate the same to various authorities like the Secretary to Government, Labour and Employment Department and other authorities of Central and State Government dealing with Labour issues and the Labour Courts/Tribunals.

17. While winding up his submissions, Mr.Ajay Khose, leaned counsel for the workman, made a suggestion to this Court that the following direction given by the Hon'ble Supreme Court in *M/s.Creative Garments Ltd., Vs. Kashiram Verma* reported in *2023 LiveLaw (SC) 198* may be applied to the case on hand too.

"23.In future all the cases to be filed and in all the pending cases, the parties shall be required to furnish their permanent address(es). Even if the representative of the workman is appearing, he shall furnish permanent address of the workman as well. Even in proceedings subsequent to first stage, it shall be mandatory to provide permanent address of the party for his service. Merely mentioning through Labour Union or authorised representatives, who are sometimes union leaders or legal practitioners, will not be sufficient. Service of notice of workman will have to be effected on the permanent address of the workman"

18. We accede to the aforesaid suggestion of Mr. Ajay Khose and hold



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accordingly. Though many workmen may not have permanent residence, we are of the view that as and when change of address is there for any of the parties to the dispute, the same shall be informed to the Authorities, Labour Courts and Tribunals for effective communication of proper adjudication after information to the parties.

These Writ Appeals are disposed of with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

[S.V.N., J.] [K.R.S., J]
19.09.2023

Index: Yes / No
Internet: Yes / No
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To

1. Tamil Nadu State Transport Corporation,
Rep. by its Managing Director,
Head Office,
Vellore.
2. The Presiding Officer,
Labour Court,
Vellore.
3. The Secretary,
Labour and Employment Department,
Fort St. George,
Chennai – 600 009.

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S. VAIDYANATHAN,J.,
and
K.RAJASEKAR,J

arr

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19.09.2023