



W.A. Nos.3485 & 3486 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2023

CORAM

THE HON'BLE MR.JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. Nos. 3485 & 3486 of 2023

&

C.M.P. Nos. 28440 & 28442 of 2023

The Management,
Tamil Nadu State Transport
Corporation,
No.12, Ramakrishna Road,
Salem – 636 007
rep. by its Managing Director.

..Appellant in
both appeals

Vs.

1. The Presiding Officer,
Labour Court, Salem.

2. D. Jayakumar

..Respondents
in both appeals

Prayer: Writ Appeals as against the order dated 10.08.2023 in W.P.

Nos. 18607 of 2015 and 30193 of 2019.



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For Appellant in both appeals

:: Mr.M. Aswin

For Respondents in both
appeals

:: R1 Court
Mr.M.Agni Selvaraju
for R2

J U D G M E N T

(Delivered by S. Vaidyanathan,J.)

The instant intra court appeals have been filed by the Transport Corporation as against the order dated 10.08.2023 passed in W.P. Nos.18607 of 2015 and 30193 of 2017.

2. For the sake of convenience, the parties are referred to in these writ appeals as Management and Workman.

3. Facts, in brief, which had given rise to the filing of the writ appeals are:

The workman joined the service of the Management as a Driver on 01.11.1980 and owing to the misconduct committed by him, a charge memo dated 27.11.2009 was issued. Not satisfied with the explanation of the workman dated 05.12.2009, an enquiry was conducted and the enquiry

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officer, by his report dated 17.08.2010 held that the charges were proved.

Based on the said report, a second show cause notice was issued to which a detailed explanation was submitted by the workman. However, as it was not found to be satisfactory, the Management imposed the punishment of removal from service by order dated 27.01.2011. Aggrieved by the order of removal from service, the workman raised an industrial dispute, in I.D. No. 24 of 2013, which was taken up by the Labour Court, Salem and by award dated 11.02.2015, the Labour Court set aside the order of removal from service and imposed the punishment of postponement of increment with cumulative effect for a period of two years and directed the Management to reinstate the workman with continuity of service and 25% backwages and other attendant benefits. Aggrieved by the award of the Labour Court, the Management filed W.P. No. 18607 of 2015 and questioning the rejection of his request by the Management to implement the award of the Labour Court on the ground that the said award was under challenge before this Court, the workman filed W.P. No. 30193 of 2019. The learned Single Judge, by the order under challenge, while dismissing the writ petition filed by the Management, allowed the writ petition filed by the workman and directed



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the Management to disburse all the benefits as claimed by the workman,

Hence, the present writ appeals, at the instance of the Management.

4. Heard the learned counsel for the Management as well as the workman.

5. The charge against the workman, which resulted in his removal from the service of the Management was that he disturbed the crew counselling meeting held on 24.11.2009 and abused the officials in filthy language. The Labour Court, after careful consideration of the materials before it, came to the conclusion that even if the charges were proved, the punishment of removal from service was disproportionate to the gravity of the misconduct and thereby modified the punishment to postponement of increment for a period of two years with cumulative effect and ordered reinstatement with continuity of service, 25% backwages and all other attendant benefits. The operative portion of the award passed by the Labour Court is as hereunder:

"இறுதியாக, மனுதாரரை 27.1.2011ல் எதிர்மனுதாரர் நிர்வாகம்



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பணிநீக்கம் செய்து பிறப்பித்த உத்தரவு ரத்து செய்து
அவருடைய ஊதிய உயர்வு இரண்டு ஆண்டுகளுக்கு திரண்ட
பயனுடன் நிறுத்தி வைக்க வேண்டும் என்றும், இன்றிலிருந்து
மூன்று மாத காலத்திற்குள் அவருக்கு பணித்தொடர்ச்சி 25
சதவீத பின்சம்பளம் மற்றும் இதர சலுகைகளுடன் மீண்டும்
பணி வழங்க வேண்டும் என்றும் உத்தரவிடப்பட்டு இ மனு
பகுதியாக அனுமதிக்கப்படுகிறது."

The learned Single Judge had also dismissed the challenge made by the Management to the award by way of W.P. No. 18607 of 2015. Moreover, the learned Single Judge allowed the writ petition filed by the workman, as stated supra, and observed that as the workman had already attained the age of superannuation, the question of reinstatement would not arise and that the workman would be entitled to all other benefits as per the award of the Labour Court.

6. Though the learned counsel for the Management would contend that the workman would not be entitled to any relief in the light of the judgment rendered by the Hon'ble Apex Court in *Mahindra and Mahindra Limited V. NB. Narawade* reported in (2005) 3 SCC 134, we are of the view that the said judgment is distinguishable on facts, more so, when the



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workman has not committed similar misconduct earlier and the said judgment may not be applicable to the facts of this case. In W.A. No. 1835 of 2021 (*S. Raja V. M/s. Hindustan Unilever Limited and Another*), a Division Bench of this Court, to which one of us (SVNJ) was a member, had considered the use of abusive language and hurl of threats to employer by workman and by judgment dated 25.05.2023, it was held that the powers of the Labour Court under Section 11-A of Industrial Disputes Act, 1947 (“I.D.Act”, in short) are wide enough and the Labour Court is empowered to impose a lesser punishment than the one imposed by the Management. We have categorically held in several cases that the powers of the Civil Court are very limited whereas the powers of the Labour Court under the I.D.Act, 1947 are extensive. Under Section 11-A of I.D.Act, 1947, the Labour Court's powers are wide enough to interfere and modify the punishment imposed and the award of the Labour Court granting the relief cannot be interfered with, more so, when the learned Single Judge has also confirmed the same holding that there is no perversity in the award. It would be worthwhile to extract Paragraph No.21 of the judgment in W.A.No. 1835 of 2021 for useful reference:



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“21. Section 11-A of the Industrial Disputes Act, 1947 was introduced on 15.12.1971 and after its introduction, the Labour Court is empowered to reappreciate the evidence and come to a different conclusion. Even though charges stood proved in this case, the Labour Court has every right to interfere with the same, in its wisdom as contemplated under Section 11-A of the I.D.Act, 1947. It is true that Tiruvalluvar in his Tamil Masterpiece “Tirukkural”, which was referred to by the Apex Court in **Kaushal Kishor V. State of U.P. And others (supra)** had vindicated that wound that was made by a hateful speech will not heal and remain forever, but, however, the Poet nowhere stated that the person, who indulged in such proclamation should be punished immediately by way of dismissal from service, as the very same Poet had emphasized in Kural No.151 that ,

**“அகழ்வாரைத் தாங்கும் நிலம்போலத் தன்னை
இகழ்வார்ப் பொறுத்தல் தலை.”**

Translation: “To bear with those who revile us, just as the earth bears up those who dig it.”

Inner Tamil Meaning: தன்னை வெட்டுவோரையும்
விழாமல் தாங்குகின்ற நிலம் போல், தம்மை
இகழ்வாரையும் பொறுப்பதே தலைபான
பண்பாகும்.”

7. When the matter was heard at length, on an earlier occasion, in



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order to shorten the life of litigation, this Court had putforth a suggestion to the learned counsel for the workman as to whether the workman would be agreeable to give up 25% of backwages so that a finality could be reached and the workman would be able to see the colour of the coin during his lifetime.

8. Pursuant to the suggestion of this Court, today, the workman has filed an affidavit dated 15.12.2023 and same is scanned and reproduced below:



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IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Appellate Jurisdiction)

W.A. No. 3485 of 2023

and

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The Management,
Tamil Nadu State Transport Corporation
No.12, Ramakrishna Road,
Salem – 636007.

...Appellant/Appellant

-Vs-

1. The Presiding Officer,
Labour Court, Salem.
2. D. Jayakumar, D.R. No.0829,
S/o. Duraisami,
No.124, Ayyavu Gounder Street,
Valapaddy Post & Taluk,
Salem district.

...Respondents/Respondents

COMMON AFFIDAVIT OF D.JAYAKUMAR

I, D. Jayakumar, S/o Duraisami, Indian, Hindu, aged about 69 years and residing at No.6/222, Kamaraj Nagar, Vada Chennimalai Post, Athur taluk, Salem District 636 121, now temporarily come down to Chennai do hereby solemnly affirm and sincerely state as follows:

1. I am the 2nd Respondent in the above Writ Appeal and I am well acquainted with the facts and circumstances of the case.

2. I respectfully submit that I was the Heavy Vehicle Driver of the Appellant and attained superannuation on 30-4-2015 after completion of 34 years of meritorious service.

3. I respectfully submit that my dismissal order dated 27-1-2011 issued by the Appellant for alleged misconduct of charge levelled against me alleging that I wantonly in a pre-planned manner interfered and made disturbance in crew counseling meeting conducted on 24-11-2009 at about 11.30 hours along with

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three other employees and also used abuse and filthy language as against the various Trade Union members and superior officers in the presence of other employees who participated in the meeting and they were accomplished and hindering the meeting and subsequently the crew counseling meeting was abandoned and my activity has created unrest among other employees, was set aside by the learned Judge, Labour Court, Salem in I.D.No.24/2013 dated 11-2-2015 by issuing minor punishment stopping my increment for two years with cumulative effect and directed the respondent to reinstate me in service with 25% of back wages with all other allowances and benefits.

4. I respectfully submit that the Appellant had challenged the award of Labour Court made in I.D.No.24/2013 dated 11-2-2015 before this Hon'ble High Court in W.P.No.18607/2015 and obtained stay of operation of the award with the condition to deposit 25% back wages.

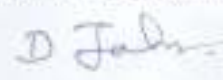
5. I respectfully submit that the Appellant did not comply with the direction made in M.P.No.1/2015 in W.P.No.18607/2015.

6. I respectfully submit that this Hon'ble Court had vacated the order made in M.P.No.1/2015 on 22-1-2016 as the Appellant did not comply with the direction made, in spite of several opportunities granted and this Hon'ble Court had passed the following order:

"In spite of several indulgence being granted, Petitioner/ Management has not complied with the direction issued by this Court as early as on 22-7-2015, directing them to deposit 25% of the backwages.

2. In fact the said order was a self-working order and the stay stood automatically vacated. However, so as to give an opportunity to the petitioner/Management, the Court granted one more indulgence. However, it appears that the Management is not inclined to comply with the conditional interim order granted by this Court and they are citing their financial incapacity. If that is so, then the Petitioner Corporation has to be wound up and the Government may consider that aspect of the matter also.

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3. In the light of the interim order already granted by this Court dated 22-07-2015, is vacated, the respondent/workman is entitled to initiate proceedings to implement the award by approaching the Labour Court.

Accordingly, M.P.No.1 of 2015 in W.P.No.18807/2015 stands dismissed."

7. I respectfully submit that thereafter I had received a sum of Rs.2, 62,538/- as part of 25% after filing R.E.P.No.24/2013 on 5-2-2017 before Labour Court, Salem.

8. I respectfully submit that I am leaving the above said 25% back wages of the award of the learned Labour Court made in I.D.No.24/2013 dated 11-2-2015.

Therefore, I respectfully pray that this Honourable High Court may be pleased to accept this affidavit and pass such further or other order or orders as this Hon'ble High Court may deem fit and proper in the circumstances of this case and render justice.

Solemnly affirmed at Chennai
this the 15th day of December 2023
and signed his name in my presence:

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No. of Coms. Nil
Sign

D. J. J.

Before me

Laxmishree Begum
MS. 494/2008

Advocate, Chennai
No. 63, Adde Law Chambers,
High Court Buildings
Chennai - 600109



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9. In view of the aforesaid affidavit filed by the workman giving up 25% backwages, the rest of the benefits available to him like Gratuity, Pension, etc barring entire backwages, shall be paid within a period of four months from the date of receipt of a copy of this order. If any amount has been paid or withdrawn by the employee pursuant to the orders of this Court, the same need not be recovered or adjusted. It is submitted on behalf of the workman, across the bar, that the workman is willing to deposit his share of the contribution to the Provident Fund in order to enable him to get better pensionary benefits and he is at liberty to do so.

10. The writ appeals are disposed of accordingly. No costs. Connected C.M.Ps are closed.

nv

(S.V.N.J) (K.R.S.J.)
15.12.2023



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To

The Managing Director,
Tamil Nadu State Transport
Corporation,
No.12, Ramakrishna Road,
Salem – 636 007



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S. VAIDYANATHAN,J.

AND

K. RAJASEKAR,J.

nv

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15.12.2023