

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.25803 of 2010
and
M.P.Nos.1 of 2010 & 2 of 2012

The Management
Tamil Nadu State Transport
Corporation (Salem) Ltd.,
No.12, Ramakrishna Road
Salem-636 007
rep.by its General Manager Petitioner

Vs.

1.The Presiding Officer
Labour Court, Salem

2.G.Munusamy Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorari to call for the records concerning with I.D.No.131 of 2006, dated 08.10.2009, on the file of the first respondent and to quash the same.

For Petitioner : Mr.R.K.Gandhi

For Respondents : Mr.V.Bhiman for R2
R1 - Labour Court

सत्यमेव जयते
O R D E R

Reserved on : 05.10.2015

Pronounced on : 20.11.2015

The prayer in the writ petition is for issuance of a writ of certiorari to quash the impugned order, dated 08.10.2009, in I.D.No.131 of 2006, whereby and whereunder the first respondent has set aside the order, dated 02.02.1986, removing the second respondent / workman from service and directed the petitioner / Management to reinstate him in service with full backwages and continuity of service and all other attendant benefits.

2. The short facts of the case are as follows:

The second respondent was employed as a Conductor in the petitioner Corporation from 01.10.1981. On 23.09.1985, the second respondent was on duty in the bus bearing registration No.TMN 6691, in Dharmapuri - Salem route. At about 14.30 hours, the bus was checked by the Checking Inspectors at Kalipettai and it was found that the second respondent / workman had received a sum of Rs.1/- each from a group of six passengers, who were travelling from Pappireddipaty to Manjavaditotalling, totalling to Rs.6/-, but he had issued old tickets, which were already sold in the morning trip and a sum of Rs.42.80 was found deficit in his cash bag. For the said misappropriation and misconduct, the petitioner / Management issued a charge memo, dated 01.10.1985, to him and for which he submitted his explanation, dated 08.10.1985. Not being satisfied with the explanations, the petitioner / Management conducted a domestic enquiry. The second respondent / workman had also participated in the domestic enquiry. The Enquiry Officer, after analyzing the facts and circumstances, found that the charges levelled against the second respondent / workman were proved and accordingly submitted a report, dated 04.12.1985, to the petitioner / Management.

3. The petitioner / Management, based on the said enquiry report, issued another show-cause notice, dated 27.12.1985, calling the second respondent / workman to explain as to why he should not be dismissed from service. For which also the second respondent / workman submitted his explanation. However, in the meantime, the second respondent / workman, committed several misconducts such as non-issuance of ticket and mentioning wrong ticket numbers etc. If an employee like this nature is allowed to continue in service, it will be detrimental to the interests of the Corporation. Therefore, not satisfied with the explanation, the petitioner / Management, by Order dated 02.02.1986, dismissed the second respondent / workman from service.

4. Aggrieved by the order of dismissal from service, the second respondent / workman raised an industrial dispute in I.D.No.131 of 2006, in the Labour Court, Salem. The Labour Court, without analyzing the facts and circumstances, by Award, dated 08.10.2009, directed the petitioner / Management to reinstate the second respondent / workman with continuity of service with full backwages and all other attendant benefits. Challenging the said Award, dated 08.10.2009, the petitioner / Management has filed this writ petition.

5. The learned counsel appearing for the petitioner / Management has submitted that the second respondent / workman after a lapse of twenty years without any valid reason raised the industrial dispute. The Labour Court, without appreciating the facts and circumstances of the case, has erroneously passed the impugned Award. On assumptions and presumptions, the Labour Court, has come to a conclusion that there is no evidence as to how old tickets were in the possession of the second respondent / workman. It had failed to note that the driver of the bus has also stated at the time of inspection that six passengers had told the second respondent / workman gave old tickets to them. In such circumstances, the observation of the Labour Court that no passengers were examined is not sustainable. Since assumptions and presumptions are not sustainable on the eyes of law, the findings of the Labour Court that the observations of the Enquiry Officer are not based on record and they are perverse, are not sustainable. The said misconduct not only affects the loss of revenue to the Corporation, but also causes damage to the reputation of the Corporation. The Labour Court failed to consider the financial implications of the petitioner / Corporation as well as it will set a bad example to the employees of all the Transport Corporations in the State. Since the Labour Court has not assigned any valid reason, the Award of reinstatement is not in accordance with law. Therefore, the learned counsel prayed this Court to quash the impugned order of reinstatement.

6. The learned counsel appearing for the second respondent / workman has submitted that the second respondent was appointed as a Conductor in the petitioner Corporation on 01.10.1981 and subsequently he was made permanent. On 23.09.1985, when he was on duty as a Conductor, there was a heavy crowd in his bus and hence he issued tickets in a hurried manner. At that point of time, the Checking Inspectors inspected the bus and one of the passengers lost his ticket and hence the passenger paid the fare for fresh ticket. However, he has not issued fresh ticket. This is the allegation against the second respondent / workman. But, the said allegation has not been proved through the passengers and hence the said allegation is nothing but the own opinion of the Checking Inspectors. The Management issued a memo to the second respondent / workman and conducted a domestic enquiry, wherein the particular passenger was not examined as a witness, likewise, he was not examined before the Labour Court. Therefore, the allegation levelled against the second respondent / workman by the Management has not been proved and as such the order of dismissal, dated 02.02.1986, is not fit

to be operated and hence the same was set aside by the Labour Court and directed the petitioner / Corporation to reinstate the second respondent / workman with full backwages and continuity of service and all other attendant benefits. Hence, the learned counsel prayed this Court to dismiss the writ petition.

7. Considering the facts and circumstances of the case, arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court is of the view that the second respondent / employee was dismissed from service on 02.02.1986. However, he raised an industrial dispute in I.D.No.131 of 2006 before the Labour Court, Salem, and challenged the dismissal order, after a lapse of around twenty years. In such circumstances, the second respondent / workman is not entitled to receive full backwages continuity of service and all other attendant benefits for the entire period. Therefore, this Court modifies the impugned order, dated 08.10.2009, passed by the first respondent and directs the petitioner / Management to reinstate the second respondent / workman herein in service within a period of thirty days from the date of receipt of a copy of this Order with full backwages from the date of filing I.D.No.131 of 2006 and also to pay other attendant benefits payable to the second respondent / workman from the date of filing I.D.No.131 of 2006. The basic pay structure will be taken into account as what was prevailing during 2006 including all other admissible allowances.

8. In the result, the writ petition is partly-allowed and the impugned order, dated 08.10.2009, passed in I.D.No.131 of 2006, by the first respondent, is modified to the extent as indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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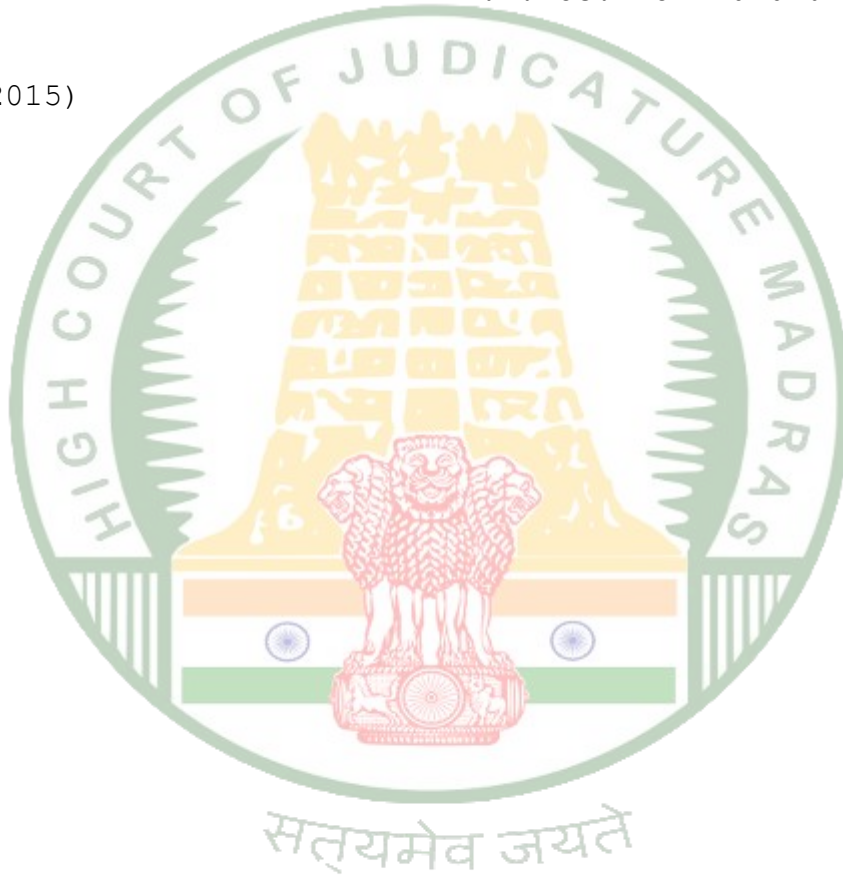
The Presiding Officer,
Labour Court, Salem.

+1cc to Mr.V.Bhiman, Advocate, S.R.No.63166

W.P.No.25803 of 2010
and

M.P.Nos.1 of 2010 & 2 of 2012

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