

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.A.No.896 of 2017

Tamil Nadu State Transport
Corporation (Salem) Ltd.,
rep by its Managing Director
Salem ... Appellant/Petitioner

-vs-

1. The Presiding Officer
Labour Court, Salem
2 V.Rajendran ... Respondents/Respondents

Appeal under Clause 15 of the Letters Patent, against the order dated 18.06.2013 made in W.P.No.24150 of 2006 filed under Article 226 of the constitution of India, praying for the issue of a writ of certiorari, to call for the records of the first respondent in I.A.No.73/2001 dated 9.8.2005 and quash the same.

For Appellant :: Mr.P.Paramasivadoss

For Respondents:: Mr.V.Ajoy Khose for R2
R1-Court

JUDGMENT

(Judgment of the Court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel for the parties.

2. This appeal is filed by the Transport Corporation against the order of the learned single Judge. The learned single Judge, by order dated 18.6.2013 passed in Writ Petition Nos.24150 of 2006 and 4091 of 2008, has confirmed the award of the first respondent-Labour Court for reinstatement of the second respondent-Workman with 50% of backwages as well as 50% of other benefits and continuity of service. It appears that against the order of the disciplinary authority dismissing the second respondent from service on the misconduct of not having issued some ticket to a boy, who is a minor, the Workman raised a dispute before the first respondent-Labour Court and the Labour Court passed an award for reinstatement with 50% of backwages as well as 50% of other benefits and continuity of service, against which the Department as well as the Workman had preferred the writ petitions, as mentioned above, before the learned single

Judge and now, aggrieved by the order of reinstatement passed in favour of the second respondent with 50% of backwages as well as 50% of other benefits with continuity of service, the Department has filed this writ appeal before us.

3. It is ascertained from the records and also the submissions that during the period of enquiry, the wages under Section 17-B of the Industrial Disputes Act has been paid to the second respondent-Workman. There is a finding of the Labour Court that the second respondent-Workman is said to have issued half ticket to a boy aged about 11 years. However, his statement has not been accepted by the checking officials, who intercepted the vehicle way back during February, 1999. But the explanation offered by the second respondent is that he had received only ten rupees and after issuing a ticket for Rs.9.50 to the boy, the balance 0.50 paise was also returned to him. However, there is an actual shortage of Rs.9.50 when the second respondent remitted the collection amount at the end of his duty for the day. As such, the Labour Court found that the question of receiving twenty rupees from the boy did not arise, since, after issuing the ticket for Rs.9.50 with the return of 0.50 paise to the boy, there should have been an excess amount in the second respondent's cash bag. However, taking note of the further explanation offered by the Workman that as per the invoice, totally 150 tickets were sold to the passengers between Salem and Attur and the Conductor had also issued tickets to all the passengers properly, the Labour Court held that without there being any sufficient evidence adduced as to the age of the boy that he was a major, the question of collecting the amount towards full fare or issuing the ticket for a lesser value will not arise. On this basis, the dismissal order has been interfered with by the Labour Court. Taking note of this aspect, by confirming the award of the Labour Court, the learned single Judge held that the order of dismissal is proportionately excessive and unwarranted.

4. We do concur with the finding rendered by the learned single Judge in this regard. However, so far as backwages and other benefits are concerned, during the period of enquiry and thereafter, since already the second respondent had been paid with the wages under Section 17-B, we feel that the direction for 50% backwages and 50% of other benefits needs some modification. Accordingly, we are of the view that the wages under Section 17-B paid to the second respondent-Workman be treated as sufficient towards backwages and no further 50% of other benefits be paid to him. However, if the second respondent has got remaining period of service, it is for the appellant-Department to reinstate him within three months from the date of receipt of a copy of this order. Further, since there is an order for reinstatement, for the purpose of pensionary or any other benefits, the second respondent has to be accorded

continuity of service. By way of this clarification, the appeal filed by the Department is allowed in part. Consequently, C.M.P.No.12587 of 2017 is closed. No costs.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Presiding Officer
Labour Court, Salem

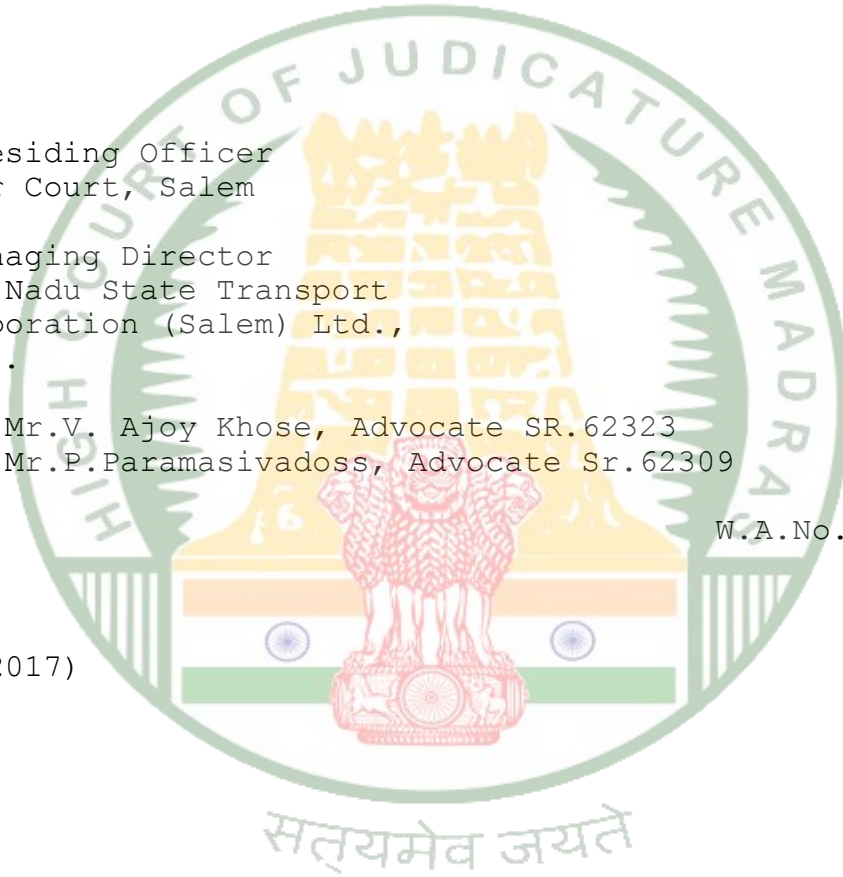
2. The Managing Director
Tamil Nadu State Transport
Corporation (Salem) Ltd.,
Salem .

+ 1 cc to Mr.V. Ajoy Khose, Advocate SR.62323

+ 1 cc to Mr.P.Paramasivadoss, Advocate Sr.62309

W.A.No.896 of 2017

MSM(CO)
EU (22/09/2017)



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