

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.6.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.A.No.1250 of 2018
and
C.M.P.No.10322 of 2018

The Management,
Cheran Transport Corporation Ltd.
(Now known as Tamil Nadu State
Transport Corporation)
Coimbatore Division 1,
37, Mettupalayam Road,
Coimbatore 43.

Appellant

Versus

1. The Presiding Officer,
Industrial Tribunal, Chennai.

2. V.Arjunan

Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters
Patent against the order dated 19.1.2004 passed in W.P.No.7010
of 1996 on the file of this court.

PRAYER IN W.P.No.7010 of 1996 : Petition filed under Article 225
of the Constitution of India to issue a writ of certiorari to
call for the records on the file of 1st respondent herein in
Petition No.86/88 in I.D.No.62/82 dated 04.10.1995 for the
reasons stated herein.

For appellant : Mr.Rajani Ramadass

For R2 : Mr.Ajay Khose

JUDGMENT

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

Heard the learned counsel appearing for the appellant-
Management and Mr.Ajay Khose, learned counsel, who takes notice
on behalf of the second respondent.

2. The writ appeal has been filed by the Transport Corporation challenging the order passed by the learned Single Judge in dismissing the writ petition filed by them and thereby confirming the order passed by the Industrial Tribunal declining to grant approval for the order passed by the Transport Corporation imposing punishment of dismissal from service of the second respondent herein.

3. It appears that the respondent herein-a Conductor of the appellant Transport Corporation was issued with a charge memo containing two charges with regard to non issuance of tickets for receipt of fare to a passenger while, the bus was plying from Devarsolai to Nilakottai on 17.5.1987 and subsequently, on completion of enquiry, he was dismissed from service. However, it appears that the Industrial Tribunal did not grant approval for the same. Hence, the Transport Corporation had preferred the writ petition.

4. It is relevant to refer to Paragraphs 6 and 7 of the order passed by the learned Single Judge which read thus:-

"6. As regards the passenger who is alleged to have got down claiming that he had paid the fare and had not received the ticket, Ex.M.13 explanation shows that when the bus stopped at the Mayfield Division, 9 miles after Devarsolai, one passenger attempted to get off and the Checking Inspector tried to stop him and it was revealed that he had not got the ticket and to escape from the Checking Inspector, he had falsely stated that he had given one rupee and that the second respondent/conductor had returned 20 paise change, but had not issued any ticket. The second respondent had stated that this was not true. However, before the truth of the passenger's statement could be verified, the Checking Inspector had given clearance for the bus to move.

7. In this context, the decision in U.P.STATE ROAD TRANSPORT CORPORATION AND OTHERS VS. MAHESH KUMAR MISHRA AND OTHERS ((2000)3 SUPREME COURT CASES 450) is relevant, wherein the Supreme Court held that when none of the passengers had been examined to ascertain where they had boarded the bus and the transport Inspector had also not recorded the statement of the passengers, the punishment of dismissal was shockingly disproportionate. In THE STATE OF

HARYANA AND ANOTHER AND RATTAN SINGH (1982(1)LLJ 46), the delinquent employee had approached the Civil Court for a declaration that the order of termination was a nullity. That does not apply to the facts of the present case and in any event, the Tribunal has held against the Management, not only because of non-examination of passengers. The reasons given by the first respondent for setting aside the findings of the Enquiry Officer cannot be said to be perverse or illegal. Therefore, the writ petition is dismissed. No costs."

5. Having heard the learned counsel appearing for the parties and perused the materials available on record, we find that immediately, after the alleged misconduct that had occurred on 17.5.1987, the employee was kept under suspension and subsequently, he was dismissed on 26.5.1988. However, after the Industrial Tribunal had dismissed the approval petition filed by the Management on 4.10.1995, he was reinstated in service, vide order dated 23.1.1996 which was also subject to the result of the appeal the Management had proposed to file. Therefore, eight years had lapsed during the period from his dismissal from service till his reinstatement. It is also submitted that he was not paid any wages during such period.

6. In the facts and circumstances of the case, we are of the view that even assuming that there may be some minor misconducts committed by the second respondent, since he had already retired from service, we do not intend to interfere with the order passed by the learned Single Judge. However, we make it clear that he would not be entitled to backwages for the period commencing from the date of dismissal till the reinstatement. But, such period would be reckoned for the purpose of calculating pensional benefits. Further, we make it clear that if at all any amount is paid during the period of enquiry proceedings, it need not be recovered. The writ appeal is disposed of accordingly. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-vii)

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Sub Assistant Registrar

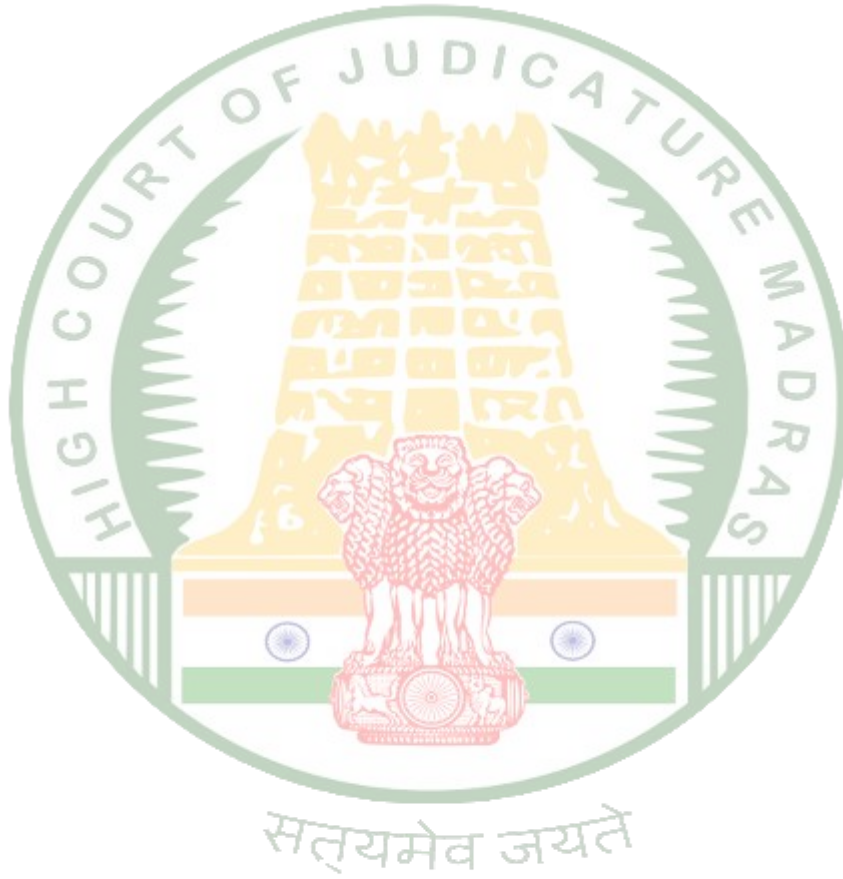
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To:

1. The Presiding Officer,
Industrial Tribunal, Chennai.

W.A.No.1250 of 2018

BS (CO)
TR(20/07/2018)



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