

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2018

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

W.P.NO.10830 of 2016

The Management

Tamilnadu State Transport Corporation (Salem) Ltd

Bharathipuram, Salem Main Road

Dharmapuri - 636 705, rep.by its General Manager

.... Petitioner

Vs

1. The Presiding Officer
Labour Court, Salem.

2. P.D.Kumaresan Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the order passed by the first respondent in I.D.No.75 of 2013 dated 31.03.2015 and quash the same.

For Petitioner : Ms.Rajani Ramadoss

For Respondents: M/s.KV Shanmughanathan- for R2

O R D E R

The labour court, in I.D.No.75 of 2013, has ordered reinstatement of the workman along with 45% backwages and other attendant benefits by the award dated 31.03.2015 and it is under challenge by the management. The labour court has, inter-alia set aside the order of dismissal dated 26.10.2012 passed in the domestic enquiry.

2. The brief facts leading to the filing of the dispute in I.D.No.75 of 2013 is that the workman has joined the services of the petitioner as conductor on 23.08.2007. It is the case of the management that the workman was absenting himself from duty without any prior intimation or permission from 07.08.2011 and therefore he was issued with a charge memo, in respect of which the explanation submitted by the workman was not found satisfactory. Therefore, domestic enquiry was ordered. During the domestic enquiry, the past conduct of the workman has also been taken note of and the enquiry officer concluded that the workman was guilty continuous absence from duty and hence the absence was not justified.

3. Challenging the order passed in the domestic enquiry, a dispute has been raised before the labour court. The labour court, after taking note of the fact that the workman was not well and that he has submitted leave letters dated 19.9.2011 and 11.11.2011 along with medical certificate, has come to the

conclusion that the dismissal is not justified. The further observation is that without looking into those aspects, based on the vague admission made by the workman that he did not attend duty, it has been concluded that the services of the workman should be terminated. There is an observation that even though those leave letters have been received, the management has neither chosen to give any reply to those letters, nor has produced the leave letters before the labour court, and in the absence of the same, the receipt of leave letters are deemed to have been admitted by the management. Therefore, the labour court concluded that the absence was justified by the production of leave letter along with medical certificate and therefore the vague admission made by the workman ought not to have been accepted by the authorities, who conducted the domestic enquiry and on that basis, the enquiry report has been set aside.

4. The labour court, relied upon the judgment reported in 2012 (3) LLN 116 (Krushnakant B Parmar -Vs- Union of India and another) , wherein it was held that the absence of the workman for duty could be either wilful or because of compelling circumstances and that would be the determining factor and in the case of the absence under compelling circumstances, it is not possible to report for or perform duty, and such absence cannot be held to be wilful. Relying upon the above decision, the labour court concluded that the absence of the workman is justified.

5. Insofar as the backwages are concerned, 45% of the backwages had been awarded by the labour court. Learned counsel appearing for the management would point out that not even an affidavit is filed by the workman stating that he was not gainfully employed from the date of suspension till the date of dismissal and hence the labour court awarding 45% backwages is not justified; especially in the light of the conduct of the workman that he was not in the habit of obtaining prior permission. The past conduct of the workman has been enlisted in the charge memo dated 26.10.2012, stating that the workman had been imposed with a fine of Rs.100, that he was warned on two occasions for being absent to duty without prior intimation and that his confirmation of employment had been postponed for three months etc.,

6. Under the circumstances, this court is of the view that awarding 45% of backwages in the absence of material disclosing that he was not gainfully employed elsewhere, is not justified.

7. In the result, the order of the labour court with respect to reinstatement alone is confirmed. There will be continuity of service, which is permissible for the purpose of terminal benefits alone and not for other attendant benefits. The award of 45% backwages with all other attendant benefits is set aside.

The workman shall be reinstated into service and he is directed report to work within a period of two weeks from the date of receipt of a copy of the order. The writ petition is ordered accordingly. No costs. Consequently, connected W.M.P. is closed.

kst

Sd/-

Assistant Registrar(cS IX)

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Sub Assistant Registrar

To

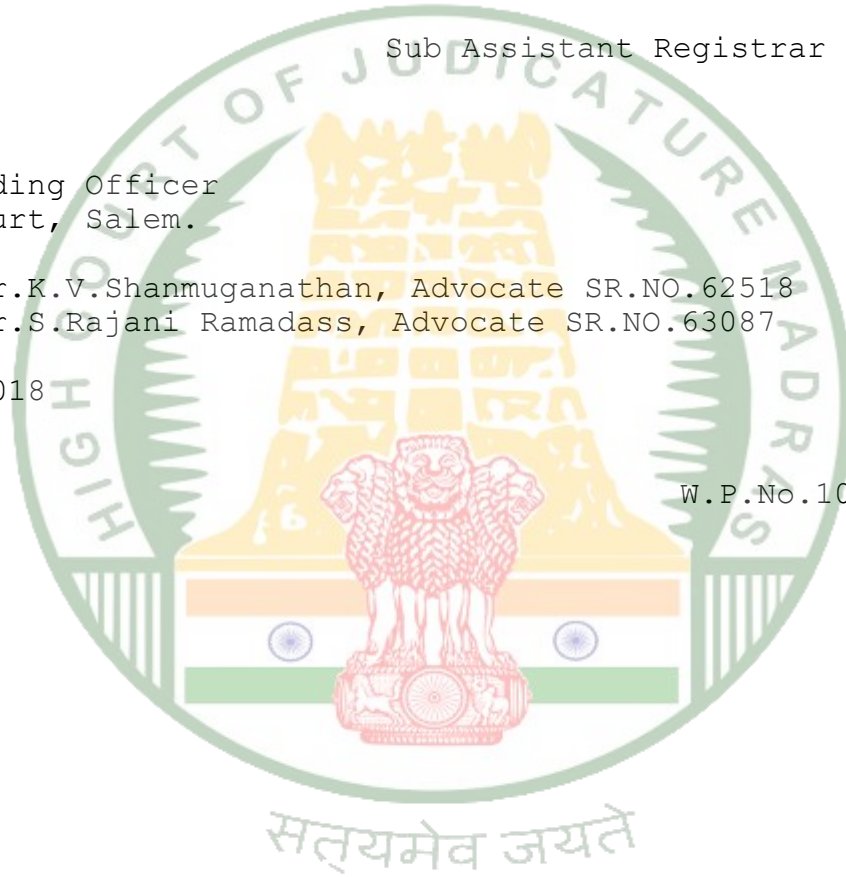
The Presiding Officer
Labour Court, Salem.

+1cc to Mr.K.V.Shanmuganathan, Advocate SR.NO.62518

+1cc to Mr.S.Rajani Ramadass, Advocate SR.NO.63087

sm:11.9.2018

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