

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2018

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

W.P.No.27895 of 2004 and W.P.No.25017 of 2005
and W.M.P.Nos.232 & 33915 of 2004
and W.M.P.Nos.190 & 2805 of 2005

Tamil Nadu State Transport Corporation Salem Ltd.,
rep.by its Managing Director, 12, Ramakrishna
Road, Salem - 636 007. Petitioner in W.P.No.27895/2004
& R2 in W.P.No.25017 of 2005

Vs

1. The Presiding Officer
Labour Court, Salem. R1 in both the Writ Petitions
2. V.Gnanasekaran Petitioner in W.P.No.25017/2005
& R2 in W.P.No.27895 of 2004

Prayer in W.P.No.27895 of 2004: Writ Petition filed under
Article 226 of the Constitution of India praying to issue a Writ
of Certiorari to call for the records of the first respondent in
I.D.No.651 of 2001 dated 21.10.2003 and quash the same.

Prayer in W.P.No.25017 of 2005: Writ Petition filed under
Article 226 of the Constitution of India praying to issue a Writ
of Certiorarified Mandamus after calling for records relating to
the award dated 21.10.2003 passed by the first respondent in
I.D.No.651 of 2001 and quash the same insofar as depriving the
backwages to the petitioner and consequently direct the second
espondent to pay the petitioner backwages from the date of
dismissal to the date of award.

For Petitioner in W.P.No.27895/2004
& R2 in W.P.No.25017 of 2005 : Ms.Rajani Ramadoss

For Respondents : R1 Labour Court

R2 in W.P.No.27895 of 2004 and
Petitioner in W.P.No.25017/2005 : Mr.V.Ajay Khose

ORDER

There are two writ petitions - one filed by the management
in W.P.No.27895 of 2004 and another by the workman in
W.P.No.25017 of 2005.

2. The brief facts leading to the filing of the writ petition are that the workman was a conductor, having joined Jeeva Transport Corporation on 22.06.1995. Lastly, he worked in the Mettur branch of the Corporation. A charge memo dated 30.04.2001 was issued to the workman. Exparte enquiry was conducted and the enquiry officer also submitted his report. On the basis of the report, the services of the workman was terminated by an order dated 26.6.2001.

3. This order of termination was challenged by the workman in I.D.No.651 of 2001 before the Labour Court, Salem. The labour court considered only the following two issues viz.,

- (a) Whether the punishment imposed on the workman is justified?
- (b) What relief the workman is entitled to ?

4. The labour court has given a finding that the validity of the enquiry is not challenged and therefore it is not necessary to decide the question of validity of the enquiry. A persusal of the labour court award would go to show that there is a finding that during the period of absence, there is no proof to show that the workman submitted any leave application. Only at a later point of time, he had produced the document showing that he was suffering from health issues and therefore, he was not able to report to work. The labour court has considered the punishment as disproportionate to the charges levelled and considered modification of punishment. The labour court had also ordered reinstatement with continuity of service, but not with backwages. The non-award of backwages is also challenged by the workman in the writ petition filed by him.

5. The question of grant of backwages is not automatic, it can be granted only when the workman proves that he was not gainfully employed elsewhere during the period of his dismissal. In the absence of the proof showing that he was not gainfully employed elsewhere, the workman is not justified in demanding backwages.

6. Learned counsel for the management would submit that the question of reinstatement would not arise as the workman has attained superannuation on 31.01.2014. The fact remains that during the pendency of the writ petition, instead of 17-B wages, he has been offered employment and from 19.04.2005 till the date of his retirement, he has rendered service continuously without any black mark from the management. Under the circumstances, considering the subsequent conduct as well as the past conduct which is not wilful, the order passed by the labour court for reinstatement is held justified. The following order is passed, in these writ petitions.

For the period of non-employment, the contribution payable to the Pension Fund Trust by the employer shall be paid. Employee is not entitled to bonus for the period of non-engagement / non-employment.

(i) The continuity of service, increment due and other benefits shall be on notional basis for the purpose of calculation of eligibility period of pension.

(ii) As the workman has already attained superannuation, the management is directed to settle the dues payable to the workman within a period of eight weeks from the date of receipt of a copy of this order".

9. In the light of the above directions, the writ petition filed by the management (W.P.No.27895 of 2004) is dismissed and the writ petition filed by the workman (W.P.No.25017 of 2005) is allowed to the extent indicated. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

KST
To

1. The Presiding Officer, Labour Court, Salem.
 2. The Managing Director,
Tamil Nadu State Transport Corporation Salem Ltd.,
12, Ramakrishna Road, Salem - 636 007.
 3. The Section Officer, VR Section, High Court, Madras.
- +1cc to Mr.V.Ajoykhose, Advocate SR.No.71239
+1cc to Mrs.S.Rajeni Ramadass, Advocate SR.No.71398

W.P.No.27895 of 2004
and W.P.No.25017 of 2005

NMI (CO)
GMY (04/12/2018)