

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN
and

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
W.A. No.1463 of 2017

and

C.M.P.No.14969 of 2017

Tamil Nadu State Transport Corporation (Salem) Ltd.,
Rep. by its Managing Director,
No.12, Ramakrishna Road,
Salem - 636 007.Appellant/2nd Respondent

Vs.

1. The Presiding Officer,
Labour Court, Salem.1st Respondent/1st Respondent

2. M. Soundirarajan2nd Respondent/Petitioner

Writ Appeal is filed under Clause 15 of the Letters Patent
against the order of this Court in W.P.No.34302 of 2012 dated
11.04.2016.

WP.No.34302/2012:Preferred under Art 226 of the Constitution of
India, seeking for a writ of certiorarified mandamus to call
for the records connected with the Award dated 16.9.2008 passed
by the 1st respondent in I.D.No.262 of 2005 in so far as it
relates to the Award of Break of Service from the date of
dismissal till the petitioner is reinstated and the petitioner
is not entitled for back wages promotion and other monetary
benefits his future increment will be accrued after completion
of one year in service after reinstatement in the regular due
date connecting the previous increment before 12.5.2000 quash
the same and also direct the 2nd respondent to grant the
petitioner continuity of service back wages promotion and all
other attendant incidental benefits.

For petitioner : Ms.Rajini Ramadoss

For Respondents: Ms.S.Girija for R2
R1 - Court

J U D G M E N T

[Judgment of the Court was delivered by P.VELMURUGAN, J.]

It is to be noted that the second respondent was working as
a driver in the appellant Corporation from 01.09.1986. During
the course of service, a charge memo dated 02.11.1999 was issued
to the second respondent for unauthorized absence from duty for
the period from 28.08.1999 to 30.09.1999, 06.10.1999 to
27.10.1999 and from 30.12.1999 to 21.01.2000 without any prior
intimation to the management or with proper prior permission

from the Branch Manager. Thereafter, an enquiry was ordered to be conducted by the appellant management, by appointing an Enquiry Officer. The Enquiry Officer submitted his report holding that the charges were proved. The appellant management concurred with the findings of the Enquiry Officer and imposed the punishment of dismissal from service on 12.05.2000.

2. The second respondent challenged the dismissal order by raising an Industrial Dispute in I.D.No.262 of 2005 before the first respondent, under Section 2(a)(2) of the Industrial Dispute Act, 1947. The first respondent passed an award on 16.09.2008, setting aside the order of dismissal as excessive in nature and directed to reinstate the second respondent, without backwages, promotion or monetary benefits. His future increment will be accrued after completion of one year in service after reinstatement in the regular due date connecting the previous increment before 12.05.2000.

3. Aggrieved by the order of the first respondent, the appellant Corporation filed a writ petition in W.P.No.353 of 2010 before this Court. Meanwhile, the second respondent filed a writ petition in W.P.No.34302 of 2012, challenging the portion of the award passed by the first respondent in directing the reinstatement along with break in service from the date of dismissal till the date of reinstatement and denial of backwages, promotion and other monetary benefits.

4. The writ Court after hearing the counsel for both the writ petitions passed a common order by partly allowing the writ petitions filed on either side. By its order dated 11.04.2016, the Writ Court directed to pay backwages to the second respondent in the following manner:

- (i) The findings of the Labour Court that the order of dismissal passed against the workman, which is bad in law is confirmed and accordingly the order of dismissal is set aside.
- (ii) The workman is entitled to be reinstated with continuity of service and all other attendant and monetary benefits, which he will get is as follows:
 - (a) For the period from the date of dismissal on 12.05.2000 till September, 2005, the workman is not entitled to have any backwages.
 - (b) For the period from October, 2005 till 16.09.2008, the workman is entitled for 50% of the backwages and
 - (c) For the period from 17.09.2008, till the date of reinstatement, the workman is entitled for full backwages.

5. Feeling aggrieved with the above order, this Intra Court Appeal has been filed by the Management/Corporation.

6. Heard the rival submissions made by the learned counsel on either side and perused the records.

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7. In this case, admitted facts are that the second respondent joined as a driver in the appellant Corporation on

01.09.1986 and he unauthorizedly absented himself from duty from 28.08.1999 to 30.09.1999, 06.10.1999 to 27.10.1999 and from 30.12.1999 to 21.01.2000 without any prior intimation to the management or with proper prior permission from the Branch Manager, for which, charge memo dated 02.11.1999 was sent to him through R.P.A.D. The same was returned as "Unserved". In spite of the efforts taken by the management they could not serve the charge memo to the second respondent. The second respondent evaded the notice. Since he did not attend the enquiry, the Enquiry Officer submitted his report that the charges were proved against him. The appellant management concurred with the findings of the Enquiry Officer and imposed the punishment of dismissal. The second respondent had raised an Industrial Dispute before the first respondent in I.D.No.262 of 2005 under Section 2(a)(2) of the Industrial Disputes Act, 1947.

8. After the enquiry, the first respondent passed an award on 16.09.2008, holding that the misconduct had been proved. However, the Labour Court set aside the order of the dismissal as it was excessive in nature and directed to reinstate the second respondent with break of service from the date of dismissal till he is reinstated and further that he is not entitled to backwages, promotion and other monetary benefits. His future increment will be accrued after completion of one year in service after reinstatement in the regular due date connecting the previous increment before 12.05.2000.

9. Feeling aggrieved with the order of the first respondent, the appellant Corporation filed the writ petition before this Court in W.P.No.353 of 2010 and in the same way the second respondent also filed the writ petition in W.P.No.34302 of 2012.

10. The learned Single Judge has elaborately discussed the entire aspects in detail. Though the learned Single Judge accepted the order of the first respondent that misconduct committed by the second respondent has proved, but at the same time, found that the punishment was not proportionate to the charges proved. Therefore, the learned Single Judge accepted the order of the Labour Court by confirming it and only interfered with the direction to pay backwages. For better appreciations, the relevant portion of the order of the learned Single Judge is extracted hereunder:

"8. On appreciation of the documents placed by the Management, the Labour Court held that the domestic enquiry was vitiated and the workman was not afforded with proper opportunity. Thus, the Labour Court held that the workman is entitled for reinstatement. While moulding the relief to be granted, the Labour Court took into consideration the delay in raising the Dispute, which was about five years and held that for the said period, the workman will not be entitled to any monetary benefits by applying the principle 'no work no pay'. Further, the Labour Court observed that if the workman is found to be incorrigible and entitled to be reinstated, he can be imposed with the lesser

punishments of reduction in rank /grade; he can be issued with the punishment of 'censure' or some other lesser punishments. Ultimately, the Award came to be passed, which, as observed earlier was virtually is not an award of reinstatement, but in effect, it is an award directing the workman to be appointed as a fresh entrant.

9. After hearing the learned counsels for the parties, and perusing the materials placed on record, this Court is of the view that the approach of the Labour Court in so far as the findings it has recorded with regard to the domestic enquiry is valid and proper. In other words, the view of the Labour Court that the domestic enquiry was vitiated on the ground of serious violation of principles of natural justice, is proper and does not call for any interference. The only matter to be considered in the instant case is with regard to the relief, the workman is entitled to.

10. As rightly pointed out by the learned counsel for the Management that though the workman was granted an opportunity by the Labour Court to lead evidence, he did not choose to lead either oral or documentary evidence and therefore, he cannot now contest the matter before this Court stating that on account of ill-health, he did not report for duty. The workman having not utilised the opportunity before the Labour Court cannot seek to advance a case which was not placed before the Labour Court. That apart, the delay of five years in approaching the Labour Court has not been explained by the workman. Therefore, even if there is an Award of reinstatement, then obviously, the workman cannot claim wages for the period from 12.05.2000 till 29.09.2005, when the Dispute was raised before the Labour Court. Therefore, denial of backwages by the Labour Court for the said period is justified.

11. The next point to be considered is the period during which the matter was pending before the Labour Court i.e. from 29.09.2005 to 16.09.2008. This three year period cannot be put against the workman, as for no fault on him, the matter was pending before the Labour Court. Therefore, once the Labour Court has come to a conclusion that the workman has to be reinstated, then the Labour Court should have considered granting the relief for the period between 2005 to 2008. However, considering the past conduct of the workman, as he is a habitual absentee, he has also been imposed with penalties for the similar delinquency on earlier occasions, the Labour Court had to take a strong stand in the matter to enforce discipline. Therefore, this

Court is of the considered view that from October 2005, till the date of Award i.e. on 16.09.2008, the workman is entitled to 50% of the back wages, as denial of entire backwages would be a very harsh punishment in the given facts and circumstances.

12. Though the Award was passed on 16.09.2008, the Management filed this Writ Petition only during June 2010. This delay has not been explained by the Management in the Writ Petition. Only with a view to avoid payment of wages under section 17-B of the Act, the workman has been reinstated in January, 2010. Therefore, this delay having not been explained by the Management in a proper perspective, the benefit should go to the workman and accordingly from 17.09.2008, to till reinstatement, the workman is entitled to full backwages. Furthermore, the Labour Court was not justified in effacing the entire service of the petitioner on the charges which were framed against him, especially when the Labour Court found the domestic enquiry to be vitiated and the workman was entitled to be reinstated. Therefore, the workman should be entitled to continuity of service with all attendant benefits, with monetary benefits, as has been ordered as above."

11. We are of the view that the learned Single Judge rightly denied the backwages for the period from 12.05.2000 till 29.09.2005 and also awarded full backwages from the date of award till the date of reinstatement. However, the learned Single Judge has granted 50% backwages from the period of October, 2005 till 16.09.2008.

12. The learned Single Judge has pointed out that the second respondent belatedly approached the Labour Court by challenging the dismissal order passed by the management on 12.05.2000. It was filed only in the month of October, 2005. Therefore, he is not entitled to backwages during that period. Further, the learned Single Judge has granted 50% of the award amount during the pendency of the Industrial Dispute before the first respondent, for the period he was not worked. Since it was due to the delay on the part of the second respondent, the learned Single Judge has pointed out that even though the Labour Court has given the opportunity to establish his case, the second respondent did not examine any evidence and utilize the opportunity, he is not entitled to 50% of the backwages from October, 2005 to 16.09.2008. However, the Labour Court and the learned Single Judge have found that the Enquiry Officer has violated the principals of natural justice and the order of punishment passed by the management is disproportionate. In the interest of justice though the second respondent is not entitled to backwages as he belatedly challenged the dismissal order, he is entitled to the backwages

during the pendency of the Industrial Dispute before the first respondent. For the reasons stated above, in order to strike a balance, this Court is inclined to modify the backwages from 50% to 25% for the period from October, 2005 till 16.09.2008.

13. In the result,

(i) The first and third limbs of the order passed by the learned Single Judge is confirmed.

(ii) We modify the direction issued by the learned Single Judge by directing the appellant to pay 25% of the back wages for the period from October, 2005 till 16.09.2008 instead of 50% of the back wages to the workman.

(iii) The payment due to the 2nd respondent shall be paid within a period of eight weeks.

14. The Intra Court Writ Appeal is partly allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rsi/tar
To
The Presiding Officer,
Labour Court, Salem.

+1cc to Ms.S.Girija, Advocate Sr.No.21831

+1cc to Ms.Rajini Ramadoss Advocate Sr.No.21979

RSY(CO)
sm:14.6.2018

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