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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2007 of 2018
and
C.M.P.No.15920 of 2018

Tamil Nadu State Transport Corporation (Salem) Ltd.,
Dharmapuri Region,
Rep by its Managing Director,
Salem.

.. Appellant

Vs.

1.The Presiding Officer,
Labour Court, Salem.

2.N.Muniraj

.. Respondents

Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent, against the order, dated 12.06.2013, passed in W.P.No.10883 of 2006.

W.P.No.10883 of 2006.

Writ Petition filed under Article 226 of the constitution of India a issue a writ of certiorari to call for the records of the 1st respondent in I.D.No.356/2003 dated 7.2.2005 and quash the same.

For Appellant : Ms.S.Rajeni Ramadass

JUDGMENT

(Judgment of this Court was made by SUBRAMONIUM PRASAD, J.)

The appellant seeks to challenge the order dated 12.06.2013, passed by a learned Single Judge of this Court, in W.P.No.10883 of 2006, by which the learned Single Judge, has confirmed the award passed by the Presiding Officer, Labour Court, Salem, in



I.D.No.356 of 2003. The Labour Court, Salem, by its award dated 07.02.2005, set aside the order of dismissal of service, passed by the appellant/corporation and directed the appellant/corporation herein, to reinstate the second respondent, in service, with continuity of service and other benefits but without back wages.

2. On 04.09.1997, the second respondent has joined service, in the appellant/corporation, as a conductor. On 10.01.2013, when the second respondent was on duty, the bus was checked by the Checking Inspector, at that time, there were 33 passengers and 5 children. The conductor had issued tickets and completed the invoice. On checking, it was found that 14 tickets, were not written in the ticket book. Out of the 14 tickets, there was no entry in the ticket book for 10 tickets, regarding the commencement of the journey and destination and the 4 remaining tickets were hurriedly filled up with fare of Rs.5.

3. On further examination, it was alleged that the passengers have told that they paid entry fare with the conductor. When the cash back was checked, it was found that there was a shortage of Rs.9.50P. It was also stated that a sum of Rs.249/- misappropriated by the second respondent. Domestic enquiry was conducted, the explanation submitted by the second respondent was not satisfactory and he was dismissed from service.

4. The matter was taken up before the Labour Court, Salem, in I.D.No.356 of 2003. The learned Labour Judge, found that there was a shortage of Rs.9.50 paise and that misconduct has been proved. However, the Labour Court held that there was no previous misconduct of the second respondent and dismissal was disproportionate to misconduct.

5. The Labour Court was of the opinion that the second respondent ought to have completed invoice, at the time when the tickets were issued.

6. Taking a lenient view, the Labour Court, set aside the order of dismissal from service, and directed the appellant to reinstate the second respondent in service, with continuity of service and other benefits, but without back wages. In addition to the back wages, the Labour Court also directed the appellant to cut one increment with cumulative effect.

7. The Labour Court had taken a sympathetic view, as the second respondent, at the time of misconduct, had completed 23 years of service. The Management (appellant) took up the matter by filing writ petition.



8. Before the learned Single Judge, it was contended by the appellant that the second respondent had mis-appropriated and mis-appropriation is being very serious charge, the second respondent ought not to have been directed to be reinstated.

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9. The learned Single Judge after perusing the material on record found that there was no allegation of mis-appropriation. The allegation was that the second respondent did not fill up the place of commencement of journey, the destination and the fare collected. The learned Single Judge held that though the second respondent had collected the amount from 14 passengers, did not show the same in invoice.

10. The learned Single Judge held that there is no allegation at all that the invoice did not reflect the actual amount collected from the passengers.

11. The learned Single Judge therefore upheld the finding of the Labour Court, which modified the quantum of punishment.

12. The judgment of the learned Single Judge is challenged before this Court by way of this writ appeal.

13. A perusal of the records would show that the award and the order of the learned Single Judge, does not call for any interference. The second respondent has attained superannuation on 28.02.2014.

14. The punishment is clearly excessive and disproportionate to the charge of misconduct alleged against the second respondent. The order of the Labour Court denying back wages and also the direction that one increment with cumulative effect should be cut in addition to the back wages, is a subsequent punishment.

15. When a specific question was put to the learned counsel for the appellant, we were informed that the payment under Section 17(B) of the Industrial Disputes Act, 1947 has not been made.

16. Section 17(B) reads as under:-

"Section 17B. Payment of full wages to workman pending proceedings in higher courts.- Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of



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any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court:

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be."

17. The order of the Labour Court and the learned Single Judge do not call for interference. Writ Appeal is dismissed.

18. The appellant/corporation is directed to pay backwages to the second respondent, during the proceedings before the **High*** Court to which, he is entitled to under Section 17(B) of the Industrial Disputes Act 1947. The payment shall be made within a period of six weeks from the date of receipt of a copy of this order. No Costs.

Sd/-

Assistant Registrar(CS IX)
dt. 12.10.2018

Corrected as per order of this
court dated 9.11.2018 made in
W.A.No.2007/18 & CMP.No.15920/18

Sd/-

Assistant Registrar(CX-IX)
dt. 15.11.2018

//True Copy//

Sub Assistant Registrar

dm

To

1.The Priding Officer, Labor Court, Salem / To be substituted to
2.The Manging Director, Tamil Nadu / the order already
State Transport Corporation (Salem) Ltd, / despatched on 9.11.18
Dharmapuri Region Salem.
+1cc to Mr.S.Rajeni Ramadass, Advocate, S.R.No.61858

W.A.No.2007 of 2018

and

C.M.P.No.15920 of 2018

KJI (CO)
GSP(17/10/2018)
EU 15.11.2018