IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 05.7.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

Writ Appeal No.612 of 2018

K.V.Rajendran .. Appellant

Vs.

1. The Management
Tamil Nadu State Transport Corporation
(Salem Division-2) Ltd.
Dharmapuri Region, Bharathipuram
Dharmapuri District.

2. The Presiding Officer
Labour Court
Salem. .. Respondents

Appeal filed under Clause 15 of Letters Patent against the order dated 31.01.2012 made in W.P.No.37508 of 2017.

WP.No.37508/2017:Petition U art 226 of the Constitution of India pryaing to call for the records pertaining to the award dated 27/5/2004 in I.D.No.663/2000 from the 2nd respondent quash the same and direct the first respondent to reinstate and the petitioner with continuity of service, back wages and all other attendant and consequential benefits.

For Appellant : Mr.K.Thiruvengadam
For Respondent-1: Ms.Rajeni Ramadoss

J U D G M E N T
(Delivered by Huluvadi G.Ramesh,J)

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This writ appeal is directed against the order dated 31.01.2012 made in W.P.No.37508 of 2017.

2. Heard Mr.K.Thiruvengadam, learned counsel for the appellant and Ms.Rajeni Ramadass, learned counsel for the first respondent.

3. It appears that the appellant, while he was working as Spare Conductor in the bus proceeding to Kela Mangalim from

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Hosur, alleged to have collected money from nine passengers and had not issued the tickets, as found by the Checking Inspectors in the midway of the trip. Therefore, disciplinary proceedings was initiated and after enquiry, it was found that the appellant was guilty of the charges levelled against him. Thereafter, second show cause notice was issued to the appellant and the appellant submitted his explanation. Not satisfied with the same, the Department dismissed the appellant from service.

4. Aggrieved by the order of dismissal, the appellant raised an industrial dispute, wherein, the Labour Court found that the charges were proved and held that the dismissal of the appellant was proper, in the light of the acceptance by the appellant that though he received money from nine persons, he could not issue tickets in view of the crowd and that such mistake would not occur in future. Challenging the said order, the appellant filed writ petition.

5. In the writ petition, the learned single Judge, taking note of the fact that the appellant himself has admitted his mistake in not issuing tickets after receiving money and the promise made by him that such mistake would not occur in future, dismissed the writ petition. Assailing the said order, the appellant is before this Court.

6. Admittedly, as contended by the respondent, there is a delay on the part of the appellant in raising the industrial dispute and also in filing the writ petition and writ appeal. Further, as per the decision of the Apex Court relied upon by the learned counsel for the respondent in Delhi Transport Corporation v. Shyam Lal [(2004) 8 SCC 88], the admission of the appellant that he received money from the passengers and had not issued the tickets, is the best piece of evidence. However, having regard to the nature of the mistake committed by the appellant, we are of the considered view that the proportionality of the punishment is too harsh and therefore, the punishment of dismissal from service has to be reduced to withholding of increment for three years with cumulative effect.

In view of the above, the order of punishment of dismissal from service is reduced to the one of withholding of three increments with cumulative effect and accordingly, the appellant is entitled to be reinstated into service. However, since the respondent attained the age of superannuation last month, he shall be paid the monetary benefits, pension etc. While calculating the monetary benefits, the period of suspension,

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the period from the date of dismissal till the date of raising of industrial dispute, the period from the date of order passed in the industrial dispute till the date of filing of the writ petition and from the date of order in the writ petition till the date of filing of the writ appeal, shall be excluded. It is also made clear that the appellant is not entitled to any backwages. If already 17-B wages is paid during the suspended period, that shall be treated as entitlement to the appellant.

In the result, the writ appeal is allowed in part. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

kpl
To

1. The Management
   Tamil Nadu State Transport Corporation
   (Salem Division-2) Ltd.
   Dharmapuri Region
   Bharathipuram
   Dharmapuri District.

2. The Presiding Officer
   Labour Court
   Salem.

+1cc to M/s.Rajeni Ramadoss, Advocate Sr.No.43948
+1cc to M/s.K.Thiruvengadam, Advocate Sr.No.43551

GP(CO)
sm:27.7.2018

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