

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.8.2018

CORAM

THE HON'BLE MR.HULUVADI G.RAMESH, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE S.S.SUNDAR

Writ Appeal Nos.1524 of 2013 & 956 of 2015

The Management of
TVS Motor Company Limited
(Formerly known as TVS Suzuki Ltd.)
Jayalakshmi Estates, 5th Floor
No.8, Haddows Road
Chennai 6
rep. by its Chairman & Managing Director.

M/s. TVS Motor Company Limited
(Formerly known as TVS-Suzuki Ltd.) Appellants in 1 and 2
Post Box No.4, Harita WA No.1524/13 &
Hosur 635 109 Respondents 2&3
rep. by its President. ... in WA No.956/15

Vs.

The Presiding Officer ... Respondent-1 in
Labour Court, Salem. both WAs.

R.Maheswaran ... Respondent-2 in
WA No.1524/13 &
Appellant in
WA No.956/15

Appeals under Clause 15 of Letters Patent filed against the
order dated 01.4.2013 made in W.P.Nos.14560 of 2003 & 23314 of
2006.

W.P.No.14560 of 2003: Writ Petition filed under Article 226 of
the constitution of India praying for the issuance of a writ of
certiorari calling for the records of the first respondent in
I.D.NO.539 of 2000 and quash his award dated 20.1.2003.

W.P.NO.23314 of 2006: Writ petition filed under Article 226 of
the constitution of India praying for the issuance of a writ of
certiorarified Mandamus calling for the records of the first
respondent, the presiding officer, Labour Court, Salem in
respect of the Award in I.D.NO.639 of 2000 dated 20.1.2003 and

quash the portion of the award denying the back wages and other attendant benefits to the petitioner and consequently direct the 2nd and 3rd respondent to pay the petitioner full back wages and other attendant benefits from the date of dismissal till the date of retirement, with continuity of service, award and costs;

For Appellants in
WA No.1524/13 &
Respondents 2&3 Mr.Anandha Kumar
in WA No.956/15 : For M/s. T.S.Gopalan and Co.

Respondent-2 in
WA No.1524/13 &
Appellant in
WA No.956/15 : Mr.K.M.Ramesh

J U D G M E N T

(Delivered by the Hon'ble Acting Chief Justice)

The writ appeals are directed against the common order of the learned single Judge dated 01.4.2013 made in W.P.Nos.14500 of 2003 & 23314 of 2006.

2. Heard Mr.Anandha Kumar, learned counsel appearing for the Management (appellants in W.A.No.1524 of 2013 and respondents 2 and 3 in W.A.No.956 of 2015) and Mr.K.M.Ramesh, learned counsel appearing for the workman (second respondent in W.A.No.1524 of 2013 and appellant in W.A.No.956 of 2015).

3. The workman was transferred to Bhopal, while he was working at Hosur. He claimed a sum of Rs.15,510/- towards the expenses incurred for transportation of his goods from Hosur to Bhopal. After one and half years, he was transferred to Patna. Challenging the same, the workman raised an industrial dispute and based on the suggestion given by the Labour Court, the workman was re-transferred to Hosur. Thereafter, the Management issued charge memo to the workman, framing two charges, namely (i) that the workman claimed a sum of Rs.15,510/- towards transportation of goods from Hosur to Bhopal by producing a bogus bill, and (ii) that the workman committed misconduct of fraud or dishonesty in connection with company's business or property. Subsequently, enquiry was conducted and based on the report of the enquiry officer that the charges were proved, the workman was dismissed from service. Hence, the workman raised an industrial dispute. The Labour Court holding that the first charge has not been proved by the Management by producing original documents and that though the second charge has been proved, the award of punishment of dismissal from service is

disproportionate, reinstated the workman into service with continuity of service, but without backwages.

4. Aggrieved by the order of reinstatement, the Management has filed W.P.No.14560 of 2003 and assailing the portion of award denying backwages, the workman has filed W.P.No.23314 of 2006.

5. The learned single Judge, finding that the Management has failed to prove that the workman did not transport goods from Hosur to Bhopal and that the charges were framed by the Management with an ill intention since the workman took part in the conciliation proceedings and that the award of imposing punishment of dismissal from service for the charge of disobedience is harsh and disproportionate, dismissed the writ petitions confirming the award of the Tribunal. Hence, the present writ appeals by the Management and the workman.

6. As regards the first charge, indisputably, the Management has not proved that the workman has claimed freight charges for transportation of goods from Hosur to Bhopal, by way of producing original documents and therefore, the Tribunal is right in holding that the first charge is not proved.

7. However, as far as the second charge of disobedience is concerned, the Tribunal though held that the second charge is proved, while setting aside the order of dismissal from service, reinstated the workman with continuity of service and without backwages.

8. We are of the considered opinion that though the Tribunal has held that the charge of disobedience is proved, it has failed to impose any punishment for the same, except to set aside the order of dismissal on the ground that the same is harsh and disproportionate. Once it is found that the workman is found guilty of the charges framed, the Tribunal ought to have imposed punishment. Thus, though we are convinced with the order of the Tribunal in respect of setting aside the order of dismissal, we are not convinced with the order of the Tribunal in respect of reinstating the workman with continuity of service and without backwages.

9. In the light of the above, we are of the view that withholding of two increments with cumulative effect for a period of two years would meet the ends of justice. Accordingly, the order of the Tribunal is confirmed insofar as setting aside the order of dismissal from service is concerned and the order insofar as reinstating the workman with continuity of service without backwages is concerned, the same is modified to the one of withholding of two increments with cumulative effect for a

period of two years. Thus, the writ appeal filed by the Management, namely W.A.No.1524 of 2013 is allowed in part and the writ appeal filed by the workman, namely W.A.No.956 of 2015 is dismissed. However, there shall be no order as to costs. Consequently, M.P.No.1 of 2013 in W.A.No.1524 of 2013 is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

kpl

To

1. The Presiding Officer, Labour Court, Salem.

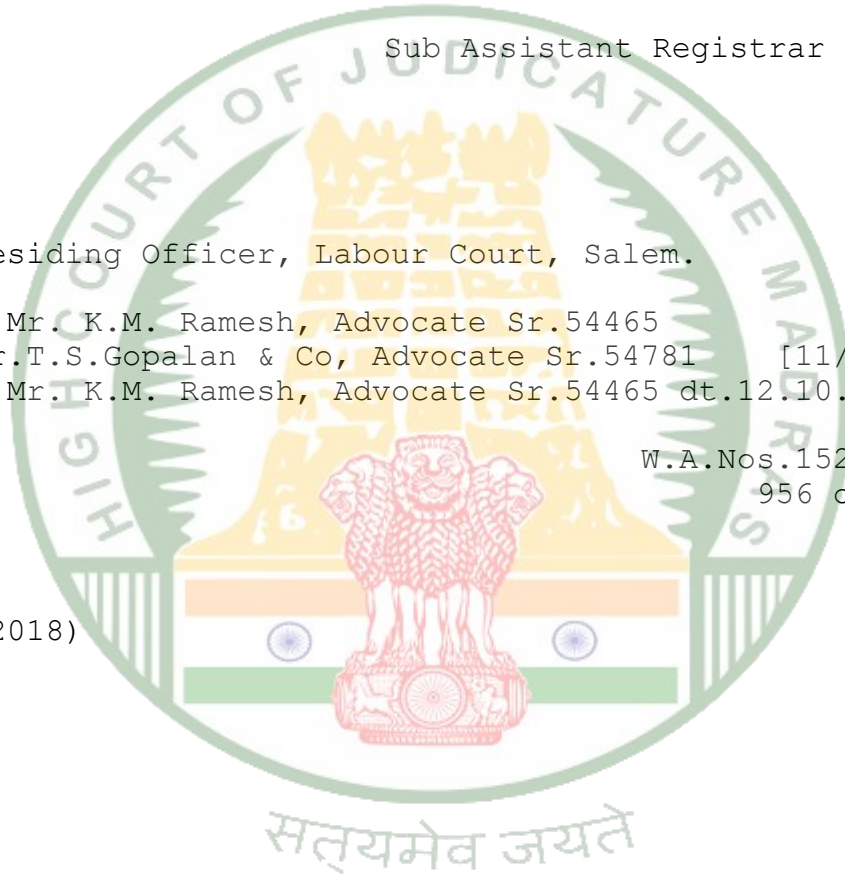
+ 1 cc to Mr. K.M. Ramesh, Advocate Sr.54465

+1cc to Mr.T.S.Gopalan & Co, Advocate Sr.54781 [11/10/2018]

+ 1 cc to Mr. K.M. Ramesh, Advocate Sr.54465 dt.12.10.2018

W.A.Nos.1524 of 2013 &
956 of 2015.

JP (CO)
EU(12/10/2018)



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