

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2019

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THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.36735 of 2004

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W.P.M.P.No.44103 of 2004

Tamil Nadu State Transport Corporation (Salem) Ltd.,
rep. by its Managing Director,
Salem. ...Petitioner

Vs

1.The presiding Officer,
Labour Court, Salem.

2.M.Ansar ...Respondents

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India for issuance of writ of certiorari to call
for the records of the 1st respondent in I.D.No.302 of 2001 dated
18.08.2003 and quash the same.

For Petitioner : Mrs.Rajeni Ramadass

For Respondent 2 : No appearance

R1-Court

सत्यमेव जयते
O R D E R

This writ petition has been filed by the petitioner-
Transport Corporation seeking to quash the order of the first
respondent in I.D.No.302 of 2001 dated 18.08.2003.

2. The award under challenge in the present writ petition
is to the punishment modified by the labour court, Salem into
one of reinstatement without continuity of service, backwages
and all other benefits.

3. Heard learned counsel appearing for the petitioner
Transport Corporation. Though notice has been served on the
second respondent and his name having been printed in the cause

list, none entered appearance on his behalf. As such, it can only be construed that the second respondent herein has no remarks to offer.

4. The second respondent herein was employed as a driver in the petitioner Corporation on 06.04.1978. On 31.08.2000, the second respondent had parked a bus in the main road in an unconscious state and hence, charges were framed against him on 12.09.2000 and his explanation was called for. The second respondent gave his explanation dated 09.10.2000 for the charges framed against him which was found to be unsatisfactory. Hence, the petitioner corporation ordered for domestic enquiry. The enquiry officer conducted an enquiry and reported that the charges were proved against the second respondent. Consequently, the second show cause notice dated 27.12.2000 was issued to the second respondent, calling for his explanation, as to why he should not be dismissed from service. The second respondent had not responded to the second show cause notice. Hence, the proposed punishment of dismissal from service was imposed on him on 17.02.2001. Thereafter, the order of dismissal came to be challenged before the labour court in I.D.No.302 of 2001. The labour court while finding that there was misconduct on the part of the second respondent, held that the punishment was not proportionate to the charges and therefore, modified the punishment to one of reinstatement without continuity of service, backwages and other benefits.

5. The learned counsel appearing for the petitioner submitted that the nature of misconduct on the part of the second respondent was very serious in nature, since he was found to have been in drunken mode. According to the learned counsel appearing for the petitioner, on the date of incident, the second respondent was found inside the bus which was stopped on the main road. Since he was not able to move the bus, the sub-inspector of police, who was on the way, had informed the stoppage of the bus and drunken mode of the driver to the Transport Corporation, based on which, the charges came to be framed. The enquiry officer had also duly conducted the enquiry by following the principles of natural justice and thereby, concluded that, the charges levelled against the petitioner was proved beyond doubt.

6. The learned counsel appearing for the petitioner submitted that the second respondent herein had previous history of having involved in 32 incidents of misconducts, in which, he was punished. Among these 32 incidents, on 09.11.1995 and 12.12.1997, the charges were that he had consumed alcohol during duty hours and hence, he was punished. There were also several misconducts of unauthorised absence by the second respondent, for which, he has suffered punishment. Since the second

respondent herein was employed as a driver and the misconduct of being in a drunken mode during duty hours is deemed to be very serious offence, she sought for setting aside the order of the labour court.

7. I have perused the award passed by the labour court as well as the supporting documents placed before this Court. The labour court had, predominantly modified the punishment of dismissal from service, on the ground that the punishment was disproportionate to the charges levelled. Though the labour court, had held that the stopping of the bus in the main road during duty hours without any reasonable cause would amount to misconduct, had felt that, the charges does not specify that the second respondent herein was in a drunken stage on the date of incident. Likewise while disbelieving the explanation of the second respondent that he had stopped the bus because of chest pain, the labour court had held that if the second respondent really had chest pain, he would have taken medical ailment, when the sub inspector of police had come there. While dealing with the previous antecedents of the second respondent, the labour court, held that management had taken a lenient view and given many chances for the second respondent to reform himself, which he had not utilised. Referring to the previous antecedents, the labour court was of the view that most of the past misconducts was with regard to unauthorised absence.

8. As pointed out by the learned counsel for the petitioner, among the 32 previous misconducts, two of them related to the drunken state of the second respondent during duty hours. When the labour court had rendered findings to the effect that the misconduct of having stopped the bus in the main road, the previous antecedents for which he has been punished and disbelieving the explanation of the second respondent that he had chest pain on the date of the incident, there was absolutely no justification to hold that the punishment of dismissal from service was disproportionate. Particularly when the charges suggest that the second respondent was in a drunken mode on that date and coupled with the earlier two incidents of misconducts, he was found and established to have been in drunken mode when he was on duty, such a lenient view should not be extended, particularly when the post held by the second respondent is that of the driver, in whose responsibility for the lives of so many passengers, would be at stake.

9. For all the foregoing reasons, I am of the view that the punishment modified by the labour court was not proper. By taking into account of the fact that the misconduct has been held to have been proved by the labour court and also in view of the past misconducts in which the second respondent was involved in, the order of dismissal, in my

view, is proportionate to the charges levelled. Hence, the order of the labour court passed in I.D.No.302 of 2001 dated 18.08.2003 on the file of the first respondent is set aside. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

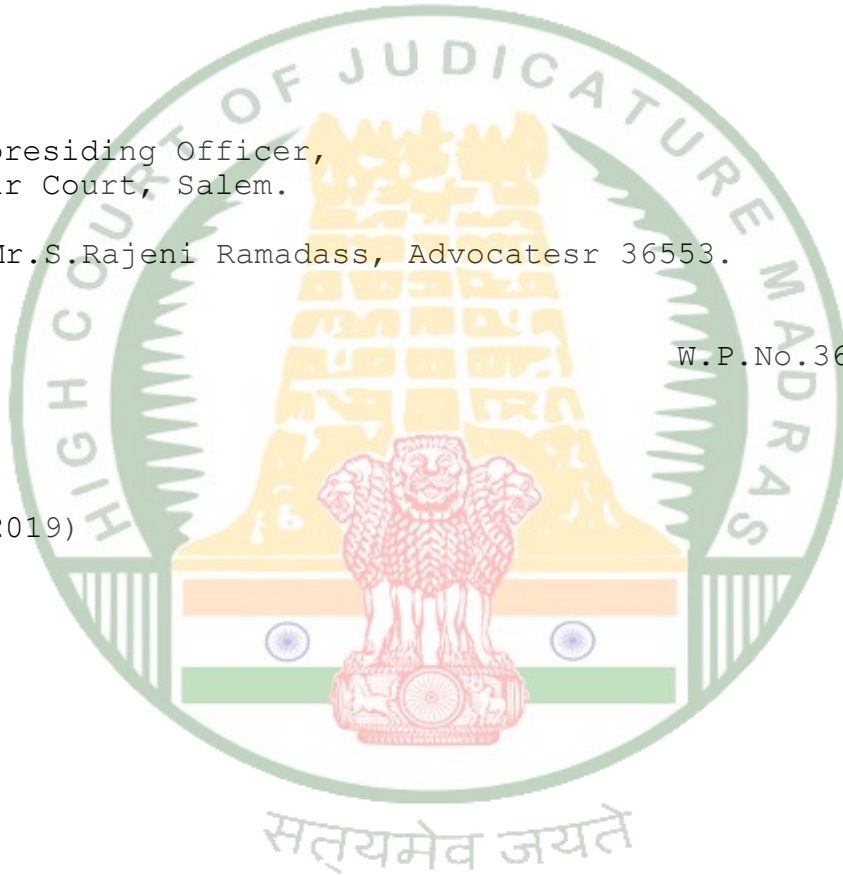
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To

The presiding Officer,
Labour Court, Salem.

+1 CC to Mr.S.Rajeni Ramadass, Advocatesr 36553.

W.P.No.36735 of 2004

VBA (CO)
SP(31/05/2019)



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