

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.8997 and 19155 of 2016

and W.M.P.Nos.7994 and 17446 of 2016

W.P.No.8997/2016

The Management,
Tamilnadu State Transport Corporation (Salem) Ltd.,
12, Ramakrishna Road,
Salem-636 007.

Rep. by its General Manager

... Petitioner

-vs-

1.The Presiding Officer,
Labour Court,
Salem.

2.P.Raja

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the order passed by the 1st Respondent in I.D.No.40 of 2013 dated 26.08.2015 and to quash the same.

For Petitioner : Mrs.S.Rajeni Ramadoss

For R1 : Court

For R2 : Mr.D.Bennington

W.P.No.19155 of 2016

P.Raja

... Petitioner

-vs-

1.The Presiding Officer,
Labour Court,
Salem.

2.The Management,

Tamilnadu State Transport Corporation (Salem) Ltd.,
Rep. by its General Manager,
12, Ramakrishna Road,
Salem-636 007.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned Award in I.D.No.40 of 2013 dated 26.08.2015 passed by the Labour Court, Salem / 1st respondent herein and quash the same in so far as the Award portion of not granting the relief of entire back wages

and all other attendant benefits to the petitioner alone and consequently direct the 2nd respondent / Management to pay the entire back wages and all other attendant benefits to the petitioner.

For Petitioner : Mr.D.Bennington

For R1 : Court

For R2 : Mrs.S.Rajeni Ramadoss

C O M M O N O R D E R

These Writ Petitions have been filed both by the Workman and the Management, challenging the Award dated 26.08.2015 made in I.D.No.40 of 2013.

2. For the sake of brevity, the parties would be referred to by their original nomenclature in the Award dated 26.08.2015 as 'the Workman' (in W.P.No.19155 of 2016) and 'the Management' (in W.P.No.8997 of 2016) and the facts are also being taken from the said Award.

3. The case of the Workman is that he joined the Management as Driver on 17.09.1986 and continued in the said post till his dismissal from service on 02.08.2010. The further case of the Workman is that on account of his active participation in the Trade Union in the capacity of District Secretary of Salem District, he was victimized by way of dismissal from service. Since he raised his voice in support of a poor employee, who was prevented by the Branch Manager from joining duty, the present disciplinary proceedings were initiated against him and was issued a charge memo dated 29.09.2009 for three charges, namely, 1) he had prevented the Branch Manager from doing his job, 2) execution of work independently without devotion and 3) causing disturbance to the management and creating restlessness among other employees.

4. It is the submission of the Workman that though he had submitted a detailed explanation to the Charge Memo, he was suspended from service from 23.06.2010 and subsequently, domestic enquiry was conducted on 26.05.2010 and 29.05.2010. It is the further submission of the Workman that due to illness, he could not appear for enquiry scheduled on 16.06.2010, which resulted in exparte conclusion of enquiry proceedings and final orders came to be passed on 02.08.2010 without even furnishing the basic report and other related documents. It is submitted that though the main allegation levelled against him was that he had prevented the Branch Manager from discharging his duties, thereby attracting the provisions of Rule No.19(1)(k) of the Standing Orders of TNSTC, Salem, a reading of the said provisions does not fall with the ambit of the alleged charge framed against him.

5. It is also submitted by the Workman that narrating all these factual flaws, he had approached the Labour Court, which, in turn, passed an Award, directing the Management to reinstate him into service with continuity of service and 25% of back wages. Aggrieved by the said Award, both the Workman and the Management have filed the Writ Petitions and the Workman has stated that the Labour Court, having accepted the fact that there is no genuineness in the charges, ought to have awarded 100% back wages instead of 25%, which is very meagre, due to which, the Workman was deprived of his right of getting the entire back wages for no fault of him and therefore, it is prayed that a portion of the Award of the Labour Court in terms of back wages is liable to be set aside.

6. Per contra, the Management has vehemently contended that the Workman had wantonly entered into the cabin of the Branch Manager along with one Sukumarn and caused disturbance to his work and the said act of the Workman was immediately reported to the Higher Officials. It was further contended that the Workman did not come forward to submit his explanation to the charge memo, which resulted in forcible appointment of an Enquiry Officer to enquire into the charges levelled against the Workman. Despite publication in a Tamil News Paper about the enquiry on 29.05.2010, the Workman had not chosen to appear for enquiry and thereafter, on receipt of the 2nd Show Cause notice on 28.07.2010, the Workman had submitted his explanation dated 30.07.2010 and the Management, having found that the explanation was not satisfactory, was constrained to dismiss him from service. Against his dismissal, the Workman had raised an Industrial Dispute in I.D.No.40 of 2013 before the Labour Court and the said Court, without considering the evidences available on record, had erroneously set aside the order of dismissal dated 02.08.2010 and directed to reinstate the Workman with continuity of service with 25% of back wages, which warrants interference by this Court.

7. Heard the learned counsel on either side and perused the material documents available on record.

8. The foremost contention of the Management is that the Workman had entered into the Branch Manager's room along with another employee and created a panic, thereby disturbing the work of everyone, including the Branch Manager. As the Workman had committed the misconduct under Rule No.19(1)(k) of the Standing Orders of TNSSTC, taking note of the report of the Branch Manager dated 23.09.2009, a Charge Memo was issued on 29.09.2009 and thereafter, a detailed enquiry was conducted and finally, he was dismissed from service on 02.08.2010. Aggrieved by the dismissal order, an Industrial Dispute was raised before

the Labour Court, Salem and the Labour Court had held that the domestic enquiry conducted was not fair and proper.

9. It is seen that the Management had not challenged the preliminary order of the Labour Court, holding that the domestic enquiry is bad, but, however, decided to let in evidence to establish the charges and the Labour Court, after analyzing both oral and documentary evidences, came to the conclusion that there is no iota of evidence to show that the Branch Manager was prevented from discharging his work, with further observation that the Management had not taken any steps to produce any cogent evidence in order to prove the charges against the Workman. Hence, the Labour Court has interfered with the order of dismissal dated 02.08.2010, holding that the charges are not established in its entirety and directed the management to reinstate him into service within a period of three months from the date of Award with continuity of service and other monetary benefits with 25% of back wages.

10. It is pertinent to mention here that though the burden is on the employer to establish the charges before the Labour Court by letting any fresh evidence, the employee has also not adduced any contrary evidence with regard to the incident that had taken place in the chamber of the Branch Manager. For the panic created by the Workman in the Branch Manager's room, the Labour Court had interfered with the punishment and deprived 75% of back wages. Even though Ex.M2 states that such incident had taken place, the Labour Court has chosen to disbelieve the said exhibit with regard to preventing the Branch Manager from discharging his duties.

11. It is no doubt true that the Labour Court has ample power to deprive the backwages, if it is established that the employee is gainfully employed or for any other reason to justify its stand. However, in the present case on hand, no reason has been given by the Labour Court in the Award to come to such a finding. Therefore, by applying the principles laid down by the Hon'ble Supreme Court Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and others, reported in (2013) 10 SCC 324, this Court is of the view that the Labour Court, having found that the charges are not established, ought to have granted reinstatement with full backwages and to that extent, the Award of the Labour Court is perverse and therefore, the Writ Petition filed by the Workman needs to be allowed.

12. Considering the entire scenario of facts and circumstances of the case, this Court is of the view that since charges are held to be not proved and the management has also not established that the Workman is gainfully employed, the

Award in respect of depriving of 75% of backwages is bad and therefore, the Workman is entitled to reinstatement with full back wages, continuity of service and all other attendant benefits, as if there is no order of dismissal passed by the Management.

13. Accordingly, the Writ Petition filed by the Workman in W.P.No.19155 of 2016 is allowed and the other Writ Petition in W.P.No.8997 of 2016 filed by the Management is dismissed.

14. At this juncture, it was submitted by the learned counsel for the Workman that the Workman had already attained superannuation on 31.03.2016 itself. In view of the fact that the Writ Petition filed by the Management is dismissed and the Workman's Writ Petition is allowed and that the Workman had already attained superannuation on 31.03.2016, the Award of the Labour Court is modified as one of reinstatement with full backwages, continuity of service and all other consequential benefits from the date of his dismissal, namely, 02.08.2010 and all the benefits upto the date of superannuation to be extended to the Workman within 45 days. It is needless to mention that in view of the common order passed in these Writ Petitions, the Workman would be entitled to pensionary benefits, if he is otherwise entitled to.

15. It is made clear that since this order replaces / modifies the Award of the Labour Court, the Management is expected to implement the Award within a period of 45 days from the date of receipt of a copy of this order in the light of the decision of the Hon'ble Apex Court in the case of Tamil Nadu State Transport Corporation vs. Neethivilangan, Kumbakonam, reported in (2001) 9 SCC 99. It goes without saying that if any complaint is made by the Workman under Section 29 of the Industrial Disputes Act, 1947, the persons who are falling under Section 32 of the Industrial Disputes Act, 1947, need to be prosecuted and the Government shall sanction prosecution taking note of the decision of Apex Court in the case of Rajkumar Gupta vs. Lt. Governor, Delhi reported in 1997 (1) LLJ 994. Once the prosecution is launched, the appropriate criminal court is expected to take up the matter and it shall proceed with the matter on a day-to-day basis without adjourning the matter beyond fifteen working days at any point of time so as to bring the issue to a logical end. It is further made clear that if the admitted amount is not paid, it is open to the Workman to seek remedy under Section 33C(1) of the Industrial Disputes Act, 1947 in view of the decision of the Apex Court in the case of Fabril Gasosa vs. Labour Commissioner, reported in (1997) 3 SCC 150 and

in case of disputed amount, the computation lies only by invoking Section 33C(2) of the Industrial Disputes Act, 1947.

16. For the sake brevity, it is reiterated that since the Workman had already retired from service, the Management is expected to pay his monthly pension from October, 2019 onwards regularly on or before 5th of every month and the arrears of pension with interest at the rate of 6% from the date of his superannuation, shall be paid within a period of 45 days from the date of receipt of a copy of this order. It is made clear that if the amount is not released within the time stipulated supra, it will carry interest @ 12% to be recovered from the personal fund of the Officials, responsible for release of the amount to the Workman. It is further directed that the Management shall furnish the name of the Officials with their designation, who failed to release the amount in time to the Registrar General of this Court, within a period of 30 days from the date of expiry of the time mentioned supra, so as to enable him to bring the same to the notice of this Court thereafter. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To:

1.The Presiding Officer,
Labour Court,
Salem.

2.The Registrar General,
High Court, Madras.

3.The Registrar(Judicial)
High Court, Madras.

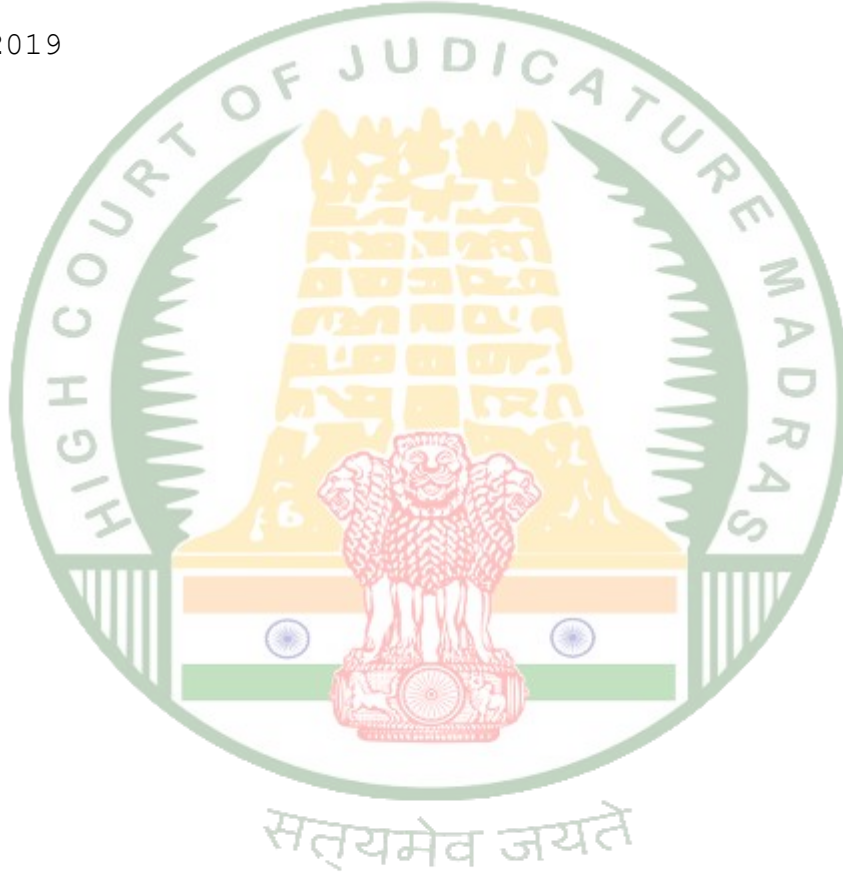
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4.The General Manager,
Management,
Tamilnadu State Transport Corporation (Salem) Ltd.,
12, Ramakrishna Road,
Salem-636 007.

+1cc to M/s.Niranjan S.kumar, Advocate sr.76016

W.P.Nos.8997 and 19155 of 2016

rk(co)
nr 21/10/2019



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