



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.09.2019

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE Mrs.JUSTICE R.THARANI

W.A. (MD) .Nos.1350 and 1646 of 2018

and

C.M.P. (MD) .No.9583 of 2018

in

W.A. (MD) .No.1350 of 2018

and

W.P. (MD) .No.2419 of 2018

and

W.M.P (MD) .No.2932 of 2018

in

W.P. (MD) .No.2419 of 2018

W.A. (MD) .No.1350 of 2018

The Management of
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited
Kumbakonam Region,
Rep by its Managing Director,
Kumbakonam. ... Appellant/1st Respondent

Vs.

1.J.Veeramani ... 1st Respondent/Petitioner
2.The Administrator,
Tamil Nadu State Transport Employees'
Pension Fund Trust,
Thiruvalluvar Illam,
Anna Salai,
Chennai-2. ...2nd Respondent/2nd Respondent

PRAYER: Writ Appeals filed under Clause 15 of Letters Patent,
against the order passed by this Court in W.P.(MD).No14170 of 2015
dated 19.02.2018.

Prayer in WP(MD). 14170/ 2015 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court To issue a writ in the
nature of MANDAMUS directing Respondents to pay pension and
commutation of pension to the petitioner for his entire service
period from 01.01.86 to 31.5.15 under TNSTCEPF rules with pension
arrears from 01.06.15 together with 16% interest p.a.



For Appellant : Mr.D.Sivaraman
For Respondents : Mr.S.Arnachalam

W.A. (MD) .No.1646 of 2018

1.J.Veeramani ... Appellant/ Petitioner
Vs.

1.The Management of
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited
Kumbakonam Region,
Rep by its Managing Director,
Kumbakonam.

2.The Administrator,
Tamil Nadu State Transport Employees'
Pension Fund Trust,
Thiruvalluvar Illam,
Anna Salai,
Chennai-2.

..Respondents/Respondents

PRAYER: Writ Appeals filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.(MD).No14170 of 2015 dated 19.02.2018.

For Appellant : Mr.S.Arunachalam
For Respondents : Mr.D.Sivaraman

W.P.No.2419 of 2018

The Management
Tamil Nadu State Transport Corporation
(Kumbakonam Division-I) Limited,
Kumbakonam.

... Petitioner

Vs

1.The Presiding Officer,
Labour Court, Cuddalore.

2.J.Veeramani

... Respondents

PRAYER:Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ Certiorari, call for the records pertaining to the award dated 03.09.2013 passed by the first respondent in I.D.No.225 of 1992 and quash the same.

For Petitioner : Mr.D.Sivaraman



JUDGMENT

[Judgment of this Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.D.Sivaraman, learned counsel appearing for the Management and Mr.S.Arunachalam, learned counsel appearing for the Employee.

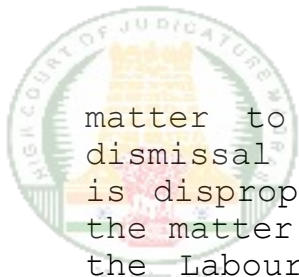
2. There are two writ appeals filed one by the Management of the Tamil Nadu State Transport Corporation, Kumbakonam Limited and another one by the erstwhile workmen of the Management. The Management has filed W.P.No.2419 of 2018 challenging the award passed by the Labour Court in I.D.No.225 of 1992 dated 03.09.2013.

3. Since the issue involved is concerning a workman and all the cases are interconnected, they were heard together and are being disposed of by this common order.

4. The following facts could be relevant for the disposal of these cases.

The workman was appointed as a Conductor on 16.10.1986 and was made as a permanent employee. On 15.11.1987, an inspection was conducted which resulted in issuance of charge memo against the workman, dated 04.12.1987 alleging misappropriation. The workman was also placed under suspension prior to the issuance of the charge memo, but after the issuance of charge memo suspension was revoked on 18.12.1987 and disciplinary proceedings were initiated. An Enquiry Officer was appointed to conduct an enquiry and he held that the charges were proved. An opportunity was granted to the workman to submit his objection to the proposed penalty and the workman had submitted his reply on 29.06.1988. The disciplinary authority by order dated 05.08.1988 dismissed the workman from service. The workman raised an industrial dispute before the Labour Court which was taken on file as I.D.No.1062/1989 on the file of the Principal Labour Court, Chennai.

5. The Management filed a counter affidavit resisting the prayer sought for, subsequently, the case stood transferred to the Labour Court, Kadalur and renumbered as I.D.No.225 of 1999. The Labour Court after examining the oral and documentary evidence, by award dated 12.02.2002, held that the charges were not proved, as the passengers were not examined and consequently directed reinstatement of the workman with backwages. The Management filed W.P.(MD).No.5611 of 2003 challenging the award, dated 12.02.2002 in I.D.No.225 of 1992. The writ petition was disposed of by order dated 29.10.2009, whereby, the Court held that one of the charges against the workman has been proved. But however, found that the punishment of dismissal from service was disproportionate and only for such purpose to reconsider the punishment to be imposed, remanded the

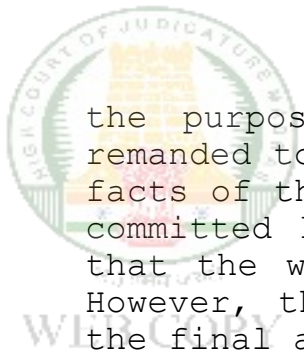


matter to the original authority to give punishment other than dismissal from service as the Court found that the dismissal order is disproportionate to the charges which was proved. Accordingly, the matter was remitted back to the Labour Court and on such remand, the Labour Court after taking note of the submissions made, set aside the order of dismissal and in lieu of imposed the punishment of stoppage of three increments with cumulative effect. Apart from that, there was a direction to the Management to grant continuity of service and backwages from the date of dismissal till the date of superannuation. The Labour Court passed the said award on 03.09.2013 on the premise that the workman had attained the age of superannuation by then. Factually, this is incorrect as the workman has attained the superannuation only in 2015.

6.Be that as it may, the said award was allowed to remain as such and the Management did not take any immediate steps to challenge the award. In the mean time, the workman filed a petition to compute his wages in C.P.No.23 of 2015 under Section 33(c) (2) of the Industrial Dispute Act and the matter is stated to be pending. The workman also filed a writ petition in W.P.(MD).No.14170 of 2015 praying for a direction upon the Management to pay pension and computation of pension to the workman for his entire service ie., from 01.01.1986 to 31.03.2015 under the TNSTCEPF Rules with pension arrears from 01.06.2015 together with interest. When the writ petition was heard, the management represented that they have filed a writ petition challenging the award, dated 03.09.2013 before the Principal Bench in the year 2018 in W.P.No.2419 of 2018. Therefore, the Court opined that the workman has to workout his remedy in the said writ petition and directed the Management to pay provisional pension together with arrears and fix a time frame within which the disbursement has to be effected. Not being satisfied with this order, the workman has filed writ appeal in W.A.(MD).No.1646 of 2018, the writ petition which was filed in the principal Seat by the Management in W.P.No.2419 of 2018 challenging the award dated 03.09.2013 in I.D.No.225 of 1992, has been transferred to this Court and has been heard by us today.

7.At the outset, we have to consider as to whether the Management has made out any ground to interfere with the award dated 03.09.2013 in I.D.No.225 of 1992, and we are of the view that the said writ petition will have a direct bearing on the appeal filed by the respondent workman.

8.The first point to be borne in mind is that the impugned award dated 03.09.2013 is pursuant to a remand order passed by the High Court in a writ petition filed by the Management challenging the original award dated 12.02.2012. The order passed in the writ petition has attained finality. Therefore, neither the Management nor the workman canvassed any ground beyond what was held by the Writ Court. The Writ Court was of the considered view that the



the purpose of considering a lesser punishment, the matter was remanded to the Labour Court. The Labour Court after considering the facts of the case, has modified the punishment, however, the mistake committed by the Labour Court was that it came to the conclusion that the workman had retired by then, which is factual incorrect. However, that aspect of the matter may not have a great impact on the final award passed by the Labour Court.

9. In our considered view, the appropriate punishment which is required to be issued in lieu of dismissal from service was examined by the Labour Court and we found that there is no perversity in exercise of discretion and therefore, the conversion of punishment of dismissal from service into stoppage of increment for three years with cumulative effect, cannot be stated as erroneous. The Management is aggrieved by the direction issued by the Labour Court to grant continuity of service with full backwages and consequential pension. It is the submission of the learned counsel for the appellant that hardly within 15 days from the date on which the respondent workman had become a permanent employee, he was charged for misappropriation, ultimately dismissed from service on 05.08.1988 and from then, he has been out of service and virtually the workman would get a substantial amount of money which he does not deserve to obtain. From the dates and events, we find that there is no delay on the part of the workman to initiate the proceedings before the Labour Court, the delay in disposal of the matter by the Court cannot be fastened on the workman. Therefore, we find that there are no extraordinary circumstances by which we should take a different view in the matter, but nevertheless, we find that the workman has worked only for a short period of time and the charge of misappropriation has been proved and the Court interfered only with regard to the penalty and remanded the matter to the Labour Court. Therefore, we express an opinion that the award of backwages in its entirety would not be appropriate in the case on hand. We also took note of the decision of the Hon'ble Supreme Court in the case of **J.K. SYNTHETICS LTD., V. K.P. AGRAWALL AND ANOTHER**, reported in **2007 (2) SSC 433** relied on by Mr.D.Sivaraman, learned counsel for the Corporation, with regard to the scope of exercise of discretion under Section 11(a) of the Industrial Disputes Act. Facing to this situation, Mr.S.Arunachalam, learned counsel on instructions submitted that 50% of the backwages may be denied and the remaining 50% may be paid and continuity of service may be granted so that the petitioner will be entitled to receive pension for which the Management has to remit their proportionate contribution to the fund and appropriate direction may be issued.

10. Considering all the above submissions, we are of the view that the award of the Labour Court does not require any interference in its entirety, but only with regard to the award of full backwages.



11.In the result,

(i)Writ Petition in W.P.No.2419 of 2018 is partly allowed and the award dated 03.09.2013 passed in I.D.No.225 of 1992 is modified by directing the Management to pay 50% of the backwages in stead of entire backwages. In the light of the order passed in the Writ Petition in W.P.No.2419 of 2018, these Writ Appeals are disposed of.

(ii)The Management is directed to grant the benefit of continuity of service to the workman and consequently, compute the length of service make the necessary contribution to enable the workman to receive pension.

(iii)The above direction be complied with within a period of 12 weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (co)

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Sub Assistant Registrar(CS)

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To

1.The Presiding Officer,
Labour Court, Cuddalore.

2.The Administrator,
Tamil Nadu State Transport Employees'
Pension Fund Trust,
Thiruvalluvar Illam,
Anna Salai,
Chennai-2.

+1 CC to Mr.D.SIVARAMAN, Advocate (SR-88425[F] dated 23/09/2019)

ORDER MADE IN

**W.A. (MD) .Nos.1350 and 1646 of 2018
and**

**C.M.P. (MD) .No.9583 of 2018 in
W.A. (MD) .No.1350 of 2018 and
W.P. (MD) .No.2419 of 2018 and
W.M.P (MD) .No.2932 of 2018 in
W.P. (MD) .No.2419 of 2018**

20.09.2019

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