



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.Nos.17921 & 20163 of 2013

R.Ilayaraja ...Petitioner in WP.No.17921/2013  
2<sup>nd</sup> Respondent in W.P.No.20163 of 2013

Tamil Nadu State Transport Corporation (Salem) Ltd.,  
Rep.by the General Manager,  
No.12, Ramakrishna Road,  
Salem - 07. ...Petitioner in WP.No.20163/2013  
2<sup>nd</sup> Respondent in W.P.No.17921 of 2013

Vs.

The Managing Director,  
Tamil Nadu State Transport Corporation  
(Salem) Ltd.,  
Salem. ...1<sup>st</sup> Respondent in W.P.No.17921 of 2013

1.The Special Deputy Commissioner of Labour,  
Chennai. ...1<sup>st</sup> Respondent in WP.No.20163/2013

PRAYER in W.P.No.17921/2013: This Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to consider the claims of the petitioner with regard to reinstatement in pursuant to the Special Deputy Commissioner's Award, dated 27.12.2012 and pass orders on the representation of the petitioner dated 09.05.2013.

PRAYER in W.P.No.20163/2013: This Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for records in proceeding pursuant to the order passed in Approval petition No.109/2011 in C1/14144/2011 dated 27.12.2012, on the file of the 1<sup>st</sup> respondent and quash the same.

In WP.No.17921/2013:

For Petitioner : Mr.G.Elanchezhiyan  
For Respondents : Mr.A.Sundaravadhanan



In WP.No.20163/2013:

For Petitioner : Mr.A.Sundaravadhanan  
For Respondents : Mr.E.Vedha Bhagat Singh  
Special Government Pleader for R1  
Mr.G.Elanchezhiyan of R2

WEB COPY

COMMON ORDER

The order of the Authority under Section 33 (2) (b) of the Industrial Disputes Act 1947, (in short, 'Act') rejecting the Transport Corporation's request for approval of the dismissal order, dated 11.03.2011, is under challenge in W.P.No.20163 of 2013.

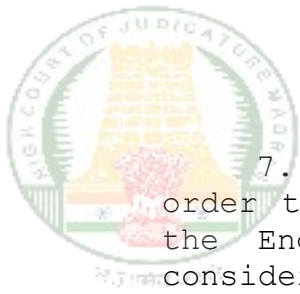
2. For the sake of convenience, the parties herein are referred to as 'the Workman' and 'the Management'.

3. In view of the rejection of the approval petition, the workman seeks for reinstatement into service with benefits, in W.P.No.17921 of 2013. The cause of action in both the writ petitions being one and the same, both the writ petitions are disposed of through a common order.

4. The workman was originally appointed in the service and subsequently, regularized on 16.05.2009, the qualification prescribed for the post of Conductor is pass in SSLC. The workman had originally attempted for the SSLC examination in the Month of April 1990, wherein he had failed in two subjects. Thereafter, he had appeared for the supplementary examination in April 1991 in which he had obtained 31 marks in English subject and accordingly, had failed. Incidentally, the workman had appeared in the April 1992 Supplementary Examination for the SSLC and obtained 47 marks in the English subject.

5. The Management on verification of the two certificates pertaining to the years 1990 and 1991, allegedly found that there was a tampering of marks in the second Certificate of the examination conducted in April 1991 and after verification, the Educational Authority had initiated departmental action against the workman for submitting a forged School Certificate. After enquiry, the charges were held to be proved and the workman was dismissed from service, through an order of dismissal, dated 11.03.2011.

6. The Management had filed an application under Section 33 (2) (b) on 15.03.2011 and by an order dated 27.12.2012, the Authority under the Act, had rejected the Management's approval petition on the ground that there was no prima-facie case before the Enquiry Officer.



7. The reason assigned by the Authority in the impugned order to substantiate that there was no prima-facie case before the Enquiry Officer is that the Authority had taken into consideration that the workman had completed his M.Com degree and therefore, had inferred that the workman would have passed his SSLC Examination. This apart, the Authority had also accepted the statement of the workman that he had submitted all the three certificates and on this ground also he had informed that there was no prima-facie case before the Enquiry Officer. The charge against the workman was not as to whether he had passed in SSLC Examination or not, but the charge was for having submitted a bogus SSLC Certificate. What requires to be proved, in the domestic enquiry, was whether the SSLC certificate given by the workman was bogus or not? As such, the inference drawn by the first respondent that there was no prima-facie case, is unacceptable.

8. However, it is seen that after the order of dismissal, the workman had filed the writ petition before this Court, seeking to rectify the marks statement, which shows his SSLC marks as 41 instead of 31. When the W.P.No.14511 of 2011, was taken up for disposal, the learned Government Advocate represented that the Director of Government Examinations had stated that they intend to cancel the certificate bearing 41 marks for the examination conducted in April 1991 and the workman had also submitted that he had no objection in cancelling the certificate. In continuance of this development, the certificate which carried the marks as 41 instead of 31 for the April 1991, was also cancelled.

9. As rightly pointed out by the learned Special Government Pleader, the enquiry was conducted in fair and appropriate manner and the reasoning adopted in the enquiry also cannot be found fault with, for the purpose of substantiating that the charges were held proved.

10. However, this Court has taken note of the subsequent developments whereby, the workman had only passed the SSLC examination conducted in April 1992, wherein he had secured 47 marks in English subject. Thereafter, he had completed his M.Com degree also.

11. The only impediment seems to be that the Management claims that the third certificate dated 16.06.1992, was not submitted by the workman at all and that they were in possession of only the first two certificates. In order to strike the balance and render justice to the workman, who claims to have passed his SSLC in 1992 itself and his appointment was 16 years



thereafter and in the meantime, he had also completed his M.Com degree in the year 2004, a lenient view could be taken whereby he could be directed to be reinstated. However, since the Management did establish their case in the enquiry, if the back wages payable to him and the last drawn wages paid under Section 17 (B) of the Act, is directed to be refunded back to the Management, the ends of justice could be secured.

12. The workman has also filed an affidavit dated 21.04.2021, whereby he has given his right to claim back wages under Section 17 B of the Act and had also undertaken to refund the back wages and the last drawn wages. This affidavit of the workman, reads as follows:

"1. I humbly submit that in the event of reinstatement order passed by this Hon'ble High Court of Madras in the above writ petition in favour of me (2<sup>nd</sup> respondent) , I am ready to forego my entire back wages and also I am ready to refund the last drawn wages [17(B) wages] received by me (the 2<sup>nd</sup> respondent) from 01.07.2013 to 05.02.2022. The above undertaking may be recorded at the time of passing order in the above writ petition.

2. I humbly submit that I am also herewith filing my SSLC passed 3<sup>rd</sup> attempt certificates dated April 1992 for verification of my SSLC qualification. The above statement also may be recorded and orders may also be passed in the above writ petition and thus render justice.

Under these circumstances, it is prayed that this Hon'ble Court may be pleased to accept my affidavit and pass suitable order in the above writ petition and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

13. The learned Special Government Pleader also submitted that since the 3<sup>rd</sup> SSLC Certificate is now being submitted to them, they may be given opportunity to verify the genuinity of the certificate.

14. In the light of the above observations and findings, the order of dismissal of the Management, dated 11.05.2011, is set aside and consequently, the order of the Authority, dated 27.12.2012 is also set aside. Accordingly, the following orders are passed:



WEB COPY

(i) There shall be a direction to the Management Corporation, to pass appropriate orders to the effect that the workman had continued in his service from 11.03.2011 onwards, together with continuity of service.

(ii) The workman shall not be entitled for the back wages during the period of his non-employment, but would be eligible only for continuity of service and other service benefits.

(iii) The workman shall refund the entire last drawn wages received by him under Section 17 (B) of the Act, to the Management forth-with. The Management shall pass orders in the aforesaid manner, after receipt of the 17 (B) wages from the workman.

(iv) The workman shall submit a copy of the original SSLC marks, dated 16.06.1992 for the supplementary examination conducted in April 1992 to the Management. The Management is at liberty to subject the April 1992 SSLC marks sheet of the workman for verification.

(v) The Management shall also pass orders permitting the workman to continue his services immediately on receipt of the refund of 17 (B) wages.

15. With the above directions, these writ petitions stand closed. No costs.

SD/-

ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

Pns  
To

1. The Managing Director,  
Tamil Nadu State Transport Corporation  
(Salem) Ltd.,  
Salem.



2.The General Manager,  
Tamil Nadu State Transport Corporation  
(Salem) Ltd.,  
Salem-7.

WEB COPY

3.The Special Deputy Commissioner of Labour,  
Chennai.

+2cc to M/s.G.Elanchezhiyan, Advocate Sr.Nos.28126,28127  
+1cc to the Government Pleader Sr.28642

W.P.Nos.17921 & 20163 of 2013

rsi[co]  
srg 30/05/2022