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W.P.Nos.24848 of 2009 and 4866 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2022

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**THE HONOURABLE MR.JUSTICE M.S.RAMESH**

W.P.Nos.24848 of 2009 and 4866 of 2014  
and M.P.Nos.1 & 2 of 2014 in WP.No.4866 of 2014

**WP.No.24848/2009**

S.Prabhakaran

... Petitioner

***Vs.***

1.The General Manager,  
Tamil Nadu State Transport Corporation,  
Villupuram Division – II,  
Vellore.

2.The Divisional Manager,  
Tamil Nadu State Transport Corporation,  
Villupuram Division – II,  
Vellore.

3.The Branch Manager,  
Tamil Nadu State Transport Corporation,  
Villupuram Division – II,  
Ambur.

... Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records in relevant to the order in Memo No.8315/Papi6/TGTC (Villupuram) Vellore/2008 dated 24.10.2009 issued by 1<sup>st</sup> respondent is totally illegal,



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improper, unreasonable and arbitrary and against the natural justice and thereby direct the respondents to allow the petitioner voluntarily retire from his service under “VRS Special Scheme”.

For Petitioner : Mr.S.N. Ravichandran

For Respondents : Mr.M.Aswin

**WP.No.4866/2014**

The Management,  
Tamil Nadu State Transport  
Corporation (Villupuram) Ltd.,  
Vellore District.

... Petitioner

***Vs.***

1.The Special Deputy Commissioner of Labour,  
D.M.S. Compound,  
Chennai.

2.Thiru S. Prabhakaran

... Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the order passed by the 1<sup>st</sup> Respondent in Approval Petition in A.P.No.288 of 2011 dated 29.04.2013 and to quash the same as illegal.

For Petitioner : Mr.M.Aswin

For Respondents : Mr.G. Velu [R1]  
Mr.S.N. Ravichandran [R2]



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### **COMMON ORDER**

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The petitioner in WP.No.24848 of 2009 is the second respondent in WP.No.4866 of 2014 and the respondents/Corporation in WP.No.24848 of 2009 are the petitioner/Management in WP.No.4866 of 2014. Therefore, for the sake of convenience, the parties are referred to by their names.

2. S. Prabhakaran is a erstwhile driver of the Corporation/Management. On 05.10.2009, charges were framed against him for misconduct of unauthorised absence, for the period between 23.11.2008 to 06.12.2008. Based on the inquiry report of proven charges, he was dismissed from services on 10.08.2011. On the same day, the Corporation/Management had filed an application under Section 33 (2)(b) of the Industrial Disputes Act, 1947, in Approval Petition No.288 of 2011, seeking for approval of the order of dismissal. The Authority through his order dated 29.04.2013, rejected the Corporation's application, on the ground of victimisation, for which purpose, reliance was placed on the decision of the Hon'ble Supreme Court in the case of ***'Lalla Ram Vs. D.C.M. Chemical Works Ltd. & another'*** reported in ***'AIR 1978 SC 1004'***.



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3. The learned standing counsel for the Corporation/Management submitted that, though S. Prabhakaran was given a proper show cause notice and summons for inquiry, he did not turn up for the inquiry and therefore, the order of dismissal came to be passed. According to the learned counsel, this is not a case of victimisation, but a punishment for a serious misconduct of unauthorised absence.

4. Per contra, the learned counsel for S. Prabhakaran submitted that S. Prabhakaran was not aware of the proceedings at all and that he had earlier submitted an application to go on Voluntary Retirement from Service (VRS), as per Regulation No.19b of the Service Regulations, which was not acted upon. On the other hand, through an order dated 24.10.2009, the General Manager, Corporation, had indicated that since the application for VRS requires three months notice period, which S. Prabhakaran did not possess in view of his unauthorised absence, the request for such a retirement is not feasible.

5. The Hon'ble Supreme Court in *Lalla Ram's case (Supra)* had set



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forth certain circumstances under which an Approval Petition can be rejected and one such ground therein, is in cases of victimisation of the workman.

6. In the instant case, the Authority had taken into account all the facts that even prior to 14 days of unauthorised absence, S. Prabhakaran had submitted an application seeking for Voluntary Retirement from Service (VRS) on medical grounds. It was further observed therein that S. Prabhakaran was not extended with opportunities during the course of inquiry. Though the summons for inquiry was marked as documents, the receipt of such summons by S. Prabhakaran, was not established. It is the case of S. Prabhakaran that he was not aware of the conduct of inquiry at all. This apart, the Authority had also taken into account the conduct of the Corporation in returning the Appeal Petition preferred by S. Prabhakaran on the ground that it has not been addressed to the Managing Director, while the fact remains that the appeal was indeed addressed to the Managing Director. On a comprehensive consideration of all these aspects, the Authority had rejected the Approval Petition, on the ground of victimisation.

7. I do not find any infirmity in such findings, which is based on the



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records of the Authority. When ***Lalla Ram's case (Supra)*** holds that the Approval Petition can be rejected on the ground of victimisation, the order of rejection cannot be found fault with.

8. In the case of ***'Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED.) & others'*** reported in ***'2013 (10) SCC 324'***, the Hon'ble Supreme Court had held that in cases of wrongful termination of service, the employee would be entitled to be reinstated back into services with full back wages. So also was the view in the case of ***'Raj Kumar Dixit Vs. Vijay Kumar Gauri Shanker, Kanpur Nagar'*** reported in ***2015 (9) SCC 345'***. In the present case also, the Labour Court had held the termination to be wrongful and by applying the principles laid down by the Hon'ble Supreme Court in the aforesaid two decisions, the proper re-course would be for reinstatement of S. Prabhakaran back into service, together with full back wages and other benefits.

9. Thus, when the Authority had dealt with the evidence before him elaborately and held that the order of dismissal is by way of victimisation, the corollary ought to have been for an order of reinstatement of S.



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Prabhakaran, together with all monetary and service benefits.

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**10.** It is now brought to the notice of this Court that S. Prabhakaran/second respondent has reached the age of superannuation on 31.07.2015. Accordingly, there are no merits in the Writ Petition in WP.No.4866 of 2014 and hence, the Writ Petition stands dismissed. In view of the dismissal of the Writ Petition challenging the Authority's order of approval in Approval Petition.No.288 of 2011, S. Prabhakaran/petitioner herein is deemed to have been in service from the date of dismissal and subsequently, reached the age of superannuation on 31.07.2015 and hence, no effective orders can be passed in the Writ Petition in WP.No.24848 of 2009 whereby, S. Prabhakaran/petitioner seeks for permission to go on Voluntary Retirement from Service (VRS) and hence, the same stands closed.

**11.** Accordingly, S. Prabhakaran is deemed to have been in service from the date of dismissal i.e. 10.08.2011 till the date of his superannuation i.e. on 31.07.2015 and therefore, would be entitled for the entire continuity of service, backwages and other attendant benefits. In this regard, there shall be a direction to the Management/Corporation to pass final orders,



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**M.S.RAMESH,J.**

***Sni***

disbursing all the retirement benefits including the backwages, within a period of four (4) weeks from the date of receipt of a copy of this order. No costs.

Connected miscellaneous petition are closed.

**22.09.2022**

Speaking  
Index: Yes  
***Sni***

To

- 1.The General Manager,  
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Villupuram Division – II,  
Vellore.
- 2.The Divisional Manager,  
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