



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.09.2021

PRONOUNCED ON : 21.01.2022

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.NOS.9913 OF 2011 & 22737 OF 2012

Tamil Nadu State Transport Corporation
Salem, Ltd.,
rep. by its Managing Director,
No.12, Ramakrishna Road,
Salem-636 007.

... Petitioner in WP.9913/2011

Vs.

1. The Presiding Officer,
Labour Court,
Salem.

2. N.Rajendran

... Respondents in WP 9913/2011

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the first respondent in I.D.No.165 of 2005 dated 13.10.2009 and to quash the same.

N.Rajendran

... Petitioner in WP22737/2012

.Vs.

1. The Presiding Officer,
Labour Court,
Salem.



2. The General Manager,
Tamil Nadu State Transport
Corporation Ltd.,
Salem Division-II,
Dharmapuri-5.

WEB COPY

... Respondents in WP.22737/2012

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records connected with the award dated 13.10.2009 passed by the first respondent in I.D.No.165 of 2005, insofar as it relates to the denial of 75% back wages to the petitioner, quash the same and also direct the respondent Management to reinstate the petitioner with continuity of service and full back wages and other attendant benefits.

For Petitioner : Mr.K.Thangam
in W.P.9913/2011 & for Mr.D.Raghu
For Respondent-2
in W.P.22737/2012

For Respondent-2 :Ms.S.Girija
in W.P.9913/2011 &
For Petitioner
in W.P.No.22737/2012

C O M M O N O R D E R

As against the award of the Labour Court, Salem dated 13.10.2009 passed in I.D.No.165 of 2005, the Management had questioned the order of reinstatement with continuity of service and 25% of back wages and the workman has also challenged the denial of 75% of the back wages. Since both the Writ Petitions arise out of the same award, a common order is passed in these Writ Petitions.

2. The workman was engaged by the Management as a driver on daily wage basis from 26.05.1997 onwards. The charge against the workman was that he had produced a bogus Secondary School Leaving Certificate for the purpose of gaining employment in their Management/Transport Corporation. According to the Management, the workman had failed in VII Std and discontinued from the Municipal Middle School, Salem, owing to which his name was removed from the school rolls on 30.08.1978. Since the prescribed qualification for appointment of driver is VIII Std and the workman had not passed VIII Std, the Management had



issued the show cause notice dated 14.06.1999, by placing reliance on the report of the District Educational Officer, Salem dated 22.05.1999. Subsequently, the workman came to be dismissed from the services on 23.08.1999. The workman had challenged the dismissal order in a petition filed under Section 2-A(2) of the Industrial Disputes Act, 1947, in which he had placed reliance on Ex.W.5/M.14 dated 07.07.1999, which is the letter of the retired Headmistress of the school, who had clarified to the Management that the workman, though had discontinued the school in VII Std, was re-admitted and had subsequently passed VIII Std also and therefore his claim for reinstatement was genuine. The Headmistress also stated in the same letter that she had inadvertently signed the Transfer Certificate as 25.05.1978 instead of 25.05.1979. The Labour Court, while placing reliance on Ex.W.5/M.14 had observed that the Management had ignored this clarification issued by the retired Headmistress and was not justified in placing reliance on the proceedings of the District Educational Officer, Salem dated 22.05.1999.

3. I do not find any infirmity in the findings of the Labour Court, Salem. Both the workman, as well as the Management had produced this document dated 07.07.1999, which was marked as Ex.W.5/M.14. The said letter is addressed to the Management/Transport Corporation. The only charge against the workman is that since the DEEO's report states that the workman had not completed VIII Std and had discontinued VII Std in his school, the Transfer Certificate produced by him is a bogus one. Had the Management, considered Ex.W.5/M.14, which has much clarity with regard to workman's qualification of having passed VIII Std and the inadvertent mistake made by the then Headmistress while issuing the Transfer Certificate, the departmental action may have dropped. It is in this background that the Labour Court had rightly appreciated the evidences and set aside the dismissal order by directing reinstatement with continuity of service.

5. Insofar as the order directing the Management to pay 25% of back wages is concerned, the Labour Court had placed reliance on the case of Regional Manager, State Bank of India, Kanpur Vs. The Presiding Officer, Central Government Industrial Tribunal cum Labour Court, Kanpur and another reported in 2006 (3) LNN 213 and held that entitlement of full back wages pursuant to reinstatement is not automatic. While holding so, the Labour Court held that the workman would be entitled for 25% back wages, since the workman had not let in evidence to show that he was not in gainful employment and further held that, it is not for the employer to establish that the workman was not gainfully employed. Such a finding in the award, is against the settled principles of law.



6. The Hon'ble Supreme Court in the case of Deepali Gundu Surwase V. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) and Others reported in 2013 (10) SCC 324, has held that when the Labour Court finds the employee to be not at all guilty of misconduct, he would be entitled for award of full back wages in the following manner:-

"38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

7. Since this Court had found that the dismissal order is per se illegal and in the light of the decision rendered by the Hon'ble Supreme Court cited above, the workman would be entitled for full back wages.

8. In the result, the Writ Petition filed by the Management in W.P.No.9913 of 2011 stands dismissed. Consequently, the Writ Petition filed by the workman in W.P.No.22737 of 2012 is allowed and the award of the Labour Court, Salem dated 13.10.2009 passed in I.D.No.165 of 2005, insofar it relates to denial of 75% of back wages to the workman is concerned, is quashed. In this background, there shall be a direction to the Tamil Nadu Transport Corporation, Salem Division II, Dharmapuri-5, to disburse the full back wages to the workman namely, N.Rajendran, within a period of four weeks from the date of receipt of a copy of this order. There shall be no orders as to costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

DP

Sub Assistant Registrar



To

1. The Presiding Officer,
Labour Court,
Salem.
2. The Managing Director,
Tamil Nadu State Transport Corporation
Salem, Ltd.,
No.12, Ramakrishna Road,
Salem-636 007.
3. The General Manager,
Tamil Nadu State Transport
Corporation Ltd.,
Salem Division-II,
Dharmapuri-5.

+2ccs to Mr.D.Raghu, Advocate, S.R.No.3726,3724
+2ccs to Ms.S.Girija, Advocate, S.R.No.4151,4150

W.P.Nos.9913 of 2011 & 22737 of 2012

(CO)
PM/07/02/2022