



W.P.(MD)Nos.13300 of 2017 & 25344 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.12.2022

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.13300 of 2017 & 25344 of 2018

and

W.M.P(MD)Nos.22945 & 22946 of 2018

W.P.(MD)No. 13300 of 2017

N.Buvanesan

... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation,
(Tirunelveli) Limited,
Corporate Office, K.T.C. Nagar,
Tirunelveli.

2.The General Manager,
Tamil Nadu State Transport Corporation,
(Tirunelveli) Limited, Tirunelveli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Mandamus*, directing the respondents to reinstate the petitioner with continuity of service, with back wages and all other attendant and monetary and other service benefits in the light of the order passed by the



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Approval Authority in A.P.No. 165/2014, dated 11.07.2016 rejecting the Approval Petition filed by the respondents.

For Petitioner : M/s.S.Govindan

For Respondents : Mr. K.Sathiya Singh
Standing Counsel

W.P.(MD)No. 25344 of 2018

The Management,
Through the General Manager,
Tamil Nadu State Transport Corporation,
Tirunelveli Limited, Tirunelveli Region,
No.3, Tiruvananthapuram Salai,
Tirunelveli – 3.

... Petitioner

Vs.

1.The Special Deputy Commissioner of Labour,
Labour and Conciliation Office,
Chennai – 2.

2. N.Buvanesan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorari*, calling for the records from the 1st respondent Special Deputy Commissioner of Labour (conciliation) Chennai relating to the impugned award passed by it in A.P.No.165 of 2014 dated 11.07.2016 and quash the same.



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For Petitioner : Mr. K.Sathiya Singh
Standing Counsel

For R-2 : M/s.S.Govindan

COMMON ORDER

W.P(MD)No.13300 of 2017 has been filed seeking direction to the respondents to reinstate the petitioner with continuity of service, with back wages and all other attendant and monetary and other service benefits in the light of the order passed by the Approval Authority in A.P.No.165/2014, dated 11.07.2016, rejecting the Approval Petition filed by the respondents.

W.P(MD)No.25344 of 2018 has been filed to quash the impugned order passed by the 1st respondent/Special Deputy Commissioner of Labour (conciliation) Chennai, dated 11.07.2016 in A.P.No.165 of 2014 rejecting the Approval Petition filed by the Management.

2. For the sake of convenience N.Buvanesan / employee is referred as writ Petitioner and the employer/Tamil Nadu State Transport Corporation is referred as respondent management.



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3. Heard Mr. K.Sathiya Singh, the Learned Standing Counsel for the Management and Mr.S.Govindan, the Learned Counsel appearing for the writ petitioner employee and perused the material documents available on record.

4. The writ petitioner was appointed as Conductor on 07.06.1986, subsequently, he was dismissed from service for unauthorized absence from 01.09.2008 to 02.10.2008 and 05.10.2008 to 24.07.2014. The respondent management has filed petition in A.P.No.165 of 2014 before the Deputy Commission of Labour (Conciliation, Chennai) for approving the punishment under Section 33(2)(b) of Industrial Dispute Act, 1947. The authority has taken the immaterial and irrelevant factors and has held that the Management has not established the charges and domestic enquiry was conducted by violating the principles of natural justice and the punishment of dismissal from service is excessive and too harsh and the action initiated by the management against the employee amounts to Unfair Labour Practice. Challenging the said dismissal order, the Management has filed a writ petition in W.P.(MD)No.25344 of 2018 and the employee has filed to implement the said order in W.P(MD)No.13300 of 2017.



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5. The charge against the petitioner is, he was unauthorizedly absence for a period from 01.09.2008 to 02.10.2008 and 05.10.2008 to 24.07.2014. The management have taken the period of suspension also as period of absence. Hence, the petitioner contested the case before the approval authority. The approval authority has framed issues and has held that there was violation of principles of natural justice, the punishment is excessive and too harsh and for various other reasons the approval was declined.

6. The contention of the Management Corporation is that the petitioner was unauthorizedly absented from 01.09.2008 to 02.10.2008 and from 05.08.2008 to 24.07.2014, thereafter, enquiry was conducted on 04.11.2011. When the petitioner appeared before the enquiry authority had submitted that he is not interested in serving further in the Corporation. Therefore, the authority has granted one more opportunity to the petitioner. Subsequently, on 16.02.2013 the Corporation decided to find out the reason for his absence and has deputed a person to the employee's house. On enquiry it was found out that the petitioner was not interested in continuing service as Conductor, since he is serving as Advocate Clerk in an Advocate office. The Management has recorded this fact in



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the finding and when a specific finding was rendered in the dismissal order the said issue was not taken up by the approval authority and no issue was framed to deal with this fact. Therefore, this Court is of the considered opinion that the order passed by the approval authority declining his approval is perverse. The authority has not properly appreciated the issue raised by the management corporation.

7. As on date the employee has attained superannuation. Therefore, there is no question of reinstatement. The employee was rendering Corporation service from 07.06.1986 and was dismissed on 24.07.2014 and has served for more than 28 years. By taking all these facts and considering the circumstances, this Court is passing the following order:

1. The impugned order passed by the 1st respondent/Special Deputy Commissioner of Labour (conciliation), Chennai, in A.P.No.165 of 2014 dated 11.07.2016 is hereby quashed to the extent stated below.
2. The punishment of dismissal from service is modified as Compulsory retirement and the service from



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07.06.1986 to 24.07.2014, i.e., more than 28 years shall be taken as service period and for this period the petitioner is entitled to terminal benefits.

3. For the period of absence from 2008 to 2014 the petitioner is not entitled to any monetary benefits and for pensionary benefits.

4. The employer shall deposit the employer contribution and the employee contribution for the period from 07.06.1986 to 31.08.2008 to the Pension Trust and thereafter pay pension for this period.

8. With the above directions, these Writ Petitions are disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
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S.SRIMATHY, J

KSA

**Common Order made in
W.P.(MD)Nos.13300 of 2017 &
25344 of 2018**

20.12.2022