



*WP.Nos.14404 of 2016
& 23886 of 2018*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.14404 of 2016 & 23886 of 2018 &
WMP.Nos.12595 & 18679 of 2016

The Management of Tamil Nadu
State Transport Corporation
(Villupuram Division I) Ltd.,
Villupuram rep.by its
General Manager

... Petitioner in WP.No.14404 of 2016
& R2 in WP.No.23886 of 2018

Vs

1.The Presiding Officer,
Labour Court, Cuddalore.

...R1 in both WPs

2.R.Thirunavukkarasu (deceased)

...R2 in WP.No.14404 of 2016
& Sole Petitioner in
WP.No.23886 of 2018

3.T.Ashok Kumar
4.T.Ganesh Babu
5.T.Malliga

(R3 to R5 were substituted as legal heirs of the deceased
R2 vide order dated 04.3.2022 in WMP.No.23059 of 2021 in
WP.No.14404 of 2016 by PDAJ & P2 to P4 were substituted
as legal heirs of the deceased sole petitioner vide
order dated 04.3.2022 in WMP.No.23063 of 2021
in WP.No.23886 of 2018 by PDAJ)

...R3 to R5 in WP.No.14404 of 2016
& P2 to P4 in WP.No.23886 of 2018



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PETITIONS under Article 226 of The Constitution of India praying
for the issuance of

(i) a Writ of Certiorari to call for the records of the order passed by the first respondent in I.D.No.30 of 2004 dated 29.11.2010 and quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947 (WP.No.14404 of 2016); and

(ii) a Writ of Certiorarified Mandamus to call for the records in I.D.No.30 of 2004 on the file of the 1st respondent herein, quash the order dated 29.11.2010 passed therein in so far as it relates to the rejection of the petitioner's prayer for back wages from the date of the petitioner dismissal from service till the date of the petitioner attaining superannuation and other attendant benefits, interest and cost and direct the 2nd respondent to pay the petitioner's back wages from the date of his dismissal from service till the date of his attaining superannuation, other attendant benefits, interest and cost.

For Management	:	Mr.M.Aswin
R2 - employee	:	died
For legal heirs of the workman	:	Mr.V.Manohar

COMMON ORDER

These petitions are filed by both the management and the employee challenging the award dated 29.11.2010 in I.D.No.30 of 2004 on the file of the first respondent.



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2. The facts leading to filing of these cases are as follows :

(i) The employee joined in the services of the management as a Junior Assistant in 1981. He served as a Labour Welfare Inspector from 1983 to 1992. From 1992 till 16.1.1999 - the date of dismissal from service, he was serving as a Senior Superintendent at Thittakudi Depot. Due to poor health, he applied for medical leave from 08.4.1998 and thereafter, it was periodically extended.

(ii) When the employee was on leave, he was issued with a charge memo dated 11.5.1998, for which, he had not submitted any explanation. Therefore, a departmental inquiry was conducted. The employee was absent throughout the inquiry. Hence, he was set ex parte. After the inquiry was concluded, pursuant to the report of the Enquiry Officer, the second show cause notice was issued, for which, the employee gave his reply dated 22.12.1998. However, not satisfied, the management dismissed him from service by order dated 16.1.1999.

(iii) Thereafter, the employee initiated conciliation proceedings before the Labour Officer Cuddalore, who issued a failure report on 14.6.1999. Subsequently, after a period of five years, the employee raised the industrial



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dispute seeking to set aside the punishment of removal from service dated 16.1.1999 and to direct the management to reinstate him into the service with full back wages and service and monetary benefits with interest and costs. In that, the management filed a counter.

(iv) During the pendency of the industrial dispute, the employee reached the age of superannuation on 31.12.2006. Further, by the impugned award, the first respondent partly allowed the industrial dispute holding that the employee would be entitled to reinstatement with continuity of service from the date of dismissal till the date of attaining superannuation only for the purpose of computing the service period and that for calculating the retirement benefits, the employee was not entitled to back wages and other attendant benefits. Challenging the same, the management is before this Court by filing WP.No.14404 of 2016.

(v) Aggrieved by the portion of the impugned award rejecting the claim of the employee for back wages and other attendant benefits from the date of dismissal from service till the date of attaining superannuation, the employee has filed W.P.No.23886 of 2018 seeking to direct the management to pay the employee the back wages.



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3. During the pendency of these writ petitions, the employee died and his legal heirs were substituted in both the writ petitions as parties to the respective litigation.

4. Learned counsel appearing on behalf of the management would submit that the impugned award of the Labour Court in interfering with the punishment imposed by the management holding that the punishment of dismissal is highly disproportionate is perverse. Admittedly, the workman was imposed with the punishment of dismissal on the ground of unauthorized absence to work. Though the workman claims that he was on medical leave during the period in which he was alleged to have been unauthorizedly absent, however, he did not give any application for medical leave and no documents regarding medical leave were filed even before the enquiry officer. Despite issuance of enquiry notice, he has also not chosen to turn up for enquiry. However, the Labour Court without properly adjudicating the said issue while passing the impugned award, has mechanically held in favour of the workman. Accordingly, he prayed for allowing the Writ Petition filed by the Management.



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5. Learned counsel appearing for the legal heirs of the deceased workman would submit that the workman was on medical leave during the period in which he was alleged to have been unauthorizedly absent for which, he also produced the medical certificate. Hence, the said period cannot be said to be the period of unauthorized absence on the basis of which, the workman was illegally terminated and hence the claim of the management with regard to unauthorized absence for termination of the workman is not acceptable. The Labour Court having elaborately discussed the factual aspects as also the documents marked on behalf of the workman, has rightly held that the workman is entitled for reinstatement and other reliefs. However, insofar as the denial of backwages, the impugned award requires interference. Since the workman was not gainfully employed during the non-employment period and in view of the fact that he has attained superannuation, he is entitled for backwages from the date of dismissal till the date of attaining superannuation.

6. This Court heard the learned counsel appearing for the management, learned counsel appearing for the legal heirs of the deceased – workman and perused the materials available on record.



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7. The allegation made against the workman is the unauthorized absence, for which he was issued with a charge memo and after conducting enquiry, he was removed from service. As against the said dismissal, the workman raised a dispute under Section 2A-(2) of the Industrial Disputes Act, 1947. By the impugned award, the Labour Court has ordered for reinstatement with continuity of service without backwages.

8. It is the case of the management that though the workman claims to have been under medical leave during the period in which he was unauthorizedly absent, however, in order to substantiate the said claim he did not produce the medical certificate before the enquiry officer. However, a perusal of the impugned award reveals that necessary documents have been marked on the side of the workman to show that he was under medical leave while no evidences have been placed by the management so as to disprove their case. Further, no evidence has been produced on the side of the management with regard to payment of compensation to the workman at the time of dismissal from service. Further, an application for medical leave is submitted by the employee at the time of going on leave and at the time of



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joining, the employee submits the medical and fitness certificate to prove his fitness to join duty, which documents, will be within the purview of the management. Therefore, asking the employee to produce materials, which are within the realm of the petitioner is wholly an unacceptable defence. In the absence of any acceptable material placed by the management to substantiate their claim with regard to the alleged misconduct as also with regard to payment of compensation to the workman, the finding rendered by the Labour Court does not suffer the vice of any illegality and hence, the same requires no interference

9. It is seen from the claim petition, that no averments have been made by the workman with regard to him being not gainfully employed during the period of dismissal. In the absence of any pleading in the claim petition relating to gainful employment during the non-employment period, the workman is not entitled for the relief of backwages. However, it is seen that even during the pendency of the industrial dispute, the employee has attained the age of superannuation on 31.12.2006 and hence the question of reinstatement does not arise.



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10. It appears that during the pendency of these Writ Petitions, the workman had passed away and his legal heirs are substituted in respective Writ Petitions. Hence, the management is directed to compute the monetary terminal benefits and pay the same to the legal heirs as if the workman had continued in service and superannuated on attaining the age of superannuation within a period of six weeks from the date of receipt of a copy of this order.

11. Accordingly, the Writ Petitions filed by both the management and the workman are dismissed with the above direction. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

26.09.2023

Index : Yes (or) No
Neutral Citation : Yes (or) No
Speaking Order : Yes (or) No

NHS

To
The Presiding Officer,
Labour Court, Cuddalore.

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M.DHANDAPANI, J

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