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W.P.Nos.23314 of 2012 and 19529 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :	02.02.2023
PRONOUNCED ON :	20.04.2023

CORAM :

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.Nos.23314 of 2012 & 19529 of 2013
& M.P.No.2 of 2012

W.P.No.23314 of 2012:

The Management
Tamilnadu State Transport Corporation Ltd.,
Kumbakonam Limited
Railway Station Road
Kumbakonam.

... Petitioner

Vs.

1.T.Govindaraj
Conductor

2.The Presiding Officer
Labour Court, Cuddalore.

... Respondents

W.P.No.19529 of 2013:

T.Govindaraj

... Petitioner

Vs.

1.The General Manager
Tamilnadu State Transport Corporation
Kumbakonam Division, Kumbakonam.



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2.The Managing Director
Tamilnadu State Transport Corporation
27, Pogaivandi Nilaya Pudhu Salai
Kumbakonam – 612 001.

3.The Presiding Officer
Labour Court
Cuddalore.

... Respondents

PRAYER IN W.P.No.23314 of 2012: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the 2nd respondent made in I.D.No.87 of 2007 dated 08.06.2011 and to quash the order to the extent of granting the retirement benefits for the service period to the 1st respondent as illegal and against the provisions of the Industrial Disputes Act, 1947.

PRAYER IN W.P.No.19529 of 2013: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records connected with the impugned award dated 08.06.2011 issued by the 3rd respondent and quash the same and further direct the 2nd respondent to reinstate the petitioner in service with full back wages, continuity of service and other attendant benefits from the date of his dismissal 22.12.2005.

W.P.No.23314 of 2012:

For Petitioner : Mrs.S.Sathya Gandhi

For R-1 : Mr.S.Sivakumar

*R2 – Labour Court



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W.P.No.19529 of 2013:

For Petitioner : Mr.S.Sivakumar

For RR 1 & 2 : Mrs.S.Sathya Gandhi

*R3 – Labour Court

COMMON ORDER

These Writ Petitions are filed by the workman as well as the Management, as against I.D.No.87 of 2007 dated 08.06.2011, passed by the Presiding Officer, Labour Court, Cuddalore, whereby, the claim of the petitioner in W.P.No.19529 of 2013, to reinstate him into service with continuity of service, back wages and other attendant benefits was dismissed and ordered only for retirement benefits for his service period.

2. The petitioner in W.P.No.19529 of 2013 was working as a Conductor in the Tamil Nadu State Transport Corporation, Kumbakonam Division. On 03.03.2005, when the petitioner was on duty in the bus bearing Registration No.TN 49 N 0970, the Checking Inspector had conducted inspection. At the time of inspection, it was found that one of the male passenger was not in possession of a ticket. On enquiry, it came to light that the petitioner has not issued ticket to

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the said passenger, after receiving the ticket fare of Rs.11/- from him. Further, on examining the cash bag of the petitioner, it was found that there was a shortage of Rs.36.50/-, including the ticket amount.

3. In continuance to the above incident, the Checking Inspector gave a complaint dated 03.03.2005 as a result of which, the petitioner was placed under suspension vide order dated 24.03.2005. Later, a charge memo, dated 11.04.2005 was issued to the petitioner. In reply to the same, the petitioner submitted his explanation on 24.04.2005. Being not satisfied with the same, domestic enquiry was ordered to be conducted by the respondent Management against the petitioner.

4. On 19.07.2005, domestic enquiry was conducted and on 22.07.2005, the Enquiry Officer submitted his report holding that the charges levelled against the workman stands 'proved'. The Enquiry Officer served the enquiry findings on 25.07.2005 and the workman submitted his explanation, which was also found to be not satisfactory by the respondent Management. Hence, second show cause notice dated 01.10.2005 was issued and the worker had submitted his explanation



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on 10.10.2005. As there was no valid reasons to modify or to cancel the proposed punishment, the workman was dismissed by the respondent Management by an order dated 22.12.2005.

5. Aggrieved against the same, the workman filed an appeal on 04.01.2006 and the respondent Management, considered his appeal and passed a detailed order, rejecting the claim of the workman. Thereafter, the workman raised an Industrial Dispute before the 3rd respondent in I.D.No.87 of 2007. The Labour Court, after considering the merits held that the charges were proved and also the punishment of removal from service was justified and therefore, ordered only the retirement benefits for his service period. Challenging the said Award, the above Writ Petitions have been filed.

6. The learned counsel for the workman contended that there was no proper consideration of the quantum of punishment, by applying the principle enunciated under the Industrial Disputes Act. She would submit that the allegation of misappropriation is without any basis and the statement given by the petitioner was misconstrued. Further, the passenger concerned was not



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examined before the Labour Court. She also submitted that while calculating the misappropriation amount of Rs.36.50/-, tiffin allowance pertaining to the workman and the bus driver were not taken into account.

7.The learned counsel for the Management would submit that the charges are serious in nature. Even prior to the present I.D., the workman was involved in a similar type of misconduct and had filed I.D.No.753 of 89. Thereafter, based on the outcome of I.D.No.753 of 89, he was reinstated in service, with continuity of service but without back wages. Since the workman committed misappropriation of corporation money and he has not mended to correct himself, the Management passed the dismissal order and the labour court has rightly held that the workman is entitled for retirement benefits for the service period only.

8. Heard both sides and perused the materials.

9. A perusal of Award passed in I.D.No.87 of 2007 would go to show that the learned Judge, after elaborate analysis of the matter, found that the workman committed misappropriation of amount of management and the same has been



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proved based on the statement of passenger and driver. The workman did not challenge the domestic enquiry proceedings. The learned Judge found that the domestic enquiry was conducted in a fair and proper manner; charges against the workman were proved. The learned Judge, citing the decisions in the case of ***Pandian Roadways Corporation Limited Vs. The Presiding Officer, Labour Court, Madurai and another [2000 L.L.R. 1221 (MHC), Union of India Vs. K.G.Soni (2006) 6 SCC 794*** and applying the principles to the case, decided that the punishment of dismissal imposed to the petitioner for misappropriation of amount by the respondent/management is proportionate.

10. The learned Judge, Labour court, taking note of the age of the workman i.e, 52 years at the time of filing of the industrial dispute in the year 2007 and that he entered into service in the year 1980 and that he was dismissed from service on 22.12.2005 and taking note of his service period of 25 years, decided that the workman is entitled to get retirement benefits for his service period only. The learned Judge, held that the workman is not entitled for reinstatement with continuity of service, backwages and other attendant benefits and he is entitled for retirement benefits for his service period only.



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11. The impugned Award has been passed based on evidence and the findings and the conclusion arrived at is based on the substantive grounds. Finding no merits in the writ petitions filed by the workman as well as management, this court has no hesitation to dismiss both the Writ Petitions.

12. In the result, W.P.No.19529 of 2013 filed by workman and W.P.No.23314 of 2012 filed by Management are dismissed. Consequently, the Management shall implement the impugned Award , within a period of six weeks from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed. No costs.

20.04.2023

Index:Yes/No

Neutral citation:Yes/No

Speaking Order: Yes/No

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To

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2. The Presiding Officer
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J.NISHA BANU, J.

nvsri

Common order in
W.P.Nos.23314/2012 and 19529/2013

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