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W.P.No.25923 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.25923 of 2013

N.Venkatachalam

...Petitioner

-Vs-

1. The Presiding Officer,
Labour Court, Salem.

2. The Management,
Tamilnadu State Transport
Corporation (Salem Division),
12, Ramakrishna Road,
Salem.

... Respondents

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 04.01.2005 passed by the first respondent/Labour Court in I.D.No.497/2004 insofar as it related to the denial of continuity of service and other attendant benefits from the date of dismissal on 30.06.1997 till the date of raising the dispute on 18.03.2004 and also the consequential impugned proceedings dated 11.09.2005 passed by the second respondent in Proc.No.PA1/5030/TNSTC/Dharmapuri/2004 insofar as it relates to further denial of the



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continuity of service and other attendant benefits from the date of dismissal from 30.06.1997 till the date of re-instatement, quash both the order and also direct the second respondent to grant continuity of service and other attendant benefits till the date of his reinstatement.

For Petitioner : Ms.S.Girija

For Respondents

R1 : Court

For R2 : Mr.R.Babu

ORDER

This Writ Petition has been filed challenging the award dated 04.01.2005 passed by the first respondent/Labour Court in I.D.No.497/2004 and consequential proceedings dated 11.09.2005 passed by the second respondent in Proc.No.PA1/5030/TNSTC/Dharmapuri/2004, insofar as it related to the denial of continuity of service from 30.06.1997 to 18.03.2004 to the petitioner.

2. The petitioner was appointed as Junior Assistant on 28.05.1988 in the second respondent corporation. While being so, he was on unauthorized absence from 11.11.1996 to 01.12.1996 and also from 05.12.1996 onwards. Therefore, the petitioner was served with two charge memos dated 04.12.1996 and 27.12.1996. After enquiry, all the



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charges were proved as against the petitioner and he was dismissed from service by an order dated 30.06.1997. Therefore, the petitioner raised an Industrial Dispute in I.D.No.497 of 2004 on the file of the Labour Court, Salem on 18.03.2004. The Labour Court passed an awarded dated 04.01.2005, setting aside the order of dismissal and directed the second respondent to reinstate the petitioner with continuity of service except for the period from 30.06.1997 to 18.03.2004 and further denied the relief of backwages and other monetary benefits. Aggrieved by the same, the petitioner filed this present Writ Petition.

3. The learned counsel appearing for the petitioner would submit that the petitioner was reinstated in service with continuity of service, in which the petitioner is entitled the continuity in service from 30.06.1997 to 08.09.2000 which for the period, the petitioner was ready to join in the second respondent corporation. She further submitted that the petitioner was dismissed from service on two charge memos dated 04.12.1996 and 27.12.1996. However, the disciplinary proceeding was initiated on the charge memo dated 04.12.1996 alone and no documents were marked by the second respondent Management to prove the charge.



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Therefore, the petitioner ought to have reinstated in service with all benefits with continuity of service.

4. Heard the learned counsel appearing on either side and perused the records.

5. On perusal of records revealed that the petitioner was on unauthorized absence from 11.11.1996 to 01.12.1996 and from 05.12.1996 onwards. However, the petitioner repeatedly requested the second respondent for his reinstatement. On receipt of the said request, the petitioner was served with a communication dated 08.09.2000 and directed the petitioner to appear before the enquiry officer along with educational qualification certificate and two sets of xerox copies of the above certificate duly attested by a gazetted officer and also one copy of recently taken passport size photograph. Even then, the petitioner was not reinstated in service.

6. Thereafter in the year 2004, the petitioner raised the present industrial dispute as against the order of dismissal dated 30.06.1997.



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Therefore, the period, in which the petitioner was ready to join duty, was not considered by the Labour Court for his continuity of service from the date of dismissal viz., 30.06.1997 to 18.03.2004 i.e., till the filing of the industrial dispute. Further the award was passed on 04.01.2005. Whereas the petitioner was reinstated into service only on 11.09.2005. Therefore, the petitioner is entitled for his continuity of service for the period from the date of dismissal viz., 30.06.1997 to the date of communication viz., 08.09.2000 and from the date of the initiation of industrial dispute viz., 18.03.2004 till the date of reinstatement viz., 11.09.2005.

7. Accordingly, the impugned award dated 04.01.2005 passed by the Labour Court, Salem, in I.D.No.497/2004 and consequential proceedings dated 11.09.2005 passed by the second respondent in Proc.No.PA1/5030/ TNSTC/Dharmapuri/2004, are hereby set aside. The second respondent is directed to grant continuity of service and other attendant benefits to the petitioner, for the period from 30.06.1997 to 08.09.2000 and for the period from 18.03.2004 to 11.09.2005, within a period of four weeks from the date of receipt of a copy of this Order.



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WEB COPY 8. With the above directions, the Writ Petition stands partly allowed. There shall be no order as to cost.

04.07.2023

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

rts



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WEB COPY To

1. The Secretary to Government,
State of Tamilnadu,
Health and Family Welfare Department,
Fort St. George,
Chennai – 600 009.
2. The Director of Public Health
and Preventive Medicines,
DMS Compound,
Chennai – 600 006.



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G.K.ILANTHIRAIYAN. J.

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