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W.A. No.1274 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2023

CORAM:

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

and

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. No.1274 of 2023

K. Nannaiyan (deceased)
represented by his legal heirs
J.P. West Street
3, Poongaline
Kumbakonam

- 1 N. Radha
- 2 Minor N. Srinivasan
- 3 Minor N. Surandran
- 4 Minor N. Sarmila

Appellants

v

- 1 Tamil Nadu State Transport Corporation
(Kumbakonam Divn. I) Ltd.
Kumbakonam
represented by its Managing Director

- 2 The Presiding Officer
Labour Court, Cuddalore

Respondents

Writ Appeal filed under Clause 15 of the Letters Patent challenging the
order dated 31.10.2019 passed in W.P. No.9187 of 2004.

For appellants
For R1
R2

Mr. D. Ganesh Raj
Mr. Murali Vinodh
Labour Court



W.A. No.1274 of 2023

JUDGMENT

To avoid verbosity, the parties are adverted to as per their rank in this writ appeal.

2 At the outset, it is to be pointed out that this writ appeal is filed by the legal heirs of the deceased workman of the first respondent Transport Corporation.

3 The sequence of events giving rise to the institution of this writ appeal are succinctly stated as under:

3.1 The workman was employed in the first respondent Corporation as a Conductor. On a set of charges that he had not issued ticket to a lady passenger despite collecting a fare of Rs.3.05 from her, he was issued with a charge memo. His explanation to the said charge memo not being satisfactory, a domestic enquiry was conducted in which the charges were held to be proved. After issuing a second show cause notice and not satisfied with his reply to the same, he was dismissed from service *vide* order dated 06.10.1982.



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3.2 Challenging the dismissal order, the workman raised an industrial dispute in I.D. No.347 of 1992. Pending the said industrial dispute, he breathed his last on 25.01.2000, in pursuance whereof, his legal heirs pursued the remedy before the second respondent Labour Court.

3.3 The second respondent Labour Court, eventually, *vide* award dated 16.06.2003, set aside the dismissal order and held that the workman is entitled to reinstatement. However, since he was no more, it was held that he was deemed to have been in service till the date of his demise, *i.e.* 25.01.2000, and that the appellants are entitled to receive all the benefits and allowances, as if he had been in continuous employment till the date of his demise.

3.4 Aggrieved, the first respondent Transport Corporation preferred a writ petition being W.P. No.9187 of 2004 before a Single Bench. The Single Bench, taking note of the previous service record of the workman and also the financial condition of the Transport Corporation, held that the appellants are entitled to get 25% of the backwages and also statutory benefits, as per service rules. The appellants were also permitted to withdraw the said 25% of the backwages with proportionate accrued interest.



3.5 The legal heirs of the deceased workman, on the ground that the Single Bench should not have reduced backwages by 75%, have preferred this writ appeal.

4 Heard Mr. D. Ganesh Raj, learned counsel for the appellants and Mr. Murali Vinodh, learned Standing Counsel for the first respondent Transport Corporation.

5 As for the first charge, the second respondent Labour Court, finding that the Ticket Inspector, with an ulterior motive, had come to the conclusion that the workman had misappropriated a sum of Rs.3.05, held that the first charge, viz., non issuance of ticket for Rs.3.05, was not proved.

6 As regards the second charge that the workman snatched the written report of the Ticket Inspector, which was the statement recorded from the lady passenger, the second respondent Labour Court, observing that, if really such an incident had happened, the Ticket Inspector would have once again got a statement from the lady passenger or from other passengers, held that the second charge was not proved.



7 As regards the third charge that the workman refused to receive the defect report given by the Ticket Inspector, the second respondent Labour Court held the same as not proved, since the first two charges were not proved.

8 It is to be noted that the second respondent Labour Court, after analysing the evidence on record, has rendered a finding of fact. At this juncture, it is worth referring to the judgment of the Apex Court in **Syed Yakoob v K.S. Radhakrishnan AIR 1964 477**, wherein, it was held that even if there is any grave defect in the fact, that will not give rise to issue a writ of certiorari to interfere with the award of the Labour Court. In the present case, the factum that the deceased workman has received the defect report and produced the same as Ex.W.1, would make it amply clear that he has not refused to receive the defect report. If he had not received the report, he could not have filed the same, was the finding of fact with regard to disproving charge no.3.

9 The Single Bench came to the conclusion that the workman had misappropriated a sum of Rs.3.05, which is a serious misconduct warranting major penalty and however, taking a lenient view, reduced the punishment of dismissal from service into one of reduction of backwages to 25%, apart from grant of other statutory benefits. For ready reference, the operative portion of the

order passed by the Single Bench is extracted below:



“11. Under these circumstances, this Court is of an opinion that the award regarding the reinstatement, cannot be granted as the employee passed away. As far as the grant of backwages and other terminal and pensionary benefits are concerned, this Court is of an opinion that the legal heirs are entitled for the same and in respect of backwages, this Court is inclined to grant 25% of the backwages. The amount of backwages are reduced on account of the fact that the previous history of the deceased employee was not considered by the Labour Court. This apart, the deceased employee had served for about 10 years and therefore, awarding of 100% backwages in respect of the misconduct is not proper. It is brought to the notice of this Court that the Transport Corporation are running in huge monetary loss.”

10 To be noted, when the Labour Court has rendered a finding of fact after analysing the evidence on record, unless there is perversity in the finding, this Court cannot exercise its powers and re-appreciate evidence and come to a different conclusion.

11 In this case, as the employee is no more, the learned counsel for the appellants submitted that the appellants are willing to accept 60% of the arrears of backwages, apart from other terminal benefits. To this effect, the appellants have filed a consent affidavit on 24.06.2023, the relevant portion of which is paragraph 3.

12 Though it has been stated that the appellants are willing to accept 60% of the backwages over and above the 25% backwages ordered in W.P.No.9187 of 2004, the learned counsel for the appellants submitted that this



Court may take into account the prayer in the said consent affidavit and pass suitable orders and may restrict the entire backwages to 60% instead of 85%, as prayed for in the consent affidavit.

13 For ease of reference, paragraph 3 and the prayer portion are reproduced below:

“3. We state that the appellants are now restricting their claims made in the writ appeal from 75% of the backwages to 60% of the backwages. Consequently, the appellant restricts its over claim of backwages from 100% as granted by the Labour Court to 85%.

It is therefore humbly prayed before this Hon'ble Court to take this affidavit on record and grant the appellants 60% of the backwages in addition to the 25% of the backwages granted in W.P. No.9187 of 2014 or to pass any other others as this Hon'ble Court may deem fit and thus render justice.”

14 In view of the above submission made by the learned counsel for the appellants, coupled with the consent affidavit dated 24.06.2023 signed by the appellants, the order of the Single Bench and the award of the Labour Court are interfered with and modified to the extent that the appellants, who are the legal heirs of the deceased workman, are entitled to 60% of backwages and not 85%, apart from other terminal benefits, which shall be distributed amongst the legal heirs proportionately. It is further ordered that pensionary benefits shall be extended to the eligible persons and all the arrears have to be settled within a period of four months.



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S. VAIDYANATHAN, J.

and

K. RAJASEKAR, J.

cad

This writ appeal is disposed of in the above terms. Costs made easy.

(S.V.N., J.) (K.R.S., J.)
27.06.2023

cad

To

- 1 The Managing Director
Tamil Nadu State Transport Corporation
(Kumbakonam Divn. I) Ltd.
Kumbakonam
- 2 The Presiding Officer
Labour Court
Cuddalore

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