



W.P.Nos.37226 and 44647 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.37226 and 44647 of 2016

and

W.M.P.No.38440 of 2016

W.P.No.37226 of 2016:

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Coimbatore Division, Coimbatore - 43.

... Petitioner

Vs.

1. The Presiding Officer,
Labour Court, Coimbatore.

2. G.Periyasamy

... Respondents

PRAYER in W.P.No.37226 of 2016 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for records of the order passed by the first respondent in I.D.No.257 of 2004 dated 13.04.2016 and to quash the same as illegal.



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For Petitioner : Mr.A.Sundaravadhanan
For Respondents : R1 - Labour Court
Mr.S.Saravanan for R2

W.P.No.44647 of 2016:

G.Periyasamy ... Petitioner

Vs.

1. The Presiding Officer,
Labour Court,
Coimbatore.

2. The Management,
Tamil Nadu State Transport Corporation Limited,
Coimbatore Division,
Coimbatore - 43.

... Respondents

PRAYER in W.P.No.44647 of 2016 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the entire records on the file of the Labour Court in I.D.No.257 of 2004 dated 13.04.2016 and quash the same in respect of portion of the order to the second respondent to pay 40% backwages and consequently, directing the second respondent to pay full backwages and all other retirement benefits to the petitioner from the date of dismissal from service to the date of petitioner's superannuation and other consequential benefits.



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For Petitioner : Mr.S.Saravanan
For Respondents : R1 - Labour Court
Mr.A.Sundaravadhanan for R2

COMMON ORDER

W.P.No.37226 of 2016 is filed by the Management (State Transport Corporation) and W.P.No.44647 of 2016 is filed by the delinquent employee. Since both the Writ Petitions challenging the very same award in I.D.No.257 of 2004 dated 13.04.2016 passed by the Labour Court, Coimbatore, these Writ Petitions are disposed of by this common order.

2. For the sake of convenience, the parties are referred to as employer and employee respectively.

3. The brief facts required for disposal of these Writ Petitions are that the employee was working with the employer from the year 1974 and on 23.06.1983, the employee was dismissed from service. Challenging the said dismissal, the employee raised an Industrial Dispute and an award was



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passed for directing reinstatement. Accordingly, the employee was reinstated with effect from 02.02.1987. Thereafter, in the year 2002, a show cause notice was issued to the employee alleging that he had committed misappropriation of Rs.12,235.35 paise. An explanation submitted by the employee, not being satisfactory, the Management / employer ordered for enquiry. Based on the enquiry report, second show cause notice was issued, for which also the employee had given his explanation. Not satisfied with the explanation given, the employee was dismissed from service. Challenging the same, the employee raised an Industrial Dispute in I.D.No.257 of 2004 where the Labour Court considering that the employee had only four years of service left, the order of dismissal was set aside, the employee was entitled 40% backwages from the date of dismissal till the date of superannuation and the employer was directed to pay all the retirement benefits due to the employee if he was in continuous service till the date of superannuation.



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4. This award is under challenge by the employer on the ground that setting aside of the award was illegal, the employee was not entitled for any backwages, and that the continuity of service ought not to have been ordered by the Labour Court.

5. The award is challenged by the employee on the ground that he was entitled to full backwages instead of 40% which was ordered by the Labour Court.

6. The learned counsel for the employer challenges the award and submits that before the Labour Court, the employer / Management has examined one witness and marked as many as eight documents and substantiate their case that the employee was frequently indulged in delinquency and that he had already been once dismissed from service in the year 1983 and was reinstated into service. Thereafter, the employee has indulged in misappropriation of funds again in the year 2002, for which, he was imposed with the punishment of dismissal from service and hence, the



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learned counsel for the employer submits that the Labour Court awarding 40% backwages from the date of dismissal till the date of superannuation and to consider the period of his non-employment if he was in continuous service for the purpose of calculating the retirement benefits is untenable.

7. The learned counsel for the employee submits that in similar circumstances, the employer / Management had awarded a lesser punishment and hence, the punishment imposed upon the employee is discriminatory in nature and therefore, the award was rightly set aside by the Labour Court. However, awarding of only 40% backwages from the date of dismissal till the date of superannuation is *per se* illegal. Therefore, on that ground, the employee has challenged the award.

8. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.



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9. This Court after going into the materials placed on record and the submissions made by the learned counsel on either side, is of the view that the Labour Court on going through the materials placed before it and the evidence adduced on either side, it rightly come to the conclusion that the punishment of dismissal was liable to be set aside and it was rightly set aside. However, since the employee was left with only four years of service, at that point of time, the Labour Court had ordered 40% of backwages from the date of dismissal till the date of superannuation. This Court is unable to find any reasons assigned by the Labour Court for coming to such a conclusion. Therefore, considering the fact that the employee was not an first time offender and that he was earlier dismissed from service for similar charges and later reinstated into service, this Court is of the view that, without any averments in the claim petition and adjudication that portion of the award directing 40% of backwages from the date of dismissal till the date of superannuation, that means, the employee is not entitled for any backwages for the period in question. However, the employee is entitled for retirement benefits due to him for the said period, i.e.,



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from the date of dismissal till the date of superannuation and his service during that period shall be taken as continuous service.

10. Modifying the award to the above extend, both these Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

24.07.2023

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

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To

1. The Managing Director,
Tamil Nadu State Transport Corporation Limited,
Coimbatore Division, Coimbatore - 43.
2. The Presiding Officer,
Labour Court, Coimbatore.



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M.DHANDAPANI, J.

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