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W.P.No.6394 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.6394 of 2016

And

W.M.P.Nos.6161 & 6162 of 2018, 8812 & 5689 of 2016

The Management,
Tamilnadu State Transport Corporation (Salem) Ltd.,
Dharmaburi Division,
12, Ramakrishna Road,
Salem – 7
Rep. by its General Manager ... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Salem.

2.K.Sabapathi ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the order passed by the first respondent in I.D.No.108 of 2012 dated 11.09.2014 and quash the same.

For Petitioner : Mr.R.Babu
For Respondents : Mr.D.Soundar Raj for R2



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ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari calling for the records of the order passed by the first respondent in I.D.No.108 of 2012 dated 11.09.2014 and quash the same.

2.The facts of the case is that the second respondent was working as Conductor in the petitioner Corporation and since he did not report for duty from 11.07.2011 onwards, he was issued with a charge memo dated 09.08.2011 and after conducting enquiry, the petitioner issued order of dismissal dated 10.04.2012 to the second respondent. Challenging the order of dismissal dated 10.04.2012, the second respondent raised industrial dispute in I.D.No.108 of 2012 before the first respondent and the first respondent vide order dated 11.09.2014 directed the petitioner to modify the absence of the second respondent as medical leave and to reinstate the second respondent with continuity of service and with 40% backwages. Challenging the same, the present writ petition has been filed.

3.The learned counsel appearing for the petitioner submitted that during the pendency of this writ petition, the second respondent retired from service on attaining the age of superannuation on



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30.06.2016 and hence there is no question of reinstatement. The learned counsel further submitted that the Hon'ble Apex Court as well as this Court have in a catena of judgments held that a person is not entitled for backwages for the period when he is not in employment and hence, the second respondent is not entitled for any backwages. The learned counsel further submitted that though the un-authorized absence of the second respondent was very well proved during the enquiry, the same was not properly appreciated by the first respondent and the first respondent mechanically passed the award.

4.Per contra, the learned counsel appearing for the second respondent submitted that the second respondent absented from duty due to illness and medical certificate was produced before the petitioner Management, however, the petitioner Management did not consider the same and it was properly appreciated by the Labour Court. The learned counsel further submitted that unless the award passed by the Labour Court is perverse or arbitrary, it cannot be interfered with by this Court under Article 226 of the Constitution of India. The learned counsel further submitted that for un-authorized absence, the order of dismissal passed by the petitioner is highly shocking and disproportionate and the Labour Court rightly passed the



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impugned award which warrants no interference.

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5. Heard the arguments advanced on either side and perused the materials available on record.

6. The facts in the present case is not in dispute. Admittedly, the second respondent was working as Conductor in the petitioner Corporation and since he did not report for duty from 11.07.2011 onwards, he was issued with a charge memo dated 09.08.2011 and after conducting enquiry, the petitioner issued order of dismissal dated 10.04.2012 to the second respondent. The charge against the second respondent is not corruption or anything else and it is only un-authorized absence. For un-authorized absence, the order of dismissal passed by the petitioner is highly shocking and disproportionate and such facts were properly appreciated by the Labour Court.

7. Coming to the question of backwages, as rightly pointed out by the learned counsel appearing for the petitioner, the Hon'ble Apex Court as well as this Court have in a catena of judgments held that a person is not entitled for backwages for the period when he is not in employment. However, since the second respondent has already



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retired from service on attaining the age of superannuation on 30.06.2016, it is practically impossible for reinstatement and hence, this Court award 20% backwages to the second respondent. The second respondent is also entitled for continuity of service.

8.In view of the above, the petitioner is directed to pay 20% backwages and extend continuity of service and pay all other terminal benefits to the second respondent. The petitioner shall pay the amount as ordered above after deducting the amount already paid, if any, to the second respondent, within a period of eight weeks from the date of receipt of a copy of this order.

9.The writ petition is accordingly disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

10.07.2023

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Speaking Order/ Non Speaking Order
Index: Yes/ No Internet: Yes/ No

To

1.The Presiding Officer,
Labour Court,
Salem.

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M.DHANDAPANI,J.
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