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W.P. No. 11455 & 14972 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2023

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

W.P. No.11455 and 14972 of 2017

and

W.M.P. No.12436 and 16214 of 2017

The Management
Rep. by its General Manager
Tamilnadu State Transport Corporation (Salem) Ltd.
No.12, Ramakrishna Road
Salem – 636 007.

... Petitioner in both the petitions

-VS-

- 1.K.Rathinam
- 2.The Presiding Officer,
Labour Court,
Salem.
- 3.The State of Tamilnadu
Rep. by its Additional Secretary
Labour and Employment Department
Fort St. George, Chennai-9.

... Respondents in both the petitions

Prayer in W.P.No.11455 of 2017:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, to call for the records of the third respondent passed in G.O.Ms.No.10(D), Labour and Employment Department dated 21.01.2011 and the award passed by the second respondent made in I.D.No.27 of 2011 dated 14.03.2016 and to quash the same as illegal.



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Prayer in W.P.No.14972 of 2017:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, to call for the records of the third respondent passed in G.O.Ms.356(D), Labour and Employment Department dated 17.06.2010 and the award passed by the second respondent made in I.D.No.162 of 2010 dated 24.11.2015 and to quash the same as illegal.

For Petitioner (for both the petitions) : Mr.R.Babu

For Respondents (for both the petitions) : Mr.K.V.Shanmuganathan (R1)
Mr.M.S.Prem Kumar, GA
(R3)

R2-Court

COMMON ORDER

Since the issue arises in bpth the cases are one and the same, both are disposed of by way of this common order.

2. W.P.No.11455 of 2017 has been filed seeking to quash the order passed by the third respondent passed in G.O.Ms.No.10(D), Labour and Employment Department dated 21.01.2011 and the award passed by the second respondent made in I.D.No.27 of 2011, dated 14.03.2016.

3. W.P.No.14972 of 2017 has been filed seeking to quash the order



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passed by the third respondent passed in G.O.Ms.356(D), Labour and Employment Department, dated 17.06.2010 and the award passed by the second respondent made in I.D.No.162 of 2010 dated 24.11.2015.

4. Both the writ petitions have been filed against the award passed by the Labour Court, Salem in ID. No.27 of 2011 and 162 of 2010. The Labour Court, vide order dated 14.03.2016 and 24.11.2015 has set aside the punishment imposed on one Govindan, who was working as a conductor in the petitioner and the member of the first respondent Union. On behalf the workman, the first respondent raised an Industrial Dispute before the Labour Court to reduce the starting basic pay for five years cumulatively.

5. The learned counsel for the petitioner submitted that admittedly, the petitioner has issued two charge memo to the workman viz., Govindan on two occasions as if he collected actual fare from the passenger and issued tickets in lesser price which was inspected by the checking inspector at the relevant point of time. While checking the bus, the workman thrown away the tickets and bag and left the scene of occurrence. Before the Labour Court, the petitioner has proved the conduct of the workman indicating that he was in the habit of committing misconduct. Further, a dispute was raised by the workman after a



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delay of seven years and the workman has not given any explanation for such delay in raising his claim. Without considering all these aspect, the Labour Court has set aside the punishment imposed on the workman, which is non est in law and the same are liable to be quashed.

6. The learned counsel for the first respondent submitted that admittedly the respective punishment was imposed as against the workman on 17.06.2005 and 13.06.2006 for reduction of basic pay for five years. However, the period of punishment has expired beyond the period of superannuation, which is impermissible one. The punishment imposed by the petitioner Management is not available in the Standing Order. In view of the above reasons, the Labour Court interfered with the punishment and the impugned orders are perfectly in order, which does not warrant any interference.

7. Heard the learned counsel for the petitioner and the learned counsel for the first respondent and perused the materials available on record.

8. The facts of the case are not in dispute. During the duty hours, while the workman was plying in the bus in the year 2003 and 2004, he allegedly collected actual fare from passengers and issued the tickets lesser in price.



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Based on the complaint, the department has initiated the proceedings against the workman and imposed the punishment on him for stoppage of increment for a period of five years. Challenging the said punishment, the first respondent union raised an industrial dispute before the Labour Court and the Labour, vide impugned orders, set aside the punishment imposed on the workman Govindan, which is under challenge before this Court.

9. The issue arises in both the cases are whether the petitioner management is entitled to impose a punishment beyond the period of superannuation. Admittedly, the punishment was imposed by the petitioner Management came to an end in the year 2010 and 2011. It is also an equally undisputed fact that the workman has retired from service in the year 2010. Further the petitioner Management has not established before this Court whether there is jurisdiction to impose such punishment as per the Standing Orders and the punishment was imposed beyond the period of superannuation, which is impermissible.

10. However, the fact remains that the workman has habitually committed the offence for misappropriation of the amount of the petitioner Management, which cannot view leniently. Considering the facts and



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circumstances of the case, this Court is inclined to interfere with award and decided to impose a minimum punishment. Accordingly, the impugned orders are set aside and the punishment imposed on the workman Govindan is modified. To that effect, the stoppage of increment is reduced from five year to two years with cumulative effect.

11. With the above direction and modification of the punishment, the petitioner Management is directed to pay the terminal benefits to the workman Govindan within a period of six weeks from the date of receipt of a copy of this order, if not already settled.

12. With the above modification, the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index: Yes/No

NCS : Yes/No



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To

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Labour Court
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- 2.The Additional Secretary
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M.DHANDAPANI, J.

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