



WEB COPY



W.A. No.1112 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2023

CORAM:

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

and

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. No.1112 of 2023 & C.M.P. No.11216 of 2020

The Management of
Tamil Nadu State Transport Corporation (Salem) Ltd.
Bharathipuram
Salem Main Road
Dharmapuri 636 705
represented by its General Manager

Appellant

v

1 The Special Deputy Commissioner of labour
DMS Compound
Anna Salai
Chennai

2 C. Samuel

Respondents

Writ Appeal filed under Clause 15 of the Letters Patent challenging the
order dated 06.04.2022 passed in W.P. No.4317 of 2015.

For appellant

Mr. Anand Gopalan
for K. Raja

For R1

Mr. T. Arun Kumar
Addl. Govt. Pleader

For R2

Mrs. Ramapriya Gopalakrishnan



JUDGMENT

For the sake of clarity, the parties will be adverted to as per their rank in this writ appeal.

2 The facts in brief leading to the filing of this writ appeal are as under:

2.1 The second respondent workman was a Conductor in the appellant Transport Corporation. For his alleged failure to issue tickets to three passengers after having collected fare from them, charges were framed against him, which were held to be proved in the domestic enquiry. Eventually, he was dismissed from service by order dated 09.08.2012.

2.2 While so, the appellant Transport Corporation filed a petition in A.P.No.487 of 2012 before the first respondent authority seeking approval of the dismissal of the second respondent workman. The said petition was dismissed *vide* order dated 05.12.2013 on the ground that there was no *prima facie* case before the Enquiry Officer.

2.3 Thereagainst, the appellant Transport Corporation filed a writ petition being W.P.No.4317 of 2015 before a Single Bench of this Court.



2.4 The Single Bench, *vide* order dated 06.04.2022, dismissed the writ petition and directed that an order be passed treating the second respondent workman as being in service without reference to the dismissal order and extend continuity of service together with all service and monetary benefits within a period of four weeks.

2.5 Challenging the aforesaid order dated 06.04.2022 passed by the Single Bench, this writ appeal is preferred by the Transport Corporation.

3 Heard Mr. Anand Gopalan, learned counsel representing Mr. K. Raja, learned counsel on record for the appellant Transport Corporation, Mr. T. Arun Kumar, learned Additional Government Pleader appearing for the first respondent authority and Mrs. Ramapriya Gopalakrishnan, learned counsel for the second respondent workman.

4 Though it has been contended by the second respondent workman that the passengers have not been examined before the first respondent authority, a reading of paragraph 2 of the order passed by the Single Bench would make it clear that Management Witnesses have gone to the witness box to speak about the charges. That apart, there is no need for a direct eyewitness in this regard and even hearsay evidence is also admissible in a domestic enquiry. Hence, the contention



of the second respondent workman that non examination of passengers is fatal,
does not cut ice with us.

5 However, with regard to delay in filing the approval petition, it was contended by Mrs. Ramapriya Gopalakrishnan, learned counsel for the second respondent workman, that the approval petition was filed only on 16.08.2012 before the first respondent authority when the dismissal order was passed on 09.08.2012 itself. This contention was refuted by Mr.Anand Gopalan, learned counsel for the appellant Transport Corporation contending that the dismissal order dated 09.08.2012 was despatched and the same was received by the first respondent authority on 16.08.2012; however, the first respondent authority, having accepted the contention of the appellant Transport Corporation that the approval petition has been filed within time, there is no need for the Single Bench to interfere with the order of the first respondent authority and hence, the order of the Single Bench is incorrect.

6 We called for the records from the first respondent authority. From the records, it is manifest that the approval petition has been received by the first respondent authority only on 16.08.2012 and there is no proof as to when the dismissal order dated 09.08.2012 passed by the appellant Transport Corporation was despatched. Hence, we are of the view that the approval petition has been



W.A. No.1112 of 2023

filed only on 16.08.2012 and not on 09.08.2012, as contended by the learned counsel for the appellant Transport Corporation and the finding of the first respondent authority, to that extent, is interfered with.

7 During the course of the arguments, the second respondent workman filed an affidavit dated 04.07.2023 stating that he is willing to give up all the monetary benefits, including backwages, and that the entire period of his service may be counted as continuous for all benefits. Further, according to him, who was present in the Court, he is willing to give up even continuity of service, in case, he is provided permanent employment with effect from a specific date.

8 In view of the above verbal submission of the second respondent workman and taking note of the affidavit filed by him, it is directed that the appellant Transport Corporation shall provide permanent employment to the second respondent workman with effect from 01.08.2023 and the entire period of service till 31.07.2023 shall not be treated as continuous one for calculating service benefits.

This writ appeal is disposed of in the above terms. No costs. Connected C.M.P. is closed.

(S.V.N., J.) (K.R.S., J.)
10.07.2023

cad

Note to Office: Issue order copy by 14.07.2023



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S. VAIDYANATHAN, J.

and

K. RAJASEKAR, J.

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To

The Special Deputy Commissioner of labour
DMS Compound
Anna Salai
Chennai

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