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W.A.Nos. 630 and 486 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

W.A.Nos.630 and 486 of 2023 and
C.M.P.Nos.6200 and 4584 of 2023

Tamil Nadu State Transport Corporation
Salem, Ltd.,
Rep. by its Managing Director,
No.12, Ramakrishna Road,
Salem- 636 007.

..

Appellant in both
Appeals.

-VS-

1. The Presiding Officer,
Labour Court,
Salem.

2. N.Rajendran

..

Respondents in both
Appeals.

Writ Appeals filed under Clause 15 of Letters Patent Act, to set aside the common order dated 21.01.2022 passed by this Court in W.P.Nos.22737 of 2012 and 9913 of 2011.



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W.A.Nos. 630 and 400 of 2022

For Appellant : Mr.A.Sundara Vadhanan
(in both Appeals)
For Respondents : R1- Labour Court
M/s.S.Girija (R2)

COMMON JUDGMENT

These Writ Appeals have been preferred by the Appellant to set aside the common order dated 21.01.2022 passed by this Court in W.P.Nos.22737 of 2012 and 9913 of 2011, in dismissing W.P.No.9913 of 2011 filed by the Management and allowing W.P.No.22737 of 2012 filed by the Workman.

2. According to the 2nd Respondent/Workman, he was born on 27.06.1965, he began his school education in Corporation Middle School, Salem and completed 5th Standard on 10.05.1976 and thereafter, completed 8th standard on 01.06.1978 and promoted to the ninth standard on 25.05.1980. Due to his family circumstances, he could not pursue his studies and therefore, started searching for a job. Since the Workman has got valid driving licence and registered his name in the Employment Exchange, he was appointed as a Driver in the Appellant/Corporation on 26.05.1977 at Salem, with the initial remuneration of Rs.110/- per day and after completion of 240 days, his services were regularised vide order dated 21.05.1998.



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3. Whiles, the Workman received a Show Cause Notice dated 14.06.1999 from the Appellant alleging that he secured the job by producing bogus school certificate. Though the Workman sought time to produce school records, he was dismissed from service on 23.08.1999 without conducting any enquiry and without giving any opportunity of hearing to put forth his case, which resulted in raising a dispute before the Labour Court in I.D.No.165 of 2005. The Labour Court after analysing the evidence on record, came to the conclusion that the Workman has not voluntarily submitted bogus certificate relating to his educational qualification and therefore, his termination is illegal and thereby, the Workman was directed to be reinstated in service with 25% of the backwages vide order dated 13.10.2009.

4. Challenging the order of reinstatement, the Appellant/Transport Corporation filed W.P.No.9913 of 2011 and challenging the denial of 75% backwages the Workman filed W.P.No.22737 of 2012. The learned Single Judge, vide common order dated 21.01.2022, dismissed the Writ Petition filed by the Management and allowed the Writ Petition filed by the Workman. Aggrieved by the same, the present Appeals have been preferred by the Management.

5. Heard both sides and perused the records.



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6. From Exs.W12 and Ex.W13- Particulars in record sheet register copies, it is clearly seen that the Workman Rajendran left the school after passing 6th Standard on 30.08.1978 and readmitted in the same school on 10.09.1978. Though, it has been argued by the learned counsel appearing for the 2nd Respondent/Workman that admission number and readmission number are quite different, from the records produced before the Court, the employee's admission number in the 6th standard is 3845 and readmission number is 4449.

7. By placing reliance on the aforesaid documents, it has been contended by the learned counsel for the Appellant/Transport Corporation that there is no possibility of admission of 600 students in the School, within a period of one month.

8. We are not inclined to accept the said submission of the learned counsel for the Appellant for the reason that the Appellant has not contested the same either before the learned Single Judge or before the Labour Court. However, Ex.M6-Letter of the District Primary Educational Officer, Salem addressed to the General Manager, TNSSTC, Dharmapuri has been sent without verifying the subsequent documents showing the alleged readmission of the Workman on 10.09.1978. Though in the school records, the



name of the Workman, his father's name as well as his Date of Birth are similar, the marks secured by the Workman in 7th standard has not been similarly reflected in the subsequent entry, when the Workman was readmitted in the school.

9. It is no doubt true that this Court cannot re-appreciate the evidence and come to the conclusion with regard to the finding of fact that has been rendered by the Labour Court. But, this Court is empowered to interfere with the award if the finding of the Labour court is perverse, moreso based on the documentary evidence. Though, it has been stated that the Workman was promoted and left the school on 30.08.1978, in the subsequent entry, it is seen that he obtained Transfer Certificate only on 25.05.1980 as could be seen from Ex.W13. Therefore, Ex.W13 is completely fabricated and as stated supra, marks obtained by the student in the 7th standard have not been similarly reflected in both entries. Apparently, Ex.W13 would not have been available, had Ex.M6- letter dated 22.05.1999 not been sent by the District Primary Educational Officer, Salem to the Appellant Corporation stating that the Workman left the school as a student on 30.08.1978.

10. The Labour Court granted 25% of the backwages while interfering with the order of dismissal from service. Though, in the present facts and circumstances of the



case, the employer has not conducted any enquiry, only after issuance of Showcause notice and after getting the reply from the Workman, he was dismissed from service.

That apart, the employer has proved their case before the Labour Court.

11. Hence, we are of the view that the learned Single Judge ought not to have granted 100% backwages by allowing the Writ Petition filed by the Workman. Once the dismissal is held to be bad, subsequent reinstatement should be granted, which is a normal rule. But, there are a catena of cases where granting of backwages is not automatic. The present case pertains to production of bogus certificate by the Workman vide Ex.W13. The Hon'ble Apex Court in the decision of ***Kerala Solvent Extractions Ltd. Vs A. Unnikrishnan and Ors.*** reported in ***2006 (13) SCC 619*** has categorically held that by producing a false certificate, a person cannot get employment. In the present case on hand, on analysing both the oral and documentary evidence, we are of the view that the Workman has produced a bogus certificate to gain employment.

12. In view of the same, the order of the learned Single Judge is liable to be interfered with. Accordingly, the common order dated 21.01.2022 passed by the learned Single Judge in W.P.Nos.9913 of 2011 and 22737 of 2012 is set aside and the



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Award of the Labour Court dated 13.10.2009 is also set aside. The Workman had the benefit of backwages under Section 17 B under the Industrial Disputes Act, 1947 during the pendency of the proceedings before this Court and the wages paid u/s 17-B of the Act to the Workman shall not be returned to the Appellant/Transport Corporation.

In the result, these Writ Appeals are allowed as indicated above. Consequently, connected Miscellaneous Petitions are closed.

[S.V.N., J.] [R.K.M., J]
20.03.2023

Index: Yes / No
Internet: Yes / No
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To

The Presiding Officer,
Labour Court,
Salem.

S. VAIDYANATHAN,J.,
and



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R.KALAIMATHI.,J

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