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W.P.Nos.17933 of 2017 and 4917 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.17933 of 2017 and 4917 of 2019

And

W.M.P.Nos.5607, 5608 and 12792 of 2019

- 1.K.Thirumalaisamy (Deceased)
- 2.A.Palaniammal
- 3.T.Dhivakaran
- 4.T.Yuvaraj

(P2 to P4 substituted as LR of deceased
first petitioner vide order dated
14.08.2023 made in WMP.5196/2022
in WP.17933/2017 by MDIJ) ... Petitioners in W.P.17933/2017

Tamil Nadu State Transport Corporation
(Coimbatore) Ltd.,
Erode Region,
Chennimalai Road,
Erode.

Rep. by it's

The General Manager

... Petitioner in W.P.4917 of 2019

Vs.

- 1.The Labour Officer
Erode District,
Erode.

- 2.The Managing Director
Tamil Nadu State Transport Corporation
(Coimbatore) Ltd.
37, Mettupalayam Road,
Coimbatore 641 043.



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3.The General Manager
Tamil Nadu State Transport Corporation
(Coimbatore) Ltd.,
Erode Regional Office,
45, Chennimalai Road,
Erode.

... Respondents in W.P.17933/2017

1.Thirumalaisamy (Died)
2.T.Yuvaraj
3.T.Dhivakaran
4.A.Palaniammal

(R2 to R4 impleaded vide order dated
14.08.2023 made in WMP.23387/2021
in WP.4917/2019 by MDIJ) ... Respondents in W.P.4917 of 2019

Prayer in W.P.No.17933 of 2017:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records connected with the orders dated 08.06.2015 passed on the Appeal by the second respondent in his proceedings Pa.No.1/D8/98/Law/Coimb/ED/2012 confirming the original order of dismissal dated 24.04.2015 passed by the third respondent in his proceedings Pa.No.1635/D8/98/Law/ TNSTC/Coimb/ED/2012, quash the same and also directing the respondents to reinstate the petitioner as Driver with continuity of service, backwages and all other attendant service benefits.

Prayer in W.P.No.4917 of 2019:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the order dated 12.10.2018 made in REP.No.195 of 2015 on the file of the Labour Court, Salem.



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W.P.Nos.17933 of 2017 and 4917 of 2019

For Petitioners : Ms.S.Girija
in W.P.No.17933/2017
Mr.M.Murali Vinoth
in W.P.No.4917 of 2019

For Respondents : R1 – Labour Court
Mr.M.Murali Vinoth for R2 and R3
in W.P.No.17933/2017
Mr.Paramasiva Doss
in W.P.No.4917 of 2019

COMMON ORDER

W.P.No.17933 of 2017 has been filed by the Workman seeking to quash the order dated 08.06.2015 passed on the Appeal by the second respondent in his proceedings Pa.No.1/D8/98/Law/Coimb/ED/2012 confirming the original order of dismissal dated 24.04.2015 passed by the third respondent in his proceedings Pa.No.1635/D8/98/Law/ TNSTC/Coimb/ED/2012 and to direct the respondents to reinstate the petitioner as Driver with continuity of service, backwages and all other attendant service benefits.

2.W.P.No.4917 of 2019 has been filed by the Management seeking issuance of Writ of Certiorari calling for the records of the order dated 12.10.2018 made in REP.No.195 of 2015 on the file of the Labour Court, Salem.

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3. Since the issue involved in these writ petitions are interrelated, they are heard together and disposed of by way of a common order. For brevity, the deceased first petitioner in W.P.No.17933 of 2017 would be hereinafter referred to as 'Workman' and the petitioner in W.P.No.4917 of 2019 would be hereinafter referred to as 'Management'.

4. The facts of the case is that the Workman joined the Management as Driver and was dismissed from service vide order dated 16.05.1996 for unauthorized absence from 30.11.1995 to 12.12.1995, 09.01.1996, 10.01.1996 and 13.01.1996 to 21.01.1996. Challenging the dismissal order, the Workman raised industrial disputes in I.D.No.76 of 1996 and the Labour Court, Salem passed an award dated 30.04.1997 directing the Management to reinstate the Workman with 25% backwages and continuity of service.

5. Aggrieved by the award dated 30.04.1997, the Management preferred W.P.No.2906 of 1998 and this Court vide order dated 30.03.2007 modified the award dated 30.04.1997 and directed the Management to reinstate the Workman with continuity of service from



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16.09.1996 but without backwages till 30.04.1997 and to pay backwages and other benefits from 01.05.1997. Aggrieved by the same, the Management preferred W.A.No.730 of 2008 and the Hon'ble Division Bench of this Court vide judgment dated 11.09.2008 disposed of the writ appeal by directing reinstatement of the Workman, but the backwages for the period between 01.05.1997 and 23.08.2008 shall be at the rate of 50% after giving credit to whatever payment made as last drawn wages under Section 17 (b) of the Industrial Disputes Act. The Workman was permitted to join duty on 25.12.1998.

6. According to the Management, the Workman absented for duty from 21.01.2012 onwards and hence he was dismissed from service on 24.04.2015. On 16.11.2015, the Workman filed REP.No.195 of 2015 before the Labour Court, Salem seeking computation of appropriate wages payable to him for the period from 01.05.1997 to 23.08.2008 and vide order dated 12.10.2018, the said petition was allowed by the Labour Court. Aggrieved by the same, the Management filed W.P.No.4917 of 2019.

7. According to the Workman, he submitted fitness certificate and



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joining report to the Management as early as on 18.02.2012, however, he was not given duty permit till 16.12.2012 and hence, he could not join duty and hence he approached this Court by filing writ petition in W.P.No.28510 of 2013 and when the said writ petition was pending, the Management concluded enquiry and the Enquiry Officer submitted exparte enquiry report. The exparte enquiry report was served on the Workman and the Workman submitted his objections, pursuant to which, the Management sent letters dated 04.06.2014, 25.07.2014, 14.08.2014 and 17.10.2014 directing the Workman to rejoin duty. Consequent to the letter dated 04.06.2014, the Workman appeared before the General Manager of the State Transport Corporation and he insisted the Workman to withdraw W.P.No.28510 of 2013; to submit fresh joining report with new medical certificate for the entire period and since the Workman could not comply with the said conditions, he was dismissed from service with effect from 24.04.2015. Aggrieved by the same, the Workman preferred appeal before the Managing Director of the State Transport Corporation and the said appeal was rejected. Aggrieved by the same, the Workman has filed W.P.No.17933 of 2017.

8.The learned counsel appearing for the Management submitted



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that without any calculation memo, the Labour Court allowed REP.No.195 of 2015 and directed the Management to deposit Rs.30Lakhs with 9% interest within one month in default to pay 12% interest and also awarded Rs.10,000/- as costs which is un-sustainable one. The Hon'ble Division Bench of this Court vide judgment dated 11.09.2008 made in W.A.No.730 of 2008 apart from directing to reinstate the Workman categorically held and that the backwages for the period between 01.05.1997 and 23.08.2008 shall be at the rate of 50% after giving credit to whatever payment made as last drawn wages under Section 17 (b) of the Industrial Disputes Act. However, the Labour Court while deciding REP.No.195 of 2015 has hastily taken a decision as if the Management has to pay Rs.30Lakhs to the Workman.

9.This Court finds some force in the submission made by the learned counsel appearing for the Management. Hence, this Court directs the Management to disburse 50% backwages for the period between 01.05.1997 and 23.08.2008 after deducting the amount already paid by way of 17-B wages to the legal heirs of the Workman, within a period of six weeks from the date of receipt of a copy of this



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order. The order dated 12.10.2018 made in REP.No.195 of 2015 by the Labour Court, Salem is modified to the above extent.

10.It appears that pursuant to the judgment of the Hon'ble Division Bench of this Court dated 11.09.2008 made in W.A.No.730 of 2008, the Workman was reinstated in service on 25.12.1998. However, the Workman again absented for duty from 21.01.2012 onwards and hence he was dismissed from service on 24.04.2015.

11.The learned counsel appearing for the Workman submitted that earlier the Workman was dismissed from service on the ground of unauthorized absence and that was set aside by the Labour Court. Again the Workman was dismissed from service on the ground of unauthorized absence with effect from 24.04.2015. The learned counsel further submitted that the Workman absented from duty purely on medical grounds and he submitted fitness certificate and joining report to the Management as early as on 18.02.2012, however, he was not given duty permit and hence, he could not join duty. Aggrieved by the dismissal order, the Workman preferred appeal before the Managing Director of the State Transport Corporation,



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however the said appeal was rejected, which is not sustainable one.

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12.Perusal of records disclose that the Workman joined the Management as Driver and was dismissed from service vide order dated 16.05.1996 for unauthorized absence. Challenging the dismissal order, the Workman raised industrial disputes in I.D.No.76 of 1996 and the Labour Court, Salem passed an award dated 30.04.1997 directing the Management to reinstate the Workman with 25% backwages and continuity of service. Aggrieved by the award dated 30.04.1997, the Management preferred W.P.No.2906 of 1998 and this Court vide order dated 30.03.2007 modified the award dated 30.04.1997 and directed the Management to reinstate the Workman with continuity of service from 16.09.1996 but without backwages till 30.04.1997 and to pay backwages and other benefits from 01.05.1997.

13.Aggrieved by the order of this Court dated 30.03.2007 made in W.P.No.2906 of 1998, the Management preferred W.A.No.730 of 2008 and the Hon'ble Division Bench of this Court vide judgment dated 11.09.2008 disposed of the writ appeal by directing reinstatement of the Workman, but the backwages for the period between 01.05.1997



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and 23.08.2008 shall be at the rate of 50% after giving credit to whatever payment made as last drawn wages under Section 17 (b) of the Industrial Disputes Act. Thereafter the Workman was permitted to join duty on 25.12.1998.

14. Again the Workman was dismissed from service on 24.04.2015 on the ground of unauthorized absence. For unauthorized absence, the order of dismissal is highly disproportionate. Though the remedy available to the Workman is to raise industrial dispute, the Workman has filed this writ petition and since the same is pending from the year 2017, this Court is not inclined to direct the Workman to raise industrial dispute. Further the Workman has passed away during the pendency of this writ petition.

15. It has been the consistent view of the Courts that it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere in the same in exercise of powers under Article 226 of the



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Constitution. In **Prem Nath Bali – Vs - High Court of Delhi (2015 (16) SCC 415)**, the Hon'ble Supreme Court held as under :-

"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what



was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."

(Emphasis Supplied)

16.From the ratio laid down by the Hon'ble Apex Court above, it is crystal clear that the power to interfere with the punishment should be exercised only if the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges and, thereby, shocking the conscience of the Court or if it is in contravention of the Rules.

17.In the case on hand, the punishment of dismissal from service passed on the employee is not only disproportionate, but it shocks the conscience of this Court and necessarily the said punishment deserves interference. Considering the gravity of the charges, this Court is of the considered view that punishment of stoppage of increment for one year with cumulative effect would be just and reasonable.



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18. Accordingly, the punishment of dismissal from service is modified into one of stoppage of increment for a period of one year with cumulative effect. Since the Workman has died, in order to strike the balance in between the parties, this Court directs the Management to settle all the terminal benefits due to the Workman, except backwages, in favour of his legal heirs. The Workman is not entitled to backwages. However, liberty is granted to the legal heirs of the Workman to file petition under Section 33(C) (2) of the Industrial Disputes Act with regard to the balance amount, if any, due to the Workman as per the award dated 30.04.1997 made in I.D.No.76 of 1996 by the Labour Court, Salem, as modified by the Hon'ble Division Bench of this Court vide judgment dated 11.09.2008 in W.A.No.730 of 2008 and as modified by this Court in this order.

19. These writ petitions are allowed on the above terms. No costs. Consequently, the connected miscellaneous petitions are closed.

14.08.2023

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

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M.DHANDAPANI,J.
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