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W.P.Nos.18633 and 16793 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2023

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THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.Nos.18633 and 16793 of 2017

and

W.M.P.Nos.20176, 18238 and 18239 of 2017

1. The Management,
Tamil Nadu State Transport Corporation
(Salem) Limited, Represented by its General Manager,
No.12, Ramakrishna Road, Salem – 636 007. ... 1st Petitioner in
WP.No.18633
of 2017

2. T.Gunasekaran ... 1st Petitioner in
WP.No.16793 of 2017

Vs.

1. The Special Deputy Commissioner of Labour,
DMS Campus, Anna Salai,
Chennai.

2. T.Gunasekaran ... 1st & 2nd Respondents in
WP.No.18633 of 2017

3. The Management of Tamilnadu State
Transport Corporation (Salem Division) Limited,
Represented by its General Manager,
No.12, Ramakrishna Road,
Salem – 636 007. ... sole Respondent in
WP.No.16793 of 2017



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Prayer in W.P.No.18633 of 2017 : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the 1st Respondent made in Approval Petition No.208 of 2010 dated on 02.06.2016 and quash the same.

Prayer in W.P.No.16793 of 2017 : Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the Respondent to allow the Petitioner to report for work in the light of the order of the Special Deputy Commissioner of Labour, Chennai made in A.P.No.208 of 2010 rejecting approval of the order of the Respondent dated 30.11.2010 and pay him all the monetary and other service benefits with effect from 30.11.2010 to till the date of payment award costs.

In W.P.No.18633 of 2017

For Petitioner : Mr.R.Babu

For R1 : Mr.M.S.Prem Kumar
Government Advocate

For R2 : Mr.S.Ayyathurai

In W.P.No.16793 of 2017

For Petitioner : Mr.S.Ayyathurai

For Respondent : Mr.R.Babu



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COMMON ORDER

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2. The petitioner in W.P.No.18633 of 2017 is hereinafter called as management and the petitioner in W.P.No.16793 of 2017 is hereinafter called as workman.

3. The workman joined the services of the management as a Driver during the year 1994. Due to his unauthorised absence, the management issued charge memo against the workman and conducted disciplinary proceedings. Since the charges were proved against the workman, he was dismissed from service vide dismissal order dated 30.11.2010. Seeking to get approval of the said dismissal order, the management has filed an approval petition u/s.33(2)(b) of the Industrial Disputes Act, 1947 in A.P.No.208 of 2010 before the Labour Commissioner, who in turn rejected the said application vide order dated 02.06.2016. Challenging the same the management has filed the writ petition in W.P.No.18633 of 2017. The workman has also filed another writ petition in W.P.No.16793 of 2017



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seeking to direct the management to allow the workman to report to duty in the light of the order passed by the Labour Commissioner in A.P.No.208 of 2010 dated 02.06.2016.

4. Learned counsel for the management submits that during the pendency of the writ petition filed by the management, the workman was reinstated in service on 01.05.2022 and the order of reinstatement was passed on 16.04.2022, pursuant to which the workman joined the services of the management on 01.05.2022 and the last drawn salary drawn by the workman was also fixed by the management. Hence, the workman is not entitled for any backwages.

5. Learned counsel appearing for the workman submits that on the sole ground that the management has not satisfied the procedure prescribed by the Apex Court in the case of ***Lalla Ram Vs. Managment of D.C.M. Chemicals Works Ltd. & Ors.*** reported in ***AIR 1978 SC 1004***, the Labour Commissioner has rejected the approval petition filed by the management. He further submitted that though the workman was reinstated in service in the year 2022, he is entitled for backwages for his non-employment period.



Accordingly, he prayed for passing appropriate orders.

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6. Heard the learned counsel appearing on either side and perused the materials placed on record.

7. Admittedly the workman was dismissed from service due to his unauthorised absence and when the management filed an application before the Labour Commissioner seeking to approve the dismissal order passed the management, the same was rejected on the ground that though the workman suffered illness, however, without referring the workman to medical board the management abruptly dismissed the workman from service which is against the principles of natural justice and also that the management has not satisfied the procedure prescribed by the Apex Court in the case of **Lalla Ram** (supra).

8. It is pointed out by the learned counsel for the management that during the pendency of the writ petition filed by the management, the workman was reinstated in service. Subsequently, the workman filed an



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application u/s.17B of the Act, in which no order has been passed. Though the workman was terminated in the year 2010, however, the workman is entitled for backwages for his non-employment period. Hence, this Court is inclined to modify the impugned order passed by the Labour Court as hereunder:

(i) The management is directed to pay 25% backwages to the workman within a period of six (6) weeks from the date of receipt of a copy of this order. It is made clear that, whatever the amount paid by way of 17B petition, shall be deducted from the 25% backwages payable to the workman.

9. With the above directions and observation, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

09.08.2023

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Speaking Order : Yes/ No
Index : Yes/ No
NCC : Yes/No



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To
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M.DHANDAPANI, J.

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