



W.P.No.28251 of 2017

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2023

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

W.P.No.28251 of 2017
and WMP.No.30368 of 2017

The Management
Tamil Nadu State Transport Corporation,
(Coimbatore) Limited,
Chennimalai Road, Erode.

... Petitioner

Vs.

1. The Presiding Officer,
Labour Court, Salem.

2. C.Murugesan

...Respondents

The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari after calling for the records relating to the order dated 17.10.2016 passed in ID. No.4 of 2009 on the file of the Labour Court, salem and quash the same as being illegal, arbitrary and unconstitutional.

For Petitioner : Mr.K.J.Sivakumar

For Respondents : Mr.T.S.Sivagnanasambandam R2

R1- Court



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ORDER

The petition has been filed seeking to quash the order dated 17.10.2016 passed in ID. No.4 of 2009 on the file of the Labour Court, salem.

2. It is the case of the petitioner that the second respondent was joined as conductor in the petitioner Corporation on 17.05.1986. While he was working as Conductor in the bus bearing registration No.TN 33 1734 in the route of Gopi to Kovai at Gopi Division, had misappropriated a sum of Rs.4,398/- by falsification of the invoices for the period from 01.08.2004 to 30.09.2004. Subsequently, he himself admitted the offence and voluntarily compensated the loss of Rs.4398/- on 22.12.2004. The second respondent herein committed several offences during his service and got punishment. After due enquiry, the second respondent herein was dismissed from service vide order dated 06.06.2005 with effect from 08.06.2005 and the same was approved vide order dated 31.07.2008 in approval petition No.74 of 2005. Challenging



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the said dismissal order, the second respondent herein had filed ID No.4 of 2009 seeking to quash the dismissal order dated 08.06.2005 and for reinstatement into service with continuity of service, back wages and other benefits. The first respondent had allowed the ID on 17.10.2016 directing the management to pay 50% backwages for the period from the date of dismissal till the date of retirement I.e. 08.06.2005 to 14.04.2013. As against the same, the present writ petition has been filed.

3. Learned counsel for the petitioner submitted that the second respondent has committed misappropriation of Rs.4398/- of the petitioner amount and submitted the bogus invoices before the petitioner. The said fact has admitted by the second respondent before the enquiry officer. Further the said misappropriated amount has been deposited by the second respondent. The impugned order of the Labour Court by setting aside the dismissal from 08.06.2005 vide order dated 06.06.2005 and directing the petitioner Corporation herein to pay 50% backwages for the period from the date of dismissal till the date of retirement and other benefits is erroneous, contrary to the facts and law



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and illegal. The Labour Court ought to have appreciated the fact that the dismissal of the second respondent herein was approved by the authority vide order dated 31.07.2008.

4. The learned counsel for the second respondent submitted that though the petitioner management claimed that the second respondent prepared bogus invoices for the period from 01.08.2004 to 30.09.2004 and misappropriated for a sum of Rs.4,398/- and the said fact is not true. The second respondent has never admitted his guilt before the enquiry officer. The petitioner was forced to repay such amount. Mere repayment of the misappropriated money is not amount to admission of his guilt. Further the petitioner claimed that the second respondent has submitted the bogus invoices, which was not established before the Labour Court. Except marking some payment receipts, the petitioner has not marked any sufficient document and not examined any witnesses to prove the guilt as against the second respondent. Considering all these facts, the Labour has passed award in favour of the second respondent, which does not warrant any interference. Accordingly, he prays for dismissal of



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5. Heard the learned counsel for the petitioner and the learned counsel for the second respondent and perused the materials available on record.

6. The facts of the case are not in dispute. Admittedly, the second respondent joined as conductor in the petitioner management. The allegation made against the second respondent is that he prepared a bogus invoices and misappropriated a sum of Rs.4398/- for which, a charge memo was issued. After conducting enquiry, he was dismissed from service on 06.06.2005. Thereafter, approval petition was also allowed in favour of the petitioner. Aggrieved over the same, the second respondent raised an industrial dispute before the Labour. Though the petitioner management claimed that the second respondent admitted his guilt and repaid the misappropriated amount of Rs.4,398/- vide letter dated 22.12.2004. However, the said letter was not marked before the labour Court to prove the guilt against the second respondent. Further the



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petitioner management has not taken any effective steps to mark documents and not examined any witnesses. In the absence of the documents and witnesses, the Labour Court arrived at a fair conclusion that the petitioner was directed to reinstate the second respondent with 50% backwages and other benefits, which cannot be interfered with.

7. Though the Labour Court awarded for reinstatement of service, however, whether the back wages of 50% awarded by the Labour Court is justified or not. This Court perused the claim petition. On perusal of the same, it is seen that the petitioner has not averred that the second respondent was gainfully employed during the non-employment period. The said fact has not demonstrated before the Labour Court. The Labour Court should adjudicate the particular issue before awarding the backwages and the said issue was not properly adjudicated before the Labour Court. In the absence of any averments, the Labour Court passed an award for 50% back wages, which is not sustainable one. Hence, awarding 50% back wages in favour of the second respondent is erroneous and the same is alone set aside and other benefits awarded by



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the Labour Court is confirmed. It appears that during pendency of the writ petition, the second respondent has attained superannuation.

8. For the aforesaid discussion, the writ petition stands disposed of. The petitioner management is directed to settle the entire terminal benefits to the second respondent without back wages within a period six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

17.08.2023

rli

Index: yes / no

Internet : yes / no

Speaking / Non speaking order

To

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