



WEB COPY



W.P.No.19435 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2023

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

W.P.No.19435 of 2017

and

WMP.Nos.20959 of 2017, 7832 of 2018 & 23371 of 2021

The Management,
Tamil Nadu State Transport Corporation (Salem) Ltd.,
Rep. by its General Manager,
No.12, Ramakrishna Road, Salem – 636 007.

...Petitioner

Vs.

1. The Presiding Officer,
Labour Court,
Salem.

2. S.Jayakuamr

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records pertaining to the order dated 22.06.2016 passed by the 1st respondent in I.D No.7 of 2013 and quash the same.

For Petitioner : Mr.R.Babu

For Respondents : Mr.K.V.Shanmuganathan, for R2



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ORDER

This Writ petition has been filed seeking quashment of the order of the 1st respondent dated 22.06.2016 made in I.D No.7 of 2013.

2. The case of the petitioner is that the 2nd respondent was working as driver at Mettur Branch of the petitioner corporation. For unauthorised absence, the petitioner corporation initiated disciplinary proceedings as against the 2nd respondent and the same ended in dismissal and the dismissal order was passed on 13.09.2012. Challenging the same, the 2nd respondent raised an Industrial Dispute in I.D.No.7 of 2013 before the 1st respondent, who in turn set aside the order of dismissal passed by the petitioner management, vide present impugned award dated 22.06.2016, and further directed the petitioner management to reinstate the 2nd respondent with 40% back wages, continuity of service and other benefits. Challenging the same, the petitioner has come up with this Writ petition.

3. Learned counsel for the petitioner submitted that, immediately after passing of the impugned award, the petitioner management decided to



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reinstate the 2nd respondent and to that effect a letter was also sent to the 2nd respondent, and even today, the petitioner management is ready to reinstate him, however, the 2nd respondent is the one who has not turned up for duty. He further submitted that, the 2nd respondent has not pleaded that he was not gainfully employed during the non-employment period, while so, in the absence of any such pleadings, the 1st respondent awarded 40% back wages, which is wholly unsustainable. Hence, he prayed for appropriate orders.

4. Learned counsel appearing for the 2nd respondent submitted that, though the 2nd respondent has not averred anything with regard to non employment in the claim petition, the 1st respondent is vested with the power to award back wages and for mere unauthorized absence, imposing the punishment of dismissal from service is highly disproportionate and the 1st respondent, after taking into consideration all the above said facts, passed the present impugned award, which does not warrants interference of this Court.

5. Heard learned counsel on either side and perused the materials available on record.



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6. Though very many grounds have been raised by the learned counsel on either side, at the time of arguments, the learned counsel for the petitioner management fairly submitted that, the petitioner management is ready to reinstate the 2nd respondent. Hence, the only issue arises for consideration in the present Writ petition is that, whether the 40% back wages awarded by the 1st respondent is reasonable or not.

7. As rightly pointed out by the learned counsel for the petitioner management, though the 2nd respondent did not specifically aver whether he is gainfully employed during the non-employment period, the Labour Court awarded 40% back wages, and in the absence of any material evidence or pleadings with regard to not being gainfully employed during the non-employment, awarding back wages is not sustainable. Hence, to that extent, this Court is inclined to modify the impugned award.

8. Accordingly, this Writ petition is disposed of by modifying the award passed by the 1st respondent with the following directions :-



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WEB COPY (i) The petitioner management is directed to reinstate the 2nd respondent back into service without any back wages within a period of two weeks from the date of receipt of a copy of this order.

(ii) The 2nd respondent is entitled for continuity of services and other attendant and terminal benefits.

(iii) The petitioner management shall not recover the amount, whatsoever paid in favour of the 2nd respondent by way of 17B wages.

(iv) No costs. Consequently, the connected Miscellaneous petitions are closed.

02.08.2023

skt

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

To

The Presiding Officer,
Labour Court, Salem.

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