



W.A. No. 3675 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2023

CORAM

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MRS. JUSTICE R. KALAIMATHI

WA. No. 3675 of 2014

&

C.M.P. No. 23391 of 2019

The Management of Tamilnadu State -
Transport Corporation (Salem Division I)
Ltd.,
12, Ramakrishna Road,
Salem – 636 007.

..Appellant

Vs.

P. Sekar

..Respondent

Prayer: Writ Appeal as against the order dated 16.11.2012 passed in W.P.

No. 31296 of 2007.



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For Appellant :: Mr.R. Babu

For Respondent :: Mr.S. Ayyathurai

J U D G M E N T

S. VAIDYANATHAN,J.

AND

R. KALAIMATHI,J.

The present appeal has been preferred as against the order dated 16.11.2012 passed in W.P. No. 31296 of 2007.

2. The respondent/workman joined the service of the appellant Transport Corporation as a Driver on 25.01.1991. The respondent had complained about the Time Keeper, one Nagaraj, that he was demanding bribe and accepting money from workers (Conductors and Drivers) for allotment of routes and that he was abusing the workers in filthy language if they did not oblige him. While so, the respondent was issued with a charge memo in August, 2002 by the Management alleging that he had written abusive and derogatory remarks against Thiru Nagaraj in



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the Notice Board and caused confusion among the workers spreading false information and thereby brought bad name to the appellant Corporation.

After a detailed enquiry into the charges, the respondent was dismissed from service on 14.08.2003. The respondent raised an industrial dispute before the Labour Court, Salem in I.D. No. 492 of 2004. The Labour Court, after analysing the evidence on record, came to the conclusion that the charges are serious in nature and that the punishment imposed by the Management does not require interference and dismissed the I.D. Aggrieved by the same, the employee approached this Court by filing W.P. No. 31296 of 2007, which was disposed of on 16.11.2012 by modifying the punishment of dismissal from service into one of stoppage of increment for a period of two years without cumulative effect. It was made clear that the respondent would not be entitled to any backwages for the period in question and the Management was directed to reinstate the respondent. Challenging the said order, the appellant Corporation has filed this intra-court appeal.

3. The learned Single Judge after analysing the materials before him came to the conclusion that though the charge against the employee



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relates to certain allegations against the Time Keeper using unparliamentary words, there appears to be no complaint made before the Management by the officer against whom such remarks were made. The learned Single Judge has also taken note of the fact that there is a categorical evidence of the co-worker that the Time Keeper had been demanding money and that said Nagaraj was not examined either before the Enquiry Officer or before the Labour Court. The learned Single Judge had also observed that there were a number of complaints against the Time Keeper and that no action was taken against the said Time Keeper Nagaraj by the Management. The learned Single Judge has also stated that according to the respondent/employee, he wanted to ventilate the grievance of workers and he has admitted that he had made remarks against Nagaraj, who was not examined as a witness. Taking note of the totality of circumstances, the learned Single Judge came to the conclusion that the punishment imposed on the employee was shockingly disproportionate to the misconduct alleged. Therefore, the learned Single Judge, set aside the award passed by the Labour Court with respect to punishment and modified the punishment of dismissal from service into one of stoppage of increment for a period of two



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years without cumulative effect apart from depriving backwages and directing the reinstatement of the employee on or before 31.12.2012.

4. No counsel had entered appearance for the Corporation before the learned Single Judge and the learned Single Judge had taken efforts to go through the papers produced before him and interfered with the punishment. This Court has got ample powers to modify the punishment exercising the powers under Article 226 of the Constitution of India if the punishment imposed on the employee for the misconduct is shockingly disproportionate. The learned Single Judge, while doing so, has reproduced the following observation made by the Hon'ble Apex in the judgment in ***Harjinder Singl V. Punjab State Warehousing Corporation*** reported in ***(2010) 3 SCC 192***:

“21. Before concluding, we consider it necessary to observe that while exercising jurisdiction under Articles 226 and/or 227 of the Constitution in matters like the present one, the High Courts are duty-bound to keep in mind that the Industrial Disputes Act and other similar legislative instruments are social welfare legislations and the same are required to be



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interpreted keeping in view the goals set out in the Preamble of the Constitution and the provisions contained in Part IV thereof in general and Articles 38, 39(a) to (e), 43 and 43-A in particular, which mandate that the State should



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secure a social order for the promotion of welfare of the people, ensure equality between men and women and equitable distribution of material resources of the community to subserve the common good and also ensure that the workers get their dues.”

5. In the present case, for the remarks made against the Time Keeper, the respondent/employee has been deprived backwages from 14.08.2003, the date of dismissal till the date of reinstatement, which was to be on or before 31.12.2012. The writ appeal was filed as per the endorsement of the Registry on 16.09.2013 and the same was not brought up for hearing till 2019. In the meantime, the employee was reinstated in February, 2015 and he is still working. The Apex Court, in its decision in ***Gujarat State Road Transport Corporation V. U.A. Malek*** reported in ***(2001) 10 SCC 548*** has held that *once an employee has been reinstated without backwages and when he has worked for nearly 18 years, his service*



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need not be disturbed. In the present case, the employee has been reinstated in 2015 and he is in service for the past 8 years. The Apex Court, in yet another decision in ***Gaukaran Yadav V. State of Chhattisgarh and Others*** reported in **(2017) 14 SCC 281** has held that *in case of violation of Section 25-F of I.D. Act, 1947, reinstatement need not necessarily follow and compensation may be appropriate in certain cases.* However, in that case, pursuant to the award of the Labour Court, the Management had implemented the award and reinstated the employee and he was working. In such circumstance, the Apex Court held that *the workman having been reinstated, ought not to be disturbed at that stage.*

6. Taking note of the aforesaid decisions of the Hon'ble Apex Court and that the Corporation is also facing financial constraint due to Corona from March, 2020 to February, 2022, we are of the view that apart from deprivation of backwages as per the order of the learned Single Judge, we deprive the employee of backwages till the date of reinstatement and deprivation of backwages till the date of reinstatement itself is sufficient punishment. However, the employee would be entitled to



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continuity of service and other attendant benefits. We also make it clear that in view of deprivation of backwages from January, 2013 till the date of reinstatement, there is no need to impose the punishment of stoppage of increment for 2 years without cumulative effect. The order of the learned Single Judge is accordingly modified and the writ appeal is disposed of accordingly. No costs. Connected C.M.P. is closed.

nv

(S.V.N.J.) (R.K.M.J.)
16.03.2023

To
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