



WEB COPY

W.A. No.3582 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. No.3582 of 2019 and C.M.P. No.22999 of 2019

Tamil Nadu State Transport Corporation

(Villupuram Division – I) Ltd.

3/137 Salamedu

Villupuram 605 602

Appellant

v

1 The Presiding Officer
Labour Court
Cuddalore

2 N. Veerasamy (died)

3 Angammal

4 Balaji

Respondents

(RR 3 & 4 brought on record as LR's of the deceased R2 *vide* Court order dated 11.04.2023 made in C.M.P. No.6540 of 2023 in W.A.No.3582 of 2019)

Writ Appeal filed under Clause 15 of the Letters Patent challenging the order dated 08.02.2012 passed in W.P. 13426 of 2002.



For appellant
R1
For RR 3 & 4

Mr. M.Aswin
Labour Court
Mr. K. Arunagiri

JUDGMENT

(delivered by S. VAIDYANATHAN, J.)

This writ appeal is directed against the order dated 08.02.2012

passed by a Single Bench in W.P. No.13426 of 2002.

2 To avoid prolixity, the parties will be adverted to by their rank in this writ appeal.

3 The minimum germane facts required for deciding this case are as under:

3.1 The second respondent workman joined as Conductor in the appellant Transport Corporation on 10.10.1986. He was suspended from service on the ground that he had scolded one Assistant Cook by name Thangavel in choicest epithets and also assaulted him on 18.06.1993 around 3.00 p.m. He was served with a charge memo on 25.06.1993 and a domestic enquiry was conducted on 07.07.1993. On the basis of the enquiry report, he was dismissed from service. On the failure of conciliation proceedings, the second respondent raised an industrial dispute before the first respondent in I.D. No.191 of 1994.



3.2 The first respondent, after analysing the evidence on record and finding that there was contradiction in the statement of witnesses and that the person who was scolded and assaulted, viz., Thangavel, had not given any police complaint and had not submitted any medical proof for having undertaken treatment after being subjected to assault, held that the charges were not proved and as a sequel, the second respondent is entitled to reinstatement of service with full backwages, *vide* award dated 24.07.2001.

3.3 Thereagainst, the appellant filed a writ petition being W.P.No.13426 of 2022 before a Single Bench, which, by order dated 08.02.2012, confirmed the first respondent's award *qua* reinstatement, besides ordering continuity of service. However, as for backwages, the Single Bench, considering the admitted past delinquency of the second respondent and also the punishment suffered by him therefor and on the ground that the said aspect was not considered by the first respondent and citing the trite law that grant of full backwages is not automatic upon reinstatement, reduced backwages to 50%.



3.4 Challenging the aforesaid order passed by the Single Bench, the Transport Corporation has filed this writ appeal.

4 At the outset, it is to be pointed out that after the order passed in the writ petition, the second respondent could not be reinstated in service owing to his attaining the age of superannuation in 2016 and further, he breathed his last on 14.01.2016, *i.e.*, even before the filing of this writ appeal.

5 Mr. Aswin, learned Standing Counsel for the appellant submitted that the Single Bench ordered continuity of service too, notwithstanding the same not having been awarded by the first respondent and further, full backwages from the date of the award till the date of superannuation need not be ordered, as the second respondent did not work at all.

6 The aforesaid contention of Mr. Ahwin *qua* continuity of service does not cut ice with us. At this juncture, it is apropos to refer to the judgment of the Supreme Court in **Nandkishore Shravan Ahirrao v Kosan Industries Pvt. Ltd.**,¹ wherein, it has been held in unequivocal terms

¹ (2021) 14 SCC 781



that if reinstatement into service is awarded by the Labour Court, continuity of service would follow as a matter of law. The relevant paragraph from the said judgment is usefully extracted below:

“6. *Ex facie*, the Labour Court having awarded reinstatement to the appellant, continuity of service would follow as a matter of law. The award of the Labour Court dated 27-2-2008 does not specifically deny continuity of service. Hence, the observation of the High Court to the effect that the Labour Court had denied continuity of service is erroneous and would accordingly stand corrected in terms of what has been observed hereinabove. The appellant would be entitled to continuity of service.”

(emphasis supplied)

7 Superadded, reinstatement is completely different from appointment or providing employment as a fresher. Thus, even without there being any observation *qua* grant of continuity of service by the Single Bench, the second respondent is entitled to the same, based on the award of reinstatement passed by the first respondent.

8 Coming to the issue of grant of full backwages from the date of the order of the Single Bench till the date of the second respondent's superannuation, not providing employment to the second respondent even after the order passed by the Single Bench is due to the remissness on the part of the appellant. Such being the fact, it is not fair to deprive



the second respondent of 50% backwages from the date of the order of the Single Bench till the date of his superannuation.

9 However, across the bar, the learned counsel for the second respondent submitted that the second respondent's legal heirs are willing to give up 25% of the backwages from the date of the order of the Single Bench till the date of the superannuation of the second respondent and he also filed an affidavit dated 14.07.2023 of the second respondent's legal heirs to that effect.

10 In view of the above affidavit filed by the second respondent's legal heirs, it would suffice, if the appellant pays 75% of the backwages from the date of the order of the Single Bench till the date of the second respondent's superannuation. Further, the second respondent is entitled to reinstatement with continuity of service, however, with backwages alone restricted to 50% in terms of the order passed by the Single Bench, which has attained finality, since the same has not been questioned by the second respondent. It is made clear that full salary alone should be taken into account while calculating the terminal benefits like Pension and Gratuity payable to the second respondent. As already stated, since the



second respondent is no more, the terminal benefits of the second respondent as well the family pension shall be paid to the eligible persons.

This writ appeal stands disposed of in the above terms. Connected C.M.P. is closed.

(S.V.N., J.) (K.R.S., J.)
14.07.2023

cad

To

The Presiding Officer
Labour Court
Cuddalore



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