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W.A. No.1114 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2023

CORAM:

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

and

THE HON'BLE MR. JUSTICE K. RAJASEKAR

W.A. No.1114 of 2023 & C.M.P. No.11245 of 2023

Tamil Nadu State Transport Corporation
(Kumbakonam Division – I) Ltd.
represented by its General Manager
Railway Station New Road
Kumbakonam

Appellant

v

1 The Presiding Officer
Labour Court
Cuddalore

2 G. Jayakumar

Respondents

Writ Appeal filed under Clause 15 of the Letters Patent challenging the
order dated 26.02.2013 passed in W.P. No.26920 of 2003.

For appellant

Mr. M. Murali Vinodh
for Mr. D. Venkatachalam

R1

Court

For R2

Mr. K. Arunagiri



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JUDGMENT

For the sake of clarity and to avoid verbosity, the parties will be adverted to as per their rank in this writ appeal.

2 This writ appeal is directed against the order dated 26.02.2013 passed by a Single Bench of this Court in W.P. No.26920 of 2003 preferred by the appellant Transport Corporation, wherein, the Single Bench confirmed the reinstatement of the second respondent workman ordered by the first respondent Labour Court, in I.D. No.52 of 1998 and granted only 50% backwages as against full backwages ordered by the first respondent Labour Court.

3 The facts in a nutshell are as under:

3.1 The second respondent workman was working as Tradesman in the appellant Transport Corporation. While so, he was issued with a charge memo dated 19.10.1996 alleging that while he was looking after preparation and maintenance of diesel and engine oil records, he physically altered the diesel bunk reading meter, thereby enabling one S. Balasubramanian, Tradesman, a co-workman, to misappropriate 12,000 litres of diesel and also prepared false diesel requisition forms and records for disbursement of money *qua* receipt of 4,000 litres of diesel, with an intent to cause loss to the appellant Transport Corporation.



3.2 Since his explanation was not satisfactory, a domestic enquiry was conducted, in which, the Enquiry Officer, *vide* his enquiry report dated 14.02.1997, held that the charges levelled against him were proved.

3.3 Eventually, after issuance of a show cause notice, he was terminated from service, challenging which, he raised an industrial dispute before the first respondent Labour Court.

3.4 The first respondent Labour Court, observing that no reason was adduced by the appellant Transport Corporation for imposing lesser punishment for other co-delinquents, who were also charged in the same way as the second respondent workman and charges against whom also stood proved, set aside the termination order and ordered reinstatement with continuity of service and backwages, *vide* award dated 17.02.2003.

3.5 Challenging the aforesaid award, the appellant Transport Corporation filed W.P. No.26920 of 2003, in which, a Single Bench of this Court confirmed the award of the first respondent Labour Court *qua* reinstatement and ordered only 50% backwages as against full backwages ordered by the first respondent Labour Court.



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3.6 The main ground on the basis of which the Single Bench confirmed the award of the first respondent Labour Court *qua* reinstatement was that, for the same set of charges, the co-delinquents have been inflicted with a lesser punishment, whereas, the second respondent workman has been terminated from service, which is tantamount to discrimination.

3.7 The aforesaid order of the Single Bench is under assail in this writ appeal by the Transport Corporation.

4 Heard the learned counsel for the parties and perused the materials available on record.

5 Concededly, besides the second respondent workman, 7 persons, *viz.*, Balasubramanian (Tradesman), Chandrasekaran (Bunk Boy), Mohamed Fraook (Bunk Boy), Balamurugan (Assistant Engineer), Premkumar (Assistant Engineer), Tamilselvan (Junior Engineer) and Krishnamoorthi (Branch Manager) were involved in the shortage of 12,000 litres of diesel and disciplinary proceedings was initiated against all of them and they were also inflicted with punishments.



6 The charges against the second respondent workman are that he altered the diesel bunk reading meter and thereby, aided his co-workman, viz., Balasubramanian, Tradesman, to misappropriate 12,000 litres of diesel and prepared false diesel requisition forms for disbursement of money *qua* receipt of 4,000 litres of diesel, with an intention to cause loss to the appellant Transport Corporation.

7 The learned counsel for the appellant Transport Corporation submitted that given the seriousness of the misconduct, the second respondent workman ought not to have been granted reinstatement, backwages and other benefits at all. It is noteworthy that the second respondent workman was not a bunk boy, but, a Tradesman, who aided another Tradesman, viz., S.Balasubramanian, who is no more now, to commit the misconduct. Hence, the finding of the Single Bench that the second respondent workman ought not to have been discriminated and he too should have be inflicted with a lesser punishment such as postponement of increment, as was imposed on the co-delinquents, does not cut ice with us.

8 The learned counsel for the appellant Transport Corporation further submitted that the services of the second respondent workman may be reckoned only upto the date of dismissal and he may be extended pensionary benefits alone.



9

At this juncture, it is worth pointing out that the second respondent workman, who is aged 79 years now, has filed a memo dated 15.06.2023 giving up backwages ordered by the first respondent Labour Court and that it would suffice if he is given pensionary benefits alone.

10 Considering the gravity of the offence, we are not for grant of any relief to the second respondent workman. However, in view of the concession made by the learned counsel for the appellant Transport Corporation, we hold that the second respondent workman shall be paid only pensionary benefits for the actual services rendered by him from 14.11.1980 till 16.09.1997, which shall be computed on the basis of the pay he was drawing on his last working day, *i.e.*, 16.09.1997. It is made clear the wages paid under Section 17-B of the Industrial Disputes Act, 1947, need not be adjusted. The second respondent workman is deprived of gratuity also in view of Section 4(6) of the Payment of Gratuity Act, 1972. But for the concession of the appellant Transport Corporation, no money under any head, much less pension is payable.

11 The order passed by the Single Bench is modified to the extent indicated above.

The writ appeal is disposed of in the above terms. Costs made easy. Connected C.M.P. stands closed.

(S.V.N., J.) (K.R.S., J.)
19.06.2023



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To

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