



W.P.Nos.19381 of 2015 & 25722 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.03.2024

PRONOUNCED ON : 26. 03.2024

CORAM:

THE HON'BLE Dr. JUSTICE D.NAGARJUN

W.P.Nos.19381 of 2015 and 25722 of 2018
and MP.No.1 of 2015
and WMP.No.29918 of 2018

The Management,
Taminadu State Transport Corporation (Salem Division),
12, Ramakrishna Road,
Salem -7.
Rep., by it General Manager

...Petitioner in W.P.No.19381 of 2015

R.Ravichandran

...Petitioner in W.P.No.25722 of 2018

versus

1.The Presiding Officer,
Labour Court, Salem.

2.R.Ravichandran

... Respondents in W.P.No.19381 of 2015

1.The Presiding Officer,
Labour Court, Salem.

2. The Management,

Tamil Nadu State Transport Corporation

(Salem) Ltd.,

No.12, Ramakrishana Road,



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Salem-636 007

... Respondents in W.P.No.25722 of 2018

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Prayer in W.P.No.19381 of 2015: This Writ petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the recordss passed by the first respondent in I.D.No.165 of 2009 dated 18.06.2014 and to quash the same and against the provisions of the Industrial Disputes Act, 1947.

Prayer in W.P.No.25722 of 2018: This Writ petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records connected with the award dated 18.06.2014 passed by the first respondent/Labour Court, Salem in I.D.No.165 of 2009 and quash that portion of the award which deprived the petitioner backwages and also direct the second respondent/Management to grant the petitioner, his full backwages and all other attendant benefits, besides granting the other benefits of the award.

In W.P.No.1981 of 2015:

For Petitioner : Mr.M.Aswin
For respondents : M/s.S.Girija for R2

In W.P.No.25722 of 2018

For Petitioner : M/s.S.Girija
For respondents : Mr.M.Aswin

COMMON ORDER

Writ Petition No.19381 of 2015 is filed by the Management seeking quashment of the award in I.D.No.165 of 2009 dated 18.06.2014. Writ



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Petition No.25722 of 2018, is filed by the workman seeking quashment of the award dated 18.06.2014 passed by the Labour Court, Salem in I.D.No.165 of 2009 and for direction to the Management to pay full backwages and all other attendant benefits. Since both the Writ Petitions are filed questioning the I.D.No.165 of 2009, these Writ Petitions are being disposed of by way of this common order.

2. For the sake of convenience, the parties are referred to as driver/workman and corporation.

3. R.Ravichandran was working as Driver at Rasipuram Branch of Tamilnadu State Transport Corporation. He did not report for the duty from 28.07.2004 onwards without any prior permission. As per clause 19(1) of the certified standing orders, corporation has issued a charge memo to the driver/workman on 21.08.2004 and the same was sent through Registered Post to the residential address of the workman. According to the workman, the said charge memo was not received by him and the same was returned with the endorsement “party out of station, returned to sender”.



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4. Enquiry officer was appointed and the same was also

communicated to the workman, but the notice sent by the corporation was not served on the workman. Accordingly, the notice was exhibited in the notice board of the Rasipuram Branch Tamilnadu State Transport Corporation. However, there was no appearance from the workman, thereby he was set Ex-pate. On completion of enquiry, the enquiry officer has filed the report holding that the charges were proved against the petitioner. In order to afford one more opportunity to the workman, the Management has published the notice in the Tamil daily by name “Thinaboomi” on 25.11.2004, but there was no response from him. Corporation has issued second show cause notice on 17.10.2004 calling upon the workman to explain for the provisional conclusion of punishment of dismissal based on the Enquiry Officer's report however the same was also not served on the workman. Subsequently, the second show cause notice was also exhibited in the Notice Board of the Rasipuram Branch from 20.10.2004 to 30.01.2004. Finally, on 31.01.2005, the corporation has passed an orders of dismissal of the workman with one month salary.



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5. Aggrieved by the dismissal, the workman has raised the

Industrial Dispute in I.D.No.165 of 2009 before the Industrial Tribunal, Salem after a delay of three years and the same was disposed of by the Labour Court on 18.06.2014 by way of an award with a direction to reinstate the workman without backwages with continuity of service. Aggrieved by the order passed by the Labour Court in I.D.No.165 of 2009 dated 18.06.2014, the Management has filed this Writ Petition.

6. The learned Counsel for the workman has submitted that the workman has met with accident, in which, he has sustained severe injuries, which led to deterioration of his health condition. Hence he was forced to take leave from 28.07.2004, and due to severe illness and treatment, his leave was extended upto three months and that he was unable to intimate the same to the management on account of unavoidable circumstance. It is submitted further that though workman has submitted his explanation along with his leave application, the Management has not considered, thereby, the workman has raised the Industrial Dispute in I.D.No165/2009, before the Labour Court. The labour Court on completion of enquiry has ordered for



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reinstatement of workman with continuity of service but without backwages, therefore, the workman has filed W.P No.25722 of 2018 challenging the award I.D.No.165 of 2009 seeking backwages.

7. Learned counsel for the corporation has submitted that the enquiry notice, show cause notice and dismissal orders were sent by the corporation through RPAD to the address that was mentioned by the petitioner in the service register and if at all there is any change in the address it is the duty of the workman to communicate the same to the corporation.

8. The major ground on which the Labour Court has set aside the dismissal order and directed to reinstate workman is that the workman has not participated in the enquiry. At para No.8 of the award, the Labour Court has observed that corporation has not filed any document to show the address given by the petitioner to the office, to which, the notices in respect of the enquiry was sent to the workman. This observation of the Labour Court is very strange. There is no dispute that the corporation has sent



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notices to the address of the workman known to the Management and that those notices were returned unserved and returned postal covers were filed before the Labour Court. In such situation, the workman who has submitted that he has not received those show cause notices did not specifically mention that he was not residing in the address, to which notices were sent and that he has been residing in another address. If at all the workman was residing in other address, he must file documents to show the address where he was residing to demonstrate before the Court that the corporation has sent notices to address where the workman was not residing.

9. In para.No.8 of the impugned award it is observed that the workman has filed postal receipt to show that medical certificates have been sent to the Management by post and observed further that the address from where the workman has sent those medical certificate is the placed where the workman was residing and that the corporation should have sent notices to that said address.

10. The burden lies on the workman, to prove that he was not residing



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in the address given by him to the corporation and that he was residing in other address. Further, the Management has published the notice in the local newspaper about the enquiry. The workman was expected to know atleast through his colleagues as to what was happening or should have personally approached the corporation to consider his absence as medical leave. The workman instead of approaching the corporation has stated to have sent medical certificates by post. In any case, there is no record that the petitioner was residing in another address than the address to which notices were sent by the corporation. Therefore the finding of the Labour Court, that the notices were not properly served on the workman is erroneous.

11. Be that as it may, the workman retired from service on attaining the age of superannuation, therefore he cannot be reinstated. The Labour Court has not granted backwages. The workman is seeking for continuity of service, backwages from date of dismissal of service until date of retirement. Though the workman was terminated on 31.05.2005, he has approached the Labour Court and filed Industrial Dispute in I.D.No.165 of 2009 only in the year 2009 with a delay of four year. The workman has not explained the



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reasons why he took four year in raising the Industrial Dispute. Payment of backwages cannot be granted as a matter of course whenever termination is set aside. Laches on the part of the workman will disentitle the backwages. Further for the lapses on the part of the workman in finding the Industrial Dispute with a delay of four years, the Management cannot be penalised. Further the Labour Court has properly analysed the reasons and declined to grant backwages. As there is no perversity in the said order this Court cannot interfere with.

12. In the result:

- a) The Writ Petition No.25722 of 2018 filed by the workman is dismissed
- b) The Writ Petition No.19381 of 2014 filed by the Management is dismissed.
- c) Consequently connected Miscellaneous Petitions are closed. No costs.

26.03.2024

Index : Yes / No
Speaking/Non-speaking Order

9/12



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Neutral Citation: Yes/No

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To
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Taminadu State Transport Corporation (Salem Division),
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Dr.D.NAGARJUN, J.

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