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W.P.Nos.7266 of 2012 & 26355 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2024

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.Nos.7266 of 2012 & 26355 of 2011

W.P.No.7266 of 2012

1.Ravichandran (deceased)
2.Tmt.Rama
3.Rageswari
(P2 and P3 are substituted as Lrs of the deceased P1,
as per order dated 15.10.2024 in W.M.P.No.22248 of 2021)

... Petitioners

Vs.

1.The Presiding Officer,
Labour Court, Cuddalore.

2.The Management of the
Tamil Nadu State Transport
Corporation Ltd.,
Kumbakonam,
Rep. by its General Manager.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the award dated 15.03.2010 in I.D.No.82 of 2002 passed by



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the first respondent in so far as depriving the petitioner's 50% of backwages and other attendant benefits and quash the same and direct the 2nd respondent to pay the petitioner the balance 50% backwages and all other attendant benefits apart from the relief already granted by the second respondent.

For Petitioners : Mr.V.Ajoy Khose

For Respondents : R1-Court
Mr.C.Senapathi for R2

W.P.No.26355 of 2011

The Management of Tamil Nadu State
Transport Corporation Limited,
Kumbakonam,
Rep. by its General Manager.

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Cuddalore.

2.Ravichandran (deceased)

3.Tmt.Rama

4.Rageswari

(R3 and R4 are substituted as Lrs of the deceased R2,
as per order dated 15.10.2024 in W.M.P.No.22247 of 2021)

... Respondents



W.P.Nos.7266 of 2012 & 26355 of 2011

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records relating to I.D.No.82 of 2002 dated 15.03.2010 on the file of the first respondent and quash the same.

For Petitioner : Mr.C.Senapathi

For Respondents : R1-Court
Mr.V.Ajoy Khose for R3 & R4

COMMON ORDER

These Writ Petitions have been filed by the workman as well as the Management challenging the orders of the first respondent / Labour Court dated 15.03.2010 made in I.D.No.82 of 2002 wherein the Labour Court has passed an award by giving a direction to the Management to reinstate the workman with continuity of services with backwages.

2. Heard Mr.V.Ajoy Khose, learned counsel for the workman and Mr.C.Senapathi, learned counsel for the Management and perused the materials available on record.



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3. In the industrial dispute filed by the workman, the Labour Court has passed an award by setting aside the order of dismissal of the workman and directed the Management to reinstate the workman with continuity of service with 50% backwages. The workman has filed a Writ Petition in W.P.No.7266 of 2012, challenging that part of the award which restricted his backwages only to 50% and the Management has filed another W.P.No.26355 of 2011, challenging the award in entirety.

4. The learned counsel for the workman submitted that the first respondent has observed that the workman did not give any evidence to show that he has not been gainfully employed anywhere from the date of dismissal till the date of award. It is further submitted that if at all the workman is gainfully employed, the Court cannot expect the workman to adduce a negative evidence to show that he has not been gainfully employed anywhere and on that ground, it is claimed that the workman is entitled to 100% backwages.



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5. The learned counsel for the Management submitted that the Labour Court did not appreciate the materials on record in proper perspective. The workman by name Ravichandran was in the habit of committing such misconduct in the previous occasions as well. It is further submitted that the Labour Court has given much significance to non-examination of the ticket checker and omitted to refer the other evidences on record.

6. The argument advanced by the learned counsel for the workman is that the Labour Court has chosen to limit the backwages to 50% on the finding that the workman did not prove before the Court that he was not gainfully employed elsewhere. So, it is the contention of the learned counsel for the workman that such negative proof is not possible for the workman and hence, the Court ought to have awarded full backwages. Now, the workman died and his legal heirs have been impleaded during the pendency of these Writ Petitions as parties to the proceedings.



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7. So far as the allegations against the deceased Ravichandran is concerned, he has received Rs.10/- from the passenger for travelling from Chidhambaram to Sirkali and he did not pay the balance amount of Rs.5.50/-; when the passenger was about to give the statement to the ticket checker, he attempted to scramble the papers; he used abusive words against the Checking Inspectors and there is a deficit of Rs.34.75/- in the total collection amount; he restricted the ticket checker to do his job; the petitioner refused to receive the irregularity report issued by the Checking Inspectors; because of the conduct of the petitioner, the reputation of the Management was spoilt.

8. On perusal of the enquiry report, it is seen that during the domestic enquiry on the side of the Management, eleven documents have been marked and one Parthasarathy has been examined as a witness on the side of the Management. The said Parthasarathy is the ticket checker of Kumbakonam. Even though there are many charges in respect of collection of ticket fare and not returning the balance and attempted to attack the passenger when he was about to give statement, they were not



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supported by the evidence of the concerned passenger. Even though the ticket checker was examined as witness in the domestic enquiry, during the proceedings before the Court in the industrial dispute, no witness was examined on the side of the Management.

9. The very contention of the workman before the Labour Court is that the charges have been framed against him only in view of the previous enmity between himself and the two ticket checkers. Except certain documents on the side of the Management, no other witnesses have been examined to substantiate the fact that the enquiry has been conducted in a fair and proper manner and the ticket checker did not have any previous motive against Ravichandran in order to foist him with any false charges. Some of the witnesses whose statements have been produced before the Court as Management documents did not bear the signature of the passengers. Even though gross allegations have been made against the deceased Ravichandran, the materials did not substantiate the same. When the deceased Ravichandran has alleged motive against the ticket checker, it would have been appropriate if the



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independent witnesses like passengers have been examined to prove the allegations made against him. The best witness could be the driver of the bus. But, he was also not examined during the domestic enquiry and neither he was examined during the proceedings before the Labour Court. The other ticket checker by name Varadharajan was not examined as witness, even though he has also given a statement in this regard before the General Manager.

10. Having found that the materials on record are not sufficient to prove the charges against the deceased Ravichandran, the Labour Court has chosen to record the finding that the charges were not proved. The statement of the witnesses was also not complete and hence, the Labour Court has scrutinized the materials and arrived at a conclusion that no charges could be made out against the workman. As the materials did not substantiate the charges against the workman, it is right for the Labour Court to arrive at a finding that the charges were not proved and consequently, set aside the order of dismissal.



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11. So far as the denial of 50% backwages is concerned, it is to be noted that the deceased Ravichandran was out of employment for nearly nine years. Even though it may not be possible for Ravichandran to give negative proof that he was not gainfully employed during the period of dismissal, he has also not adduced any evidence to show how he made his livelihood during this long period without getting himself employed anywhere. This would also probabilise and justify the denial of 50% backwages. Hence , I do not find any infirmity in the award of the Labour Court which limits the entitlement of backwages at 50%

12. In view of the above stated reasons, both the Writ Petitions are dismissed. The award of the Labour Court in I.D.No.82 of 2002 dated 15.03.2010 is confirmed. No costs.

Index : Yes /No
Speaking / Non-speaking
Neutral Citation : Yes / No
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R.N.MANJULA, J.

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To

- 1.The Presiding Officer,
Labour Court, Cuddalore.
- 2.The General Manager,
The Management of the
Tamil Nadu State Transport
Corporation Ltd.,
Kumbakonam.

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