



W.A.No.1539 of 2022
and W.A.No.879 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.04.2024

CORAM

THE HON'BLE MRS. JUSTICE J.NISHA BANU

AND

THE HON'BLE MR. JUSTICE P.DHANABAL

W.A.No.1539 of 2022
and W.A.No.879 of 2024
and C.M.P.No.10103 of 2022

W.P.No.1539 of 2022:

The Management
Tamil Nadu State Transport Corporation Ltd.
Kumbakonam Limited Trichy.

... Petitioner

Vs

1 D.Anandhan

2 Joint Commissioner Of Labour(Conciliation)
D.M.S.Compound, Chennai-6

.... Respondents

W.A.No.879 of 2024

D.Anandhan

.....Petitioner

VS.



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and W.A.No.879 of 2024

1. The Management
Tamil Nadu State Transport Corporation Ltd.
Kumbakonam Limited, Trichy.

2. Joint Commissioner of Labour (Conciliation)
D.M.S.Compound Chennai-6
ents

.... Respond-

COMMON PRAYER : Writ Appeals filed under Clause 15 of the Letters
patent, against the order dated 31-07-2021 passed in W.P.No.33795 of 2012.

For Appellant in
W.A.No.1539/2022 : Mr. M.Murali Vinodh
Standing Counsel

For Appellant in
W.A.No.879/2024 : Mr. V.Ajoy Khose

For Respondents
in W.A.No.1539/2022 : Mr.V.Ajoy Khose, for R1
Mr.V.Ravi,
Special Government Pleader for R2

For Respondents
in W.A.No.879/2024 : Mr. M.Murali Vinodh
Standing Counsel for R1
Mr.V.Ravi
Special Government Pleader for R2

COMMON ORDER

Writ Appeal No.1539 of 2022 has been filed by the Management as
against the order passed in W.P.No. 33795 of 2012, reinstating the employee.

Writ Appeal No.879 of 2024 has been filed by the employee, challenging the



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order passed in W.P.No.33795 of 2012, insofar as denying the backwages is concerned.

2. Since the issue involved in both the writ appeals are one and the same, the following common order is passed. For the sake of convenience, the parties are referred to as appellant Corporation and first respondent/employee.

3. The case of the appellant Corporation is that the first respondent/employee was appointed as driver in the appellant's Corporation. The first respondent was unauthorisedly absent from 22.11.2003 to 31.12.2003. Therefore, the Management initiated disciplinary proceedings by issuing a charge memo dated 05.01.2004. The first respondent had also participated in the enquiry proceedings and the Enquiry Officer had filed his Report dated 06.02.2004 stating that the charges were proved against the first respondent. Thereafter, the Appellant-Corporation called upon the first respondent for his explanation by serving the enquiry report and the first respondent also submitted his explanation vide his letter dated 09.02.2004. Finding that the explanation was not satisfactory, the respondent was imposed with the punishment of dismissal from service by an order dated 26.03.2004 along with one(1) month salary to the tune of Rs.5636.40. Thereafter, the appellant-



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Corporation filed an approval petition in A.P.No.77 of 2004 before the second respondent under Section 33(2)(b) of Industrial Disputes Act, 1947, but the second respondent, without considering the misconduct of the first respondent, dismissed the approval petition vide order dated 23.05.2011. Aggrieved by the same, the appellant-Corporation had filed a writ petition in W.P.No.33795 of 2012 and the Writ Court had dismissed the petition directing the appellant to reinstate the first respondent with wages. Against which, the present appeal has been filed by the appellant-Corporation.

4. Learned counsel for the appellant Corporation would contend that when the first respondent was in service, he absented himself from 22.11.2003 to 31.12.2003 without any prior intimation and permission. Departmental proceedings were initiated after following the due process of law. Charges were held to be proved against him. Further, show cause notice on the Enquiry Report was called upon and the first respondent also submitted his explanation. Being not satisfied with the explanation, the respondent was removed from service vide order dated 26.03.2004. The Approval petition filed by the appellant was dismissed by the approval authority. Against which, the writ petition was filed.



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5. According to the appellant, the Writ Court also failed to consider that the Authority, while exercising jurisdiction under Section 33(2)(b) of the Industrial Dispute Act has to see whether a *prima facie* case has been made out with regard to the validity or otherwise of the domestic enquiry held against the delinquent employee and would pray that the order passed by the Writ Court is liable to be set aside.

6. Learned counsel for the first respondent would contend that first respondent was working as a Driver in the appellant-Corporation. While so, there was some swelling on his both legs and due to swelling on both legs, he was unable to attend the duty. However, he approached the Traffic Controller and applied for leave by stating his illness. Without considering his leave application, the appellant-Corporation had issued a charge memo stating that he was unauthorisedly absent from 22.11.2003 to 31.12.2003 which was duly replied by the respondent. Thereafter, no domestic enquiry was conducted by following the principles of natural justice. The Enquiry Officer had filed his Report stating that the charges were proved and based on the Enquiry Report, explanation was called for and the same was submitted by the first respondent. Thereafter, the appellant-Corporation terminated the first respondent from service. The learned counsel for the 1st respondent would submit that the



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punishment is disproportionate to the charges. The appellant Corporation filed the approval petition before the second respondent and the second respondent after careful consideration, had dismissed the petition by holding that the departmental witnesses have not been cross examined and the punishment was disproportionate to the charges.

7. Learned counsel for the first respondent/employee would contend that the Writ Court has also found that there was no opportunity given to the first respondent and taking into consideration that the matter is pending for more than a decade, thought it fit that it is not appropriate to remand back the case and ordered for reinstatement with continuity of service, but without backwages. On such reinstatement, the Writ Court also directed that the employee shall be paid wages on par with his counterparts. The above said order in respect of reinstatement is a well considered and reasoned order, however, the writ court failed to award the backwages. Therefore, the Management filed the Writ Appeal No.1539/2022 against the order of reinstatement and the employee filed the Writ Appeal No.879/2024 against the order of denial of backwages.



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8. Heard the learned counsel for the appellants and the learned counsel appearing for the respondents and this Court had perused the materials available on record.

9. It is seen from the records that there is no plea by the employer that if the domestic enquiry is not fair and proper, they must be given an opportunity to let in evidence. The Writ Court finding is that remanding the matter back after a lapse of ten years is not going to serve any purpose, as the employee was punished for unauthorised absence. Even if the approval petition is ordered, the employee is entitled to raise a dispute under section 2(A) of the Industrial Disputes Act, 1947, and the date of dismissal will become final when it get merged with the order of approval authority and till such time, the employee cannot be deprived of approaching the court on the ground that he has not raised the dispute within three years.

10. From the reading of the order passed by the Approval Authority, it is seen that the employee has not wilfully and intentionally availed leave for 40 days but due to illness. Further, the approval authority has no jurisdiction to hold that the punishment is disproportionate to the charges. If the allegation of unauthorised absence from duty is made out, the disciplinary authority is



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required to prove that the absence is wilful. In the absence of such finding, the absence will not amount to misconduct. For the alleged unauthorised absence of 40 days, depriving the backwages for the entire period of 17 years of non-employment is not proper and justifiable. Therefore, we are of the view that granting 50% of backwages will be appropriate. Thus, we interfere with the order passed by the Writ Court in respect of denial of backwages alone. Accordingly, the order dated 31.07.2021 made in W.P.No.33795 of 2012 is modified to the effect that the employee is entitled to 50% of backwages from the date of dismissal till the date of order of this Court.

11. In the result, W.A.No.1539 of 2022 is dismissed and W.A.No.879 of 2024 is partly allowed and the order passed by the Writ Court in respect of deprivation of back wages to the employee is modified to the effect that the employee is entitled to 50% of backwages from the date of dismissal till the date of order of this Court. In all other aspects, the order of the Writ Court is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

(J.N.B.,J.) (P.D.B.,J.)
25.04.2024

Index : Yes / No
Speaking order/Non-speaking order
Neutral citations:Yes/No



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To

The Joint Commissioner Of Labour(Conciliation)

D.M.S.Compound Chennai-6



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J. NISHA BANU, J.

and

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