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W.P. Nos.14332 of 2015 and 27934 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2025

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THE HONOURABLE Mr. JUSTICE P.DHANABAL

W.P. Nos.14332 of 2015 and 27934 of 2015
and W.M.P. Nos.1 and 2 of 2015

W.P. Nos.14332 of 2015
and W.M.P. Nos.1 and 2 of 2015

The Management,

Tamil Nadu State Transport Corporation (Salem) Ltd.,

Bharathipuram,

Salem Main Road,

Dharmapuri - 636 705.

represented by its General Manager .. Petitioner

VS

1. The Presiding Officer,

The Labour Court, Salem.

2. V. Lakshmanappa S/o. Venkatappa .. Respondents

PRAYER: The Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari calling for records in proceeding pursuant to the order passed in I.D. No.220 of 2010 dated 09.01.2014 on the file of the 1st respondent and quash the same.

For Petitioner : Mr. M. Aswin,
Standing Counsel.



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For Respondents : R1 - Court.
R2- Mr. V. Ajoykhose

W.P. No.27934 of 2015

V. Lakshmanappa S/o. Venkatappa ... Petitioner

vs.

1. The Management,
Tamil Nadu State Transport Corporation (Salem) Ltd.,
Bharathipuram,
Salem Main Road,
Dharmapuri - 636 705.
represented by its General Manager

2. The Presiding Officer,
The Labour Court, Salem .. Respondents

PRAYER: The Writ petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus calling for records pursuant to the order passed in I.D. No.220 of 2010 dated 09.01.2014 on the file of the 2nd respondent and quash the same in so far as depriving the petitioner backwages and other attendant benefits and consequently, direct the 1st respondent to pay the petitioner and extend backwages and all attendant benefits in addition to the relief of reinstatement with continuity of service already granted by the 2nd respondent.



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For Petitioner : Mr. V. Ajoykhose

For Respondents : R1 - **Mr. M. Aswin**,
Standing Counsel.

R2- Court.

COMMON ORDER

These Writ petitions have been filed challenging the order passed in I.D. No.220 of 2010 dated 09.01.2014 on the file of the Labour Court, Salem, wherein the workmen, who is the petitioner in W.P. No.27934 of 2015 and 2nd respondent in W.P. No.14332 of 2015 has raised an industrial dispute before the Labour Court, Salem and the Labour Court has partly allowed the industrial dispute and reinstated the workmen and denied backwages and continuity of service. Therefore, both the workmen and the Management have preferred these present Writ petitions.

2. The Writ petitioner in W.P. No.14332 of 2015 hereinafter will be referred to as 'Management'. The Writ petitioner in W.P. No.27934 of 2015 hereinafter will be referred to as 'workman'.

3. The short facts necessary to dispose of these Writ petitions are as follows:-

The workman was employed as driver in the Management Corporation. When he was working as Junior Tradesman, due to Jaundice



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and ulcer, he was unable to attend duty from 05.09.2005 and went to his father-in-law's house for taking Siddha treatment. After the treatment was over, he returned for work, but the Management had not allowed him to join duty. In the meantime, the disciplinary proceedings were also initiated and after enquiry, the workman was removed from service through order dated 26.04.2007. According to the petitioner, the charge memo has not been served to him and no enquiry proceedings were informed to him and without his presence, the enquiry proceedings were conducted. Therefore, he raised an industrial dispute against the order of dismissal from service and the conciliation officer submitted his failure report and thereafter, the same was taken as industrial dispute before the Labour Court, Salem in I.D. No.220 of 2010. Before the Labour Court, on the side of the workman, no witnesses were examined and one document was marked and on the side of the Management, 4 documents were marked. After analysing the evidence adduced on both sides, the Labour Court directed the Management to reinstate the workman into service without backwages and continuity of service. The above said order has been challenged by both the Management as well as the workman.

4. The learned counsel appearing for the workman would submit that



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he had joined in service under the Management in the year 1996 and he was made permanent as Junior Tradesman with effect from 06.01.1997 and thereafter, he was working in Hosur Town Depot. While so, due to his illness of Jaundice, he was unable to attend the work from 05.09.2005 and he was taking treatment in his father-in-law's house and thereafter, when he approached the Management for duty, he was not permitted. Without serving the charge memo and without any explanation, the Management conducted enquiry in the absence of the petitioner and dismissed him from service through order dated 26.04.2007. Even according to the charge memo, without any prior permission, the petitioner was on unauthorized leave with effect from 05.09.2005. In respect of repeated representations, the request of the workman was not considered for reinstatement. Therefore, he raised an industrial dispute and the conciliation officer has also filed failure report. Therefore, an I.D. No.220 of 2010 was raised before the Labour Court, Salem. The Labour Court, though came to a conclusion that the charges have not been proved and ordered for reinstatement, failed to award backwages and continuity of service with all other attendant benefits. Therefore, the order with respect to denial of backwages and continuity of service, is liable to be set aside.



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5. The learned counsel appearing for the Management would submit that the workman was working as a Junior Tradesman at Hosur Branch and he did not report duty continuously from 05.09.2005 onwards without any prior permission. Therefore, a charge memo dated 26.04.2007 was sent through registered post to the residential address of the workman and the same was not received by him. Thereafter, an enquiry officer was appointed to enquire into the charges and the same was communicated to the workman through notice, but the same was also not received by him. Since, there was no appearance on the side of the workman, the enquiry officer enquired the matter and submitted his report that the charges were proved. Thereafter, a Show Cause Notice was issued along with enquiry report and the same was also returned. The notice was also placed in the notice board of the Branch and notice also published in the local Tamil daily newspaper Dinathandhi. But no response from the workman. Therefore, the disciplinary authority has passed an order of dismissal from service. Thereafter, the said order was challenged before the Labour Court, Salem. The Labour Court, without considering the seriousness of the charges levelled against the workman and the fact that the workman had not participated in the enquiry proceedings even after due notice issued to him, passed an order of reinstatement of the workman. Therefore, the order passed by the Labour Court, in respect of



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reinstatement, is liable to be set aside.

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6. This Court heard both sides and perused all the materials available on record.

7. Since both the Writ petitions arising out of same order, both the Writ petitions were heard together and this Court passed this common order.

8. In this case, there is no dispute that the workman was employed under the Management and it is also an admitted fact that the workman was unauthorizedly absent from the duty and he has not participated in the enquiry proceedings and the notice sent to him was also returned. The workman also admitted that he was taking Siddha treatment for his ailment in the house of his father-in-law. In this case, it is pertinent to note that already in the industrial dispute, it was decided that the domestic enquiry was not proper and thereafter, a chance was given to the Management to prove the charges. Even after that, no witness was examined on the side of Management, but only produced the documents before the Labour Court. As per the charge memo, the workman was continuously absented from 05.09.2005 onwards without any prior permission. Thereafter, dismissal order was passed on



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26.04.2007. As per the removal order, the workman was cautioned for more than 10 times, despite that, he did not attend the duty. The Management also not examined any witness and not even produced any material documents like attendance and other documents.

9. According to the workman, he was affected by Jaundice and after recovery from his illness, when he approached the Management, they refused to give employment. In order to prove the charges levelled against the workman, there are no any acceptable evidence adduced by the Management and it is the duty of the Management to prove the charges levelled against the workman. Therefore, the Labour Court, after careful consideration of all the evidences, allowed the industrial dispute and directed the Management to reinstate the workman. However, there is no any pleadings in the petition in respect of employment by the workman, thereby declined to award backwages and continuity of service.

10. It is well settled law that once the Labour Court found that the charges were not proved, it is the duty to award backwages with continuity of service, unless there is a strong evidence to decline backwages. In this case, there is no any evidence that the workman was gainfully employed during the termination period. The workman has categorically stated that he was taking



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treatment and hence he was unable to attend the duty and there is no any evidence that he was gainfully employed elsewhere. Therefore, the order of Labour Court declining of backwages is unsustainable.

11. Considering the facts and circumstances of the case and pendency of the Writ petitions since 2015, it is appropriate to award 50% of backwages and continuity of service and all other attendant benefits to the workman.

12. Therefore, in view of the above said discussions, this Court is of the opinion that the Writ petition filed by the Management is liable to be dismissed and the Writ petition filed by the workman is liable to be allowed in part as stated above.

13. In the result, the Writ petition in W.P. No.14332 of 2015 is dismissed and the Writ petition in W.P. No.27934 of 2015 is partly allowed by setting aside the order of the Labour Court declining the backwages and continuity of service. The petitioner is entitled for the 50% backwages with continuity of service and all other attendant benefits. No costs. Consequently, the connected miscellaneous petitions are closed.



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Index : Yes/No
Speaking order/non-speaking order
mjs

To

1. The Presiding Officer,
The Labour Court, Salem.

2. The Management,
Tamil Nadu State Transport Corporation (Salem) Ltd.,
Bharathipuram, Salem Main Road,
Dharmapuri - 636 705.
represented by its General Manager

P. DHANABAL, J.,

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