



W.P.Nos.25770 of 2009 & 25465 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 27.01.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.25770 of 2009 & 25465 of 2017
& W.M.P.No.8294 of 2017

W.P.No.25770 of 2009

The Management,
Tamil Nadu State Transport Corporation (Salem) Ltd,
No.12, Ramakrishna Road,
Salem – 636 007.

... Petitioner

VS.

1. The Presiding Officer,
Labour Court, Salem.

2. K.Sellappan,
S/o.Kolandha Gundar,
No.14 E 1/B, Palanisamy Street,
Sandipetpudur,
Namakkal.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking a Writ of Certiorari, calling for the records of the first respondent relating to award dated 31.07.2008 in I.D.No.3/2004 and quash the same.



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For Petitioner : Mr. Aswin
For R2 : Mr.N.K.Kanthimathi,
for Ms.S.Girija

W.P.No.25465 of 2017

K.Sellappan,
S/o.Kolandha Gundar,
No.14 E 1/B, Palanisamy Street,
Sandipetpudur, Namakkal.

... Petitioner

vs.

1. The Presiding Officer,
Labour Court, Salem.

2. The Management,
Tamil Nadu State Transport Corporation (Salem) Ltd,
No.12, Ramakrishna Road,
Salem – 636 007.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, calling for the records connected with the award dated 31.07.2008 passed by the first respondent/Labour Court, Salem in ID.No.3 of 2004 and quash the portion of the award which deprived the petitioner of backwages & other attendant benefits and also direct the 2nd respondent to give the petitioner backwages and all other attendant benefits and pass orders.

For Petitioner : Mr.N.K.Kanthimathi,
Assist by Ms.S.Girija
For R2 : Mr.Aswin
For R1 : Labour Court



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COMMON ORDER

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These two writ petitions are against the same award made in I.D.No.3 of 2004, dated 31/07/2008.

2. The brief factual background in which these writ petitions arise is that the workman was employed as a conductor. While so, on 29/8/2001, a complaint was received against him from one Kandasamy of Mohanur village stating that, on the same day at about 08.45 p.m., when 25 persons, including Kandasamy being a marriage party, boarded the bus at Namakkal Ayyappan Kovil and travelled to Mohanur. The conductor collected a sum of Rs.3.50 from each passenger but however had given only one rupee ticket. By sticking all the said tickets, the complaint was sent. On the said complaint, an enquiry was conducted with the delinquent employee on 21/09/2001 at about 08:40 a.m. While checking the delinquent's box, it was found that he still had two used tickets of Rs.3.50 each and another four used tickets of Rs.4/- each. In view thereof, a police complaint was filed and his house was thoroughly searched. However, no other incriminating material or anything else was found during the search. No further



action was taken by the police except to submit a report that no incriminating materials were found. Under the said circumstances, two charges were levelled against the petitioner *vide* memorandum dated 25/09/2001 and an explanation was called for. The petitioner submitted his explanation, claiming that the first charge was bogus. He submitted that twice he had disembarked arrack sellers from the bus. Therefore with that vengeance, they have set up a false complaint. He never gave those used tickets to the marriage party. The said arrack sellers who disembarked from the bus vowed to take false action against him and therefore, he had kept the concerned passengers as his witnesses, if tomorrow some enquiry comes. To further safeguard his position, he has collected the tickets from the said passengers and kept it in his custody to use in any future enquiry if it may come. It was not with any other bad intention he kept those used tickets in his boxes.

3. With the said explanation, when the Enquiry Officer took up the enquiry, two witnesses, namely the Manager of the Depot and one Ticket Checker who were present when the delinquent employee was accosted in the Depot were examined on behalf of the Management. The delinquent employee cross-examined the said witnesses. On behalf of the delinquent, the concerned passengers, from



whom he alleges that he has collected the tickets were examined as witnesses.

Thereafter the Enquiry Officer returned the findings as if the charges were proved.

The petitioner's further explanation was not accepted and he was dismissed from service.

4. The petitioner raised a dispute. The conciliation process did not yield any fruitful results. Thereafter, the claim petition was taken on file as I.D.No.3 of 2004. When the Labour Court took up the issue for enquiry, the procedural aspects were not argued on behalf of the Workman and therefore, the Labour Court took up the matter for consideration on merits. During the enquiry, there was no oral evidence that was let in on behalf of both sides. On behalf of the Workman, Ex.P-1 and Ex.P-2 were marked and on behalf of the Management Ex.R-1 to Ex.R-17 were marked.

5. The Labour Court found that, in the absence of examination of the complainant and the original tickets being marked in the enquiry, the First Charge can never be deemed to be proved. Concerning the second charge, the Labour Court found that when the said tickets were merely found in the box of the



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petitioner and when there was no further delinquency that he had supplied or sold the tickets to any passengers and misappropriated any money, no delinquency was made out. On that ground, the Labour Court held that the non-employment is unjustified. It ordered reinstatement with continuity of service, fixing the next increment from the date of award of the Labour Court, but however disallowed the back wages and other allowances. To the extent the relief was granted to the Workman, the Management has filed the petition in W.P.No.25770 of 2009. To the extent the relief was denied, the Workman has filed W.P.No.25465 of 2017.

6. Mr Ashwin, the Learned Counsel appearing on behalf of the Management would submit that the original complaint was received along with the tickets as pasted by the said complainant. However, because the complainant had not given the exact address in detail, the complainant could not be examined. However, the fact was confirmed by accosting the petitioner and when there is no proper explanation which is forthcoming the tickets which have become useless on account of the new tariff being followed concerning the said period. It is proved beyond doubt that it is the petitioner who had supplied the old tickets and therefore, the finding of the Labour Court in respect of First Charge is incorrect.



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In respect of the second charge, the delinquency alleged is that to enable him to supply used tickets, the petitioner has collected the same and kept it in his box.

Therefore, the finding of the Labour Court as if the delinquency itself is the actual supply of used tickets is again perverse. Therefore the non-employment is fully justified. The workman was also paid 17-B wages still his date of superannuation. The workman had suffered repeated punishments. On every occasion, the delinquency was not entering into the sale of tickets properly at that stage and non-filling up of the invoice. There is a pattern of behaviour about the present Workman and the said previous conduct also to be taken into consideration.

7. Per contra, the Learned Counsel appearing on behalf of the workman submits that in this case, the incident did not come to light by way of any ticket checking, but came into light concerning the first charge only on account of the complaint. Unless that complainant is examined in the enquiry, there is no *prima facie* evidence on behalf of the prosecution that it is the petitioner who issued those tickets on a particular day. There is absolutely nothing on record and therefore, the finding of the Labour Court in this regard is in order. As far as the second charge is concerned, *dehors* the finding made by the Labour



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Court, the Learned Counsel would take this Court through the evidence that is on record in the domestic enquiry. It is the contention of the Workman that on two different dates, the Conductor had to disembark the arrack sellers for carrying illicit arrack in the bus. When the said incident took place, the bus had stopped for a while. Those arrack sellers vowed that they would stage a false complaint against the conductor. Consequently, the Conductor wanted some witnesses who were travelling in the bus on the relevant trips. Therefore, after ascertaining the names and addresses of the witnesses, he took back the tickets given to those passengers on the relevant dates and kept them as proof in his box so that he could utilise the same to corroborate the evidence of such witnesses, if necessary to use them in the appropriate proceedings. The said witnesses have spoken in the said lines and the cross-examination by the Management did not yield any result. Therefore, when the Workman has submitted a plausible defence and there is no evidence to the contrary that he has kept with an intention only to utilise the same in the trips, the finding of the Labour Court need not be interfered with. Once the Labour Court found that the delinquencies were not proven, the Labour Court ought to have granted the back wages in full and all the other benefits.



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8. I have considered the rival submissions made on both sides and have perused the material records of the case.

8.1 As stated supra, in this case, it is the exercise of power under Section 11-A of the Act. When nothing can be pointed out concerning the procedural infirmity in the domestic enquiry, all that the Labour Court had to consider is whether there was some evidence in proof of the charge or not, to the level of the preponderance of probability.

8.2 In this case, as far as the first charge is concerned, the same was not pursuant to any ticket checking. Therefore, neither the Ticket Checker nor the Depot Manager had any personal knowledge of the incident. In the absence of the same, it would have been very easy to find out the veracity or otherwise of the complaint. According to the complaint, a marriage party consisting of 25 persons was travelling from Namakkal, Ayyappan Koil, to Mohanur village. Therefore, the identity of the complainant, Thiru.M.Kandasamy, as well as the other persons who travelled, could have been identified by the Management, and at least one of those



passengers could have been examined as a witness, or their statements could have been marked. In the absence of the same, without any *iota* of evidence on record that only in that particular trip the conductor had issued those tickets and whether he has issued those tickets at all, etc., are not at all proved by any corroborating evidence except for the complaint of M.Kandasamy who was never examined and not even his identity is verified. Therefore, the finding of the Domestic Enquiry Officer is without any *iota* of evidence about the First charge, and no exception can be made with reference to the findings of the labour court on the First charge.

8.3 Concerning the second charge, I find that the finding of the Labour Court that it is as if the delinquency is the supply of used tickets and as such is incorrect. The delinquency alleged is that the workman to use those tickets in future had stored the old tickets. However, on perusal of the evidence on record in the enquiry, it is the specific defence taken by the Workman at the earliest point of time, in response to the charge memo itself. In support of this defence, he has also examined two witnesses and their cross-examination did not reveal any falsity of the said witnesses. Therefore, the Workman has also proved his plausible defence that he has kept the said tickets, only as corroborating material to examine



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those witnesses who are witnesses to the incident of disembarking the alleged arrack vendors.

9. In the light of the overall facts and circumstances of the case, no exception can be taken for the Labour Court in arriving at a finding that the non-employment is unjustified. Once the non-employment is unjustified, reinstatement follows. The employee has also attained the age of superannuation with effect from 13.04.2017. The only question remains is that what benefits the employee would be entitled to.

10. This Court is of the view that when the charges are not proved by the Management, the benefit of reinstatement cannot be denied to the Workman. As far as back wages is concerned, the Court can take into consideration all the attendant circumstances. The period of service put by the Workman is taken into account. During the period of non-employment and the pendency of the writ petitions, he was paid 17-B wages, which is also taken into account. Additionally, the previous punishments that are given, especially many of those instances where the invoices were not written by the Workman at the relevant stage, are also taken



into account. Therefore, by taking all materials *in toto*, I am of the view that the relief granted to the Workman can be modified. The Workman will be deemed to have been in service till the date of his superannuation, and towards all claims of back wages, whatever the money paid by way of 17-B wages shall be treated as full quiet. However, the workmen will be entitled to all the superannuation benefits. The said amount shall be disbursed within 12 weeks from today, and the Workman will not be entitled to any other benefits.

11. In view thereof, both these Writ Petitions are disposed of on the following terms:

(i) The award of the Labour Court, dated 31.07.2008 made in I.D. No.3 of 2004 is upheld in as much as it finds that the non-employment of the Workman is unjustified;

(ii) The award shall stand modified in as much as the relief granted to the Workman to the effect that the Workman will be entitled to the relief of reinstatement and he will be deemed to have been reinstated into service with continuity of service and should be deemed to be in service and superannuated



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with effect from 31.05.2017. He will be entitled to all the other retirement benefits, including the Gratuity, Provident fund and other amounts.

(iii) Regarding all claims of back wages, the amount that is paid as 17-B wages shall be taken as full quit and no further back wages remain payable till the date of superannuation.

(iv) However, his wages as such are to be notionally taken into account for the purposes of retiral benefits such as the Provident fund, gratuity and all other amounts that may be due. The same shall be disbursed to the Workman within 12 weeks, from the date of receipt of the web copy of the order. If the amounts are not paid within the period, they shall be paid with further interest at the rate of 9% per annum, from today. No costs. Consequently, the connected miscellaneous petition is closed.

27.01.2025

Neutral Citation : Yes/No
bsm



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To,

1. The Presiding Officer, Labour Court, Salem.
2. The Management, Tamil Nadu State Transport Corporation (Salem) Ltd,
No.12, Ramakrishna Road, Salem – 636 007.



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D.BHARATHA CHAKRAVARTHY, J.

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