



W.P.No.19704 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2025

CORAM :

THE HONOURABLE MR. JUSTICE **M.DHANDAPANI**

W.P.No.19704 of 2010

and

MP.No.1 of 2010

Tamil Nadu State Transport Corporation (Salem) Ltd.,
Rep. by its Managing Director,
No.12, Ramakrishna Road,
Salem – 636 997.

...Petitioner

Vs.

1. The Presiding Officer,
Labour Court, Salem.

2. A.Pachaiappan

...Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records of the 1st respondent in I.D.No.184 of 2005 dated 21.10.2008 and to quash the same.

For Petitioner : Mr.M.Aswin, SC

For Respondents : R1 – Court
: Mr.S.Srinivasa Narayanan, for R2



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ORDER

This Writ Petition has been filed seeking quashment of the order of the 1st respondent made in I.D.No.184 of 2005 dated 21.10.2008.

2. It is the case of the petitioner that, the 2nd respondent was appointed in the Technical Wing in the petitioner corporation on 24.10.1975 and he was working in the Tyre Section in the Head office campus. Whiles, as the 2nd respondent absented himself from duty without prior permission, the petitioner corporation initiated disciplinary proceedings as against the 2nd respondent and the same ended in dismissal. Challenging the said order of dismissal dated 15.07.2000, the 2nd respondent raised an industrial dispute in I.D.No.184 of 2005 and the 1st respondent/Labour court, Salem, vide its award dated 21.10.2008 ordered reinstatement of the 2nd respondent with continuity of service, without backwages and further directed the petitioner to treat the period of absence of the 2nd respondent as Medical leave. Challenging the same, the petitioner has come up with this Writ petition.



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WEB COPY 3. Learned counsel for the petitioner submitted that, the petitioner corporation is a Government undertaking and established for the purpose of providing economic transport facilities to the public and also to provide employment opportunities to the eligible persons and it is an employee oriented organization and if any of the crew members absent themselves unauthorizedly, there will be dislocation of transport facilities and would result in taking additional duty from the remaining employees which would stress them and it also leads to the sickness of the establishment. Whiles, the 2nd respondent absented himself from duty continuously without any prior intimation or sanction of leave and his absence affected the smooth functioning of the management and thereby, the petitioner corporation initiated disciplinary proceeding and the same ended in dismissal of the 2nd respondent/ workman, assailing which, the 2nd respondent filed the present dispute and the labour court, without considering any of the above said facts, ordered for reinstatement and also directed to consider the unauthorised absence period of the 2nd respondent as Medical leave, which is wholly unsustainable. Accordingly, he prayed for appropriate orders.



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4. Per contra, the learned counsel appearing on behalf of the 2nd respondent submitted that, by considering both the oral and documentary evidence placed before it and also considering the fact that for mere unauthorised absence, imposing punishment of dismissal from service is highly disproportionate, though the Labour Court had ordered for reinstatement with continuity of service and directed the petitioner to consider the absence period as Medical leave, however, denied backwages solely on the ground that the 2nd respondent had raised the present dispute after a lapse of five (5) years from the date of dismissal, which is not sustainable, that too, when it is the specific stand of the 2nd respondent/workman that he was not gainfully employed during the non-employment period and that his absence is neither wilful nor wanton and the same is due to serious health ailments suffered by him. Accordingly, he prayed for appropriate orders.

5. Heard learned counsel on either side and perused the materials available on record.



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6. Admittedly, the 2nd respondent-workman joined the services of the petitioner in the year 1975 and after rendering 25 years of service, the 2nd respondent was terminated from service solely on the ground that he was unauthorisedly absent from duty.

7. It is the claim of the 2nd respondent/workman that, for mere unauthorised absence, imposing a maximum punishment of dismissal from service is highly disproportionate and the medical certificate produced by the workman to substantiate his claim of health ailments was not properly considered by the authorities. On the other hand, it is the contention of the petitioner/management that, though the 2nd respondent absented himself from duty unauthorisedly from 25.07.1999, pursuant to the request made by him, the 2nd respondent was allowed to join duty, vide order dated 05.10.1999, however, he failed to submit satisfactory explanation to the charge memos and substantiate his unauthorised absence, which led to his dismissal.

8. Though it is the case of the management that it is a case of unauthorised absence, however, it is borne out by record, as pointed out



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by the learned counsel for the 2nd respondent/workman that the workman had produced material evidence to prove his ailments. If the petitioner entertained any doubts with regard to the veracity and genuineness of the certificates or the ailments suffered by the workman, nothing prevented the petitioner from directing the employee to undergo medical test before the Medical Board. However, without doing so, the petitioner had invoked disciplinary proceedings against the workman and had inflicted the highest punishment of dismissal from service without considering the length of service put in by the workman.

9. The Labour Court, considering all the aforesaid facts and also taking cue from the ratio laid down by the Apex Court in the case of ***Prem Nath Bali Vs. High Court of Delhi*** reported in ***(2015 (16) SCC 415)*** had interfered with the punishment finding it to be disproportionate to the delinquency committed by the workman. However, when the Labour Court held that the punishment is disproportionate, the Labour Court ought to have considered the claim for backwages, but has miserably failed to award the same, which, in the considered opinion of this Court deserves to be awarded, as the workman was precluded from



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doing his work and, therefore, the concept of 'No work, No Pay' would not stand attracted as the direction of the Labour Court was to treat the said period as medical leave. Hence, this Court holds that the workman would be entitled to backwages, but not for the period from the date of award till the date of superannuation by importing the concept of 'No Work, No Pay' as the workman having obtained a beneficial award has not chosen to join work.

10. In view of the fact that pending the writ petition, the workman had attained the age of superannuation, the question of reinstatement does not arise. Hence, this Court holds that the 2nd respondent is entitled for backwages excluding the period from the date of passing of award i.e., from 21.10.2008 till the date of his superannuation.

11. Accordingly, this Writ petition stands dismissed with a direction to the petitioner corporation to settle the terminal benefits in favour of the 2nd respondent/workman by considering the period of absence of the 2nd respondent as medical leave as ordered by the Labour Court. It is made clear that the 2nd respondent is entitled for continuity of



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service for the purpose of calculating the terminal benefits. Further, the petitioner is directed to pay the full backwages to the 2nd respondent by calculating the same from the date of dismissal till the date of passing of the present impugned award. The said exercise shall be completed by the petitioner within a period of eight (8) weeks from the date of receipt of a copy of this order.

12. With the above observations and directions, this Writ petition stands dismissed. No costs. Consequently, the connected Miscellaneous petition is closed.

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Index : Yes / No
Speaking order : Yes / No
NCC : Yes / No

To

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Labour Court, Salem.
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M.DHANDAPANI, J.

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