



W.P.No.18471 of 2015 & Cont.P.No.887 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2025

CORAM :

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

W.P.No.18471 of 2015 & Cont.P.No.887 of 2024

and

WMP.No.1 of 2015

W.P.No.18471 of 2015:

The Management,
Tamilnadu State Transport Corporation (Salem) Ltd,
12, Ramakrishna Road, Salem – 636 007.
Rep. by its General Manager.

...Petitioner

Vs.

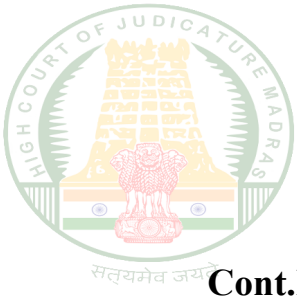
1. M.Viswanathan
2. The Presiding Officer,
Labour Court,
Salem.

...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 2nd respondent made in I.D.No.13 of 2008 dated 05.06.2013 and to quash the same.

For Petitioner : Mr.M.Aswin

For Respondents : Mrs.S.Girija, for R1
R2 – Labour Court



W.P.No.18471 of 2015 & Cont.P.No.887 of 2024

Cont.P.No.887 of 2024:

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M.Viswanathan

...Petitioner

Vs.

Lakshmanan,
General Manager,
Tamilnadu State Transport Corporation (Salem) Ltd,
12, Ramakrishna Road, Salem – 636 007.

...Respondent

Petition filed under Section 11 of the Contempt of Courts Act, 1971, seeking to punish the respondent for wilful disobedience of the order dated 19.03.2018 passed by this Court in WMP.No.6158 of 2018 in W.P.No.18471 of 2015.

For Petitioner : Mrs.S.Girija

For Respondent : Mr.M.Aswin

COMMON ORDER

Since the issue involved in both the Writ petition as well as the contempt petition are interconnected, they are disposed of by way of this common order.

2. For brevity, the parties are referred to as per their array in W.P.No.18471 of 2015.



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WEB COPY 3. Questioning the correctness of the order passed by the 2nd respondent – Labour Court in I.D.No.13 of 2008 dated 05.06.2013, directing the reinstatement of the 1st respondent - workman, the petitioner has filed Writ petition No.18471 of 2015 and the Contempt Petition No.887 of 2024 has been filed by the 1st respondent seeking to punish the petitioner for wilful disobedience of the order dated 19.03.2018 passed by this Court in WMP.No.6158 of 2018.

4. At the outset, this Court takes note of the stand of the petitioner Corporation that they are ready to accommodate the 1st respondent back into service. In effect, the challenge to this writ petition stands diluted.

5. The brief facts are that the 1st respondent was employed under the petitioner management as Clerk. According to the petitioner, he was on unauthorized absence without any prior intimation from 01.01.2003 onwards. As his absence affected the smooth functioning of the administration, the petitioner management issued a charge memo on 14.02.2003. Since, the 1st respondent did not cooperate with the domestic enquiry, he was set exparte and the order of dismissal was ultimately



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WEB COM followed, after waiting for the explanation for the second show cause notice. Challenging the said order of dismissal passed by the petitioner corporation on 22.09.2003, the 1st respondent raised an industrial dispute before the 2nd respondent in I.D.No.13 of 2008 and the 2nd respondent, on an analysis of both oral and documentary evidence, set aside the order of dismissal passed by the petitioner as against the 1st respondent and directed the petitioner to reinstate the 1st respondent *sans* backwages but with continuity of service. Challenging the same, the petitioner has come up with this Writ petition. Subsequently, this Court ordered for payment of 17B wages in favour of the 1st respondent. For alleged non-compliance of the said interim order, the 1st respondent-workman has come up with Cont.P.No.887 of 2024.

6. Heard learned counsel on either side and peruse the materials available on record.

7. As noted above, the petitioner is willing to take up the 1st respondent. On a perusal of the materials available on record, it is evident that, pending the writ petition, this Court directed the petitioner



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to pay 17B wages to the 1st respondent, vide order dated 19.03.2018 in WMP.No.6158 of 2018. In such circumstances, contending that the order passed by this Court has not been complied with fully, ie., the arrears of 17B wages was not paid, the 1st respondent/workman has filed Cont.P.No.887 of 2024. However, the order dated 19.03.2018 is clear and there is no direction to the petitioner Corporation to pay arrears of 17B wages. Indeed, it should be borne in mind that the Labour Court itself has denied back wages to the 1st respondent-Workman. Further, the learned counsel for the petitioner management has produced three proceedings dated 24.10.2018, 22.11.2018 and 03.10.2024 before this Court, in and by which the petitioner management has directed the 1st respondent to join duty and it is the 1st respondent who did not join the duty till date. On the other hand, according to the 1st respondent, he was suffering from various ailments and therefore, he could not join duty.

8. However, the attitude of the 1st respondent in stubbornly refusing to join duty has to be deprecated. The 1st respondent was only working as a clerk and he was only supposed to do desk work. He was not a driver or conductor, which would require enormous physical



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activities. If the 1st respondent was genuinely suffering from ailments which stopped him from moving around, nothing prevented the 1st respondent from seeking appropriate relief from the petitioner cooperation, namely opting for voluntary retirement. The 1st respondent expects the petitioner corporation to pay him salary every month without doing any work. This Court will not allow such expectation of the 1st respondent and the 1st respondent cannot have the cake and eat it too. Therefore, this Court is of the view that, there is no any wilful disobedience of the order of this Court on the part of the petitioner management.

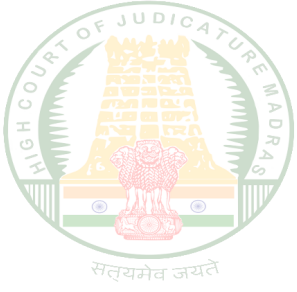
9. At the same time, considering the fact that the 1st respondent-workman is due to retire in 2026 and also considering the fact that the 1st respondent-workman is unable to join duty on account of the ailments suffered by him, no useful purpose would be served by passing any order directing the 1st respondent to join the services of the petitioner corporation and asking the 1st respondent to continue with the services of the petitioner. Hence, this Court, to balance the scales of justice and in the interest of either side, thinks it fit and proper to permit the 1st



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respondent – workman to submit application for voluntary retirement, which shall be considered affirmatively by the petitioner-employer which would avoid any bitter feelings between the employer and employee.

10. In such view of the matter, while this Court concurs with the view of the Labour Court that the workman is not entitled to backwages, but entitled to reinstatement with continuity of service, in the interest of either party, deems it fit to modify the order of the Labour Court and the 1st respondent-workman is directed to submit his application for voluntary retirement within a period of two weeks from the date of receipt of a copy of this order and on such application being filed, the same shall be considered affirmatively by the employer/petitioner within a period of two weeks thereafter and upon such acceptance of voluntary retirement, the 1st respondent-workman shall be voluntarily retired and all the terminal benefits due to the workman shall be paid to him within a period of two weeks thereafter and it is made clear that the 1st respondent would be entitled for continuity of service for the purpose of calculating the terminal benefits.



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WEB COPY 11. With the above observations and directions, the contempt petition in Cont.P.No.887 of 2024 stands closed and the Writ Petition in W.P.No.18471 of 2015 stands disposed of. No costs. Consequently, the connected Miscellaneous petition is closed.

12.03.2025

skt

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

To

1. The Presiding Officer
Labour Court,
Salem.
2. The General Manager,
Tamilnadu State Transport Corporation (Salem) Ltd,
12, Ramakrishna Road,
Salem – 636 007.



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M.DHANDAPANI, J.
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and
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