



W.P.Nos.29340, 29341 of 2010, 30996 and 30997 of 2012

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.Nos.29340, 29341 of 2010, 30996 and 30997 of 2012 &
M.P.Nos.1 of 2012 (2 Nos.) in W.P.No.30996 of 2012 and 30997 of 2012

W.P.No.29340 of 2010

M.Jayaraman

.. **Petitioner**

Vs.

1.The Presiding Officer
Second Addl. Labour Court
High Court Compound
Chennai – 600 104.

2.The Managing Director
Tamil Nadu State Transport Corporation
(Villupuram Division – 3)
Kancheepuram District – 631 501.

... **Respondents**

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari calling for the records and papers from the 1st respondent in I.D.No.326 of 2000 and quash the impugned award dated 18.11.2008 in so far as the 1st respondent has restricted the claim of the petitioner to one of compensation of an amount of Rs.1,50,000/- in lieu for



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reinstatement in service with back wages, with continuity of service and with all other attendant benefits and to pass such other order.

For the Petitioner : Mr.S.Apunu V.Swarnam
for Mr.K.J.Arunachalam

For the Respondents : Mr.M.Aswin, Standing Counsel
for R2
For R1 – Labour Court

W.P.No.29341 of 2010

1.K.Govindasamy (Deceased)
2.Pushpa
3.G.Kannan
4.G.Dillibabu
5.Kalaimani
(Petitioners 2 to 5 are substituted as per the
order of this Court dated 19.03.2014 in
M.P.No.1 of 2012 in W.P.No.29341 of 2010)

.. **Petitioners**

Vs.

1.The Presiding Officer
Second Addl. Labour Court
High Court Compound
Chennai – 600 104.

2.The Managing Director
Tamil Nadu State Transport Corporation
(Villupuram Division – 3)
Kancheepuram District – 631 501.

... **Respondents**



W.P.Nos.29340, 29341 of 2010, 30996 and 30997 of 2012

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari calling for the records and papers from the 1st respondent in I.D.No.81 of 2002 and quash the impugned award dated 18.11.2008 in so far as the 1st respondent has restricted the claim of the petitioner to one of compensation of an amount of Rs.1,25,000/- in lieu for reinstatement in service, with back wages, with continuity of service and with all other attendant benefits and to pass such other order.

For the Petitioners : Mr.S.Apunu V.Swarnam
for Mr.K.J.Arunachalam

For the Respondents : Mr.M.Aswin, Standing Counsel
for R2
For R1 – Labour Court

W.P.No.30996 of 2012

The Managing Director
Tamil Nadu State Transport
Corporation (Villupuram) Division III Ltd.,
Kancheepuram Region
Kancheepuram 631 556.

.. **Petitioner**

Vs.

1.Joint Commissioner of Labour
(Under Payment of Gratuity Act, 1972)
6th Floor, Labour Welfare Buildings
DMS Compound, Teynampet, Chennai – 6.

2.G.Pushpa
3.Kannan

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4.Dillibabu
5.Kalaivani

... **Respondents**

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari calling for the records relating to PGA No.1 / 2012 dated 06.07.2012 on the file of the 1st respondent herein and quash the same and pass such further or other orders.

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

For the Respondents : Mr.K.Tamilvendan
Government Advocate for R1
Mr.S.Apunu V.Swarnam
for Mr.K.J.Arunachalam for R2

W.P.No.30997 of 2012

The Managing Director
Tamil Nadu State Transport
Corporation (Villupuram) Division III Ltd.,
Kancheepuram Region
Kancheepuram 631 556.

.. **Petitioner**

Vs.

1.Joint Commissioner of Labour
(Under Payment of Gratuity Act, 1972)
6th Floor, Labour Welfare Buildings
DMS Compound, Teynampet, Chennai – 6.

2.M.Jayaraman

... **Respondents**



W.P.Nos.29340, 29341 of 2010, 30996 and 30997 of 2012

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari calling for the records relating to PGA No.2 / 2012 dated 06.07.2012 on the file of the 1st respondent herein and quash the same and pass such further or other orders.

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

For the Respondents : Mr.K.Tamilvendan
Government Advocate for R1
Mr.S.Apunu V.Swarnam
for Mr.K.J.Arunachalam for R2

COMMON ORDER

All these Writ Petitions are connected and taken up and disposed of by this common order.

2. Two Workmen are involved in this case. The Workman – *M.Jayaraman* joined the services of the Management in the year 1973 as Driver. While so, due to the hospitalisation of his son and daughter on account of an accident, he had taken leave on 25.02.1997. On the ground that he was unauthorizedly absent for a period of 8 days, a charge memorandum was issued on 15.05.1997. The explanation was not acceptable and domestic enquiry was



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conducted. The charge was held to be proved in the domestic enquiry and by an order dated 08.01.1998, he was dismissed from service. Therefore, the said Workman raised a dispute. Conciliation failed. Claim Petition was taken on file as I.D.No.326 of 2000. The Claim Petition was resisted by the Management.

3. It is the case of the Management that the Workman was unauthorizedly absent, when he was allotted duty as Driver. Due to his absence, the public will be affected and the bus could not be operated. In these cases of unauthorised absence, even though it is for a short period, the charges are serious in nature.

4. With the above pleadings, the Labour Court took up the matter for enquiry, the Workman examined himself as **W.W.1** and no documentary evidence was marked on his behalf. On behalf of the Management, one *Ethiraj* was examined as **M.W.1** and Exhibits **M.1 to M.10** were marked. The Labour Court considered the case of the parties and found that the domestic enquiry was not fair and proper. It considered the fact that only on account of the



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accident that happened to the son and daughter of the Workman - Jayaraman, he was not present for duty and that his version that he informed the time keeper and left the workplace and was absent for eight days is believable. Accordingly, it was held that the non-employment was unjustifiable, considering only the fact that the workman had attained the age of superannuation and was already 60 years old as of the date of the award. Instead of reinstatement with back wages, compensation of Rs. 1,50,000/- was awarded.

5. As far as the second Workman *Mr.Govindasamy* is concerned, he had since passed away, pending the Writ Petition, his legal heirs viz., his wife – *Pushpa* and three others have been substituted as the Writ Petitioners.

6. The Workman – *Govindasamy* joined the Management as a Conductor in the year 1978. While so, it is his case that he fell ill and could not report for duty from 21.12.1997 and orally informed the concerned authorities that he will be availing medical leave. Since, he could not submit a leave letter in

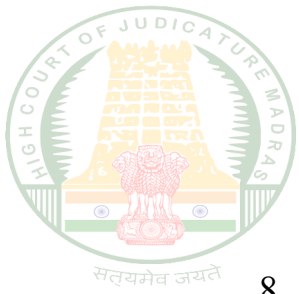


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advance, he submitted a letter on 06.01.1998, enclosing the medical certificate.

However, when he reported for duty on 09.01.1998, a charge memorandum was issued. He submitted his explanation denying the charges. Domestic enquiry was conducted and on 01.08.1998 holding that the Workman was guilty of the charge. Thereafter, the Workman was removed from service on 09.03.1999. He raised a dispute, conciliation failed.

7. The Claim Petition was taken on file as I.D.No.81 of 2002. The claim was resisted by the management, stating that when the workman was unauthorizedly absent, operations in the management, such as the present case, could not proceed, which would result in serious prejudice to the public. Therefore, the charges were of a serious nature. With the above pleadings when the Labour Court took up the matter for enquiry, the Workman examined himself as **W.W.1** and no documents were marked on behalf of him. On behalf of the Management one *N.A.Maran* was examined as **L.W.1** and Exhibits **M.1 to M.14** were marked.



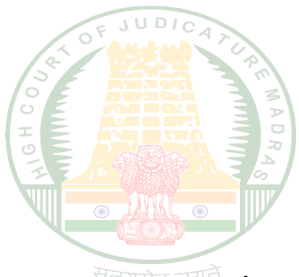
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8. The Labour Court thereafter considered the case of the parties and held that the domestic enquiry was fair and proper. Further, it found that on the basis of the evidence on record, it is clear that the Workman prayed for leave and after the leave period, he had reported for work and therefore, held that the punishment imposed was unjustified. However, taking into account he already attained the age of superannuation, instead of reinstatement with back wages, compensation of Rs.1,25,000/- was awarded.

9. Both the aforesaid Workmen aggrieved by the fact that only the relief of compensation alone was granted, have filed the present Writ Petitions in W.P.Nos.23940 of 2010 and 29341 of 2010.

10. The Workmen had also approached the authority under the payment of Gratuity Act, for payment of the gratuity. The gratuity authority held that when the Labour Court had set aside the punishment, the entire period of service should be taken into account and accordingly directed the balance period would also be taken into account and calculated the balance amount of



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gratuity and directed the Management to pay the same.

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11. In respect of the Workman – *Govindasamy*, a sum of Rs.27,318/- was ordered to be paid with 10% interest. In respect of the Workman – *Jayaraman*, a sum of Rs.33,285/- was ordered to be paid with further interest at the rate of 10% per annum. Aggrieved by the said orders, the Management has filed W.P.Nos.30996 of 2012 and 30997 of 2012.

12. Heard, *Mr.Aswin*, the learned Standing Counsel appearing on behalf of the Transport Corporation - Management. He would submit when compensation is awarded in *lieu* of reinstatement and back wages, then it is only the number of years of service actually put in by the Workmen that has to be calculated as far as the gratuity is concerned and the gratuity authority erred in considering the balance period also. As far as the Writ Petitions filed by the Workmen are concerned, he would submit that the compensation amount as ordered by the Labour Court was already paid on 18.11.2008 and 17.12.2009 and both the Workmen have received the entire amount and thereafter they



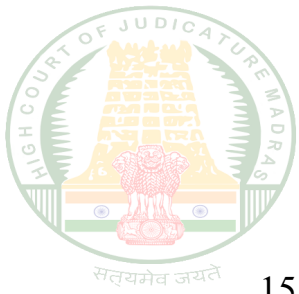
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cannot challenge the relief granted by the Labour Court.

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13. *Per contra*, the learned counsel appearing on behalf of the Workmen would submit that when the Labour Court found that the charge is not proved, then the natural corollary is to order reinstatement with back wages. Merely because the Workmen had attained the age of superannuation, the Labour Court ought not to have granted the alternative relief. The alternative relief of compensation is only to be granted in the special circumstances which do not exist in these cases. This is not a case where loss of confidence can be alleged. Even if the Workmen have attained the age of superannuation, the Labour Court ought to have granted reinstatement with back wages, so that all the benefits could have been paid to the Workmen. The Workmen as well as the family members are entitled to pension as well as the family pension.

14. I have considered the rival submissions made on either side and perused the material records of the case.



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15. In this case, when the Labour Court found that the domestic enquiry was not fair and proper, then it ought to have given an opportunity to the Management to let in evidence on the merits of the case. Be that as it may, since the punishment is of the year 1999, after a period of 26 years, the parties cannot be relegated back to the Labour Court. Therefore, the questions can be considered by this Court itself.

16. It can be seen from the proceedings that the enquiry was not fair and proper. Both the parties by consent marked the documents relating to the domestic enquiry. From the evidence, it can be seen that the period of unauthorized absence for both the Workmen were only a very short period. Considering the nature of charge which relates to unauthorized absence and considering that in the first instance the Workmen has let in evidence that he orally informed the time keeper in-charge and left the workplace, because of the accident happened to his son and his daughter and thereafter he did not turned up for work and considering the fact that the second Workman, when he turned up for work on 09.01.1999, he came with the leave letter and other



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copies, it cannot be said that the charge is proved on merits. Therefore, I hold that the non-employment is unjustified and the ultimate conclusion reached by the Labour Court is in order.

17. Once the non-employment is unjustified, the Workmen would naturally be entitled for the relief of reinstatement. Only in extraordinary cases, where there is loss of confidence or there are other factors relating to the nature of charge etc., compensation can be awarded. As far as back wages is concerned, it is the discretion of the Labour Court while taking into consideration the overall circumstances of the case. Merely because the Workmen have crossed the age of superannuation, the compensation ought not to have been awarded. Therefore, as far as the relief granted by the Labour Court, I am inclined to interfere. At the same time, the Workmen had also received the entire compensation amount as early as in the year 2008 and 2009. Therefore, the same shall be taken into account towards back wages and all other claims of retiral benefits. However, apart from the compensation amount, the Workmen will also be entitled for the entire gratuity. Already the said sum



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was ordered to be paid by the Gratuity Authority by the awards which are questioned by the Management. In view thereof, these Writ Petitions are disposed of on the following terms,

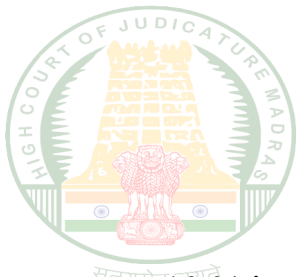
(i) The W.P.No.29341 of 2010 is partly allowed on the following terms,

a. The impugned award passed in I.D.No.81 of 2002 dated 18.11.2008 is upheld, in as much as it finds that the non-employment of the Workman is unjustified.

b. As far as the relief granted, the award stands set aside and it is modified that the Workman will be deemed to have been retired from service as on the date of his superannuation;

c. In view of the compensation amount of Rs.1,25,000/- already received by him, the same shall be taken into account as full quit towards all claims of back wages and all other retiral benefits payable to him, except the gratuity amount;

d. As far as the gratuity amount is concerned, already the appropriate authority has directed the payment of entire gratuity along with



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10 % interest by taking into account his entire period of service. The same shall stand;

e. The Workman will therefore be entitled to receive the entire gratuity amount and the Workman will be entitled for pensionary benefits as per the scheme;

f. If any Workman's contribution towards the pension scheme has to be deducted, upon demand, the Workman shall pay the same and the same can be taken into account. Further, 50 % of arrears of pension shall be paid to the Workman.

(ii) The W.P.No.29340 of 2010 is partly allowed on the following terms;

a. The impugned award passed in I.D.No.326 of 2000 dated 18.11.2008 is upheld, in as much as it finds that the non-employment of the Workman is unjustified;

b. As far as the relief granted, the award stands set aside and it is modified that the Workman will be deemed to have been retired from service



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as on the date of his superannuation;

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c. In view of the compensation amount of Rs.1,50,000/- already received by him, the same shall be taken into account as full quit towards all claims of back wages and all other retiral benefits payable to him, except the gratuity amount;

d. As far as the gratuity amount is concerned, already the appropriate authority has directed the payment of entire gratuity along with 10 % interest by taking into account his entire period of service. The same shall stand;

e. The Workman will therefore be entitled to receive the entire gratuity amount and the Workman will be entitled for pensionary benefits as per the scheme;

f. If any Workman's contribution towards the pension scheme has to be deducted, upon demand, the Workman shall pay the same and the same can be taken into account. Further, 50 % of arrears of pension shall be paid to the Workman till his date of death and thereafter, family pension payable as per the rules shall be paid to the legal heirs.



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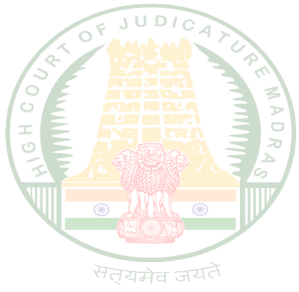
18. In view of the above orders, the Writ Petitions filed by the Management challenging the order of the payment of gratuity authority in W.P.Nos.30996 of 2012 and 30997 of 2012 shall stand dismissed.

19. No costs. Consequently, the connected miscellaneous petitions are closed.

23.01.2025

Neutral Citation : No

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To

1.The Presiding Officer
Second Addl. Labour Court
High Court Compound
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2.The Managing Director
Tamil Nadu State Transport Corporation
(Villupuram Division – 3)
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W.P.Nos.29340, 29341 of 2010, 30996 and 30997 of 2012

D.BHARATHA CHAKRAVARTHY, J.

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