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W.P.No.9912 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2025

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.9912 of 2011

And

M.P.No.1 of 2011

Tamil Nadu State Transport Corporation
(Salem) Ltd.,
Rep. by its Managing Director,
Bharathipuram,
Dharmapuri – 5.

... Petitioner

Vs.

1.The Presiding Officer
Labour Court,
Salem.

2.R.Devarajan

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the first respondent in I.D.No.697 of 2004, dated 21.04.2010 and quash the same.

For Petitioner : Mr.M.Aswin
For Respondents : R1 – Court
R2 – No Appearance

O R D E R



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The petitioner has filed this writ petition seeking issuance of Writ of Certiorari to call for the records of the first respondent in I.D.No.697 of 2004, dated 21.04.2010 and quash the same.

2.The learned counsel appearing for the petitioner submitted that the second respondent was appointed as daily wage conductor on 28.06.1989 and his service was regularized with effect from 01.05.1990. On 30.04.1996, when the second respondent was working in the bus bearing Registration No.TN29/N-0129, the vehicle was inspected by the checking inspector and it was found that the second respondent received luggage fare from a group of six passengers who were traveling from Kilvepparampatty to Dharmapuri for 42 tomato baskets at the rate of Rs.2.40 each totaling Rs.100.80 and for 5 mango baskets at the rate of Rs.3/- each totaling Rs.15/- and thus totaling to Rs.115.80 and did not issue luggage tickets to the passenger and thereby misappropriated the amount collected. The second respondent also possessed Ra.40.20 in addition to the collection amount. Thereby, suspension order dated 04.05.1996 was issued to the second respondent and enquiry was conducted.

3.The learned counsel appearing for the petitioner further



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submitted that the Enquiry Officer drawn proven minute and hence, second show cause notice was issued to the second respondent and since the explanation given by him was not satisfactory, the second respondent was dismissed from service vide order dated 05.06.1997. Thereafter the second respondent raised industrial dispute in I.D.No.697 of 2004 before the first respondent and the first respondent passed the impugned order directing the petitioner to reinstate the second respondent in service without backwages but with continuity of service only for the purpose of pensionary-retirement benefits.

4.The learned counsel appearing for the petitioner further submitted that the second respondent committed misappropriation of the amount collected which is a heinous offence, even then the first respondent ordered for reinstatement on the ground that the petitioner did not examine any passenger, however, non examination of passengers will not vitiate the departmental proceedings and what is required is preponderance of probabilities and not beyond reasonable doubt. In the present case, based on the report of the checking inspector, the second respondent was placed under suspension and after enquiry, the order of dismissal was passed, however, the first



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respondent passed the impugned order, which is not sustainable one.

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The learned counsel further submitted that the second respondent reached the age of superannuation during the year 2023.

5.Heard the learned counsel appearing for the petitioner. Though the name of the second respondent has been printed in the cause list, there is no representation for the second respondent. Considering the pendancy of the writ petition, this Court is inclined to proceed with the case and decide the same based on the materials available on record.

6.Admittedly, the second respondent was appointed as daily wage conductor on 28.06.1989 and his service was regularized with effect from 01.05.1990. On 30.04.1996, when the second respondent was working in the bus bearing Registration No.TN29/N-0129, the vehicle was inspected by the checking inspector and it was found that the second respondent received luggage fare from a group of six passengers who were traveling from Kilvepparampatty to Dharmapuri for 42 tomato baskets at the rate of Rs.2.40 each totaling Rs.100.80 and for 5 mango baskets at the rate of Rs.3/- each totaling Rs.15/-

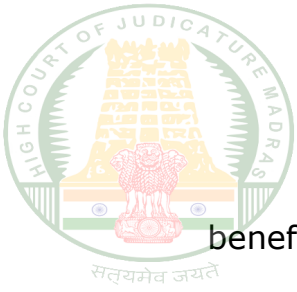


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and thus totaling to Rs.115.80 and did not issue luggage tickets to the passenger and the second respondent also possessed Ra.40.20 in addition to the collection amount.

7. None of the passengers who gave luggage fare were examined before the first respondent, however, non examination of passengers will not vitiate the departmental proceedings. In the enquiry proceedings, one Sherifkhan, the passenger who was alleged to have brought luggage in the bus and who was produced on the side of the second respondent stated that he put his signature only in the wite paper. When such deposition was available, to disprove the same, the petitioner Management did not examine any witness, thereby, the first respondent ordered for reinstatement and such finding is not perverse. Hence, the impugned order does not call for any interference.

8. However, the second respondent has reached the age of superannuation during the year 2023. Hence, no question arise for ordering reinstatement. The second respondent is not entitled for backwages from the date of termination till the date of superannuation, however, the second respondent is entitled for continuity of service. The petitioner is directed to settle the terminal



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benefits, including gratuity, provident fund, leave encashment if any,

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M.DHANDAPANI,J.

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without any backwages, in favour of the second respondent, within a period of twelve weeks from the date of receipt of a copy of this order.

9.The writ petition is dismissed with the above terms. No costs.

Consequently, the connected miscellaneous petition is closed.

17.02.2025

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

1.The Presiding Officer

Labour Court,

Salem.

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