

W.A.(MD)Nos.2399 and 2604 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.04.2025

DELIVERED ON : .06.2025

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

AND

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.A.(MD)Nos.2399 and 2604 of 2024 and
C.M.P.(MD)Nos.16551 and 18200 of 2024**

W.A.(MD)No.2399 of 2024:-

The General Manager,
Tamil Nadu State Transport Corporation
(Madurai) Limited,
Dindigul Region, Bye Pass Road,
District Collector Office Post,
Dindigul – 624 004.

... Appellant

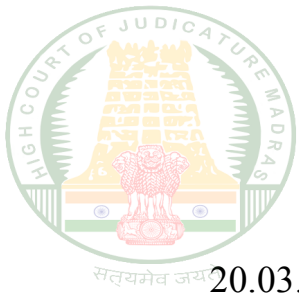
vs.

1.The Special Deputy Commissioner of Labour,
O/o. Commissioner of Labour,
Chennai – 600 006.

2.S.Thangavel

... Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent to set aside the order passed by this Court in W.P.(MD)No.3951 of 2022, dated



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For Appellant :Mr.S.C.Herold Singh

For R2 :Mr.S.Govindan

W.A.(MD)No.2604 of 2024:-

1.The Managing Director,
Tamil Nadu State Transport Corporation
(Madurai) Limited,
Madurai – 16.

2.The General Manager,
Tamil Nadu State Transport Corporation
(Madurai) Limited,
Dindigul Region,
Dindigul –4.

3.The Administrator,
Tamil Nadu State Transport Corporation Employees
Pension Fund Trust,
Thiruvalluvar Illam,
Pallavan Salai, Chennai -2.

... Appellants

vs.

S.Thangavel

... Respondent

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent to set aside the order passed by this Court in W.P.(MD)No.28444 of 2023, dated 20.03.2024.

For Appellants :Mr.S.C.Herold Singh

For Respondent :Mr.S.Govindan



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COMMON JUDGMENT

(Judgment of this Court was delivered by **S.SRIMATHY, J.**)

Both the writ appeals are arising from the orders passed in the disciplinary proceedings of the delinquent, hence both are taken up together and a common order is passed.

2.(i) The W.A.(MD)No.2399 of 2024 is filed by the Tamil Nadu State Transport Corporation against the order, dated 20.03.2024 passed in W.P.(MD)No.3951 of 2022, wherein the writ petition is filed by the Corporation inter alia praying for Writ of Certiorari to quash the order dated 05.11.2021 passed by Special Deputy Commissioner of Labour in A.P.No.73 of 2011 as illegal.

2.(ii) The W.A.(MD)No.2604 of 2024 is filed by the Tamil Nadu State Transport Corporation against the order, dated 20.03.2024 passed in W.P.(MD)No.28444 of 2023, wherein the writ petition is filed by the

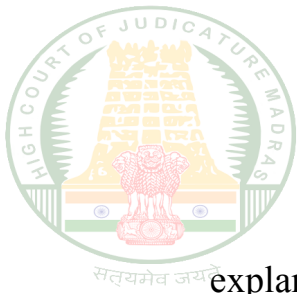


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delinquent S.Thangavel inter alia praying for Certiorarified Mandamus to quash the order dated 04.11.2023 passed by Managing Director of Corporation and consequently direct the respondents to grant Provisional Pension from the date of retirement on 30.04.2015 and also 16 months unpaid subsistence allowance along with interest in terms of Rule 19B of the Tamil Nadu State Transport Corporation Employee Pension Fund Rules and in the light of the judgment of this Court reported in 2023-IV-LLJ-467 (Mad) dated 24.08.2023.

3. The brief facts are that the delinquent S.Thangavel was working as Conductor in the Transport Corporation from 04.12.1981. On 11.11.2009, while employee was performing his duty, the Checking Inspector found that the employee misappropriated a sum of Rs.55/- without issuing tickets to a group of five passengers. Hence, a charge memo was issued and a domestic enquiry was conducted. After affording fair opportunity, the Enquiry Officer submitted a report holding that the charges are proved. The employee was directed to submit further

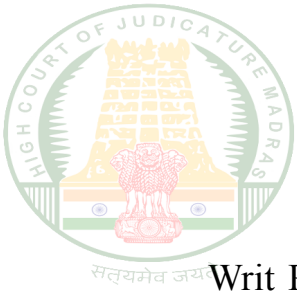


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explanation. On receipt of the further explanation, the management was not satisfied with the said explanation. Thereafter, by taking into account the fact that the petitioner had totally committed five previous misconducts and 111 other misconducts, for which he had undergone several punishments and thereafter, he was dismissed on 23.02.2011 by considering his previous misconducts and gravity of current charges.

4. Thereafter, the petitioner corporation approached the Deputy Commissioner of Labour for want of approval to dismiss the employee and filed a petition in A.P.No.73 of 2011 under Section 33(2)(b) of Industrial Disputes Act. On 27.12.2012, the Deputy Commissioner rejected the approval petition. Challenging the same, the Management filed a Writ Petition before this Court in W.P.(MD)No.14394 of 2014 and this Court vide order, dated 21.04.2021, remitted the case back to the Deputy Commissioner for deciding afresh. The Deputy Commissioner after trial by an order, dated 05.11.2021 again refused for approval. Challenging the same, the management has filed a Writ Petition in W.P.(MD)No.3951 of 2022. Simultaneously, the employee also filed a



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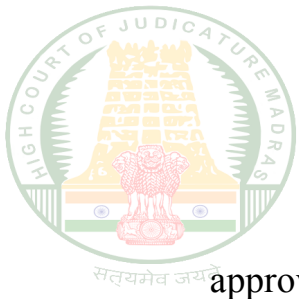
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Writ Petition in W.P.(MD)28444 of 2023 *inter alia* praying to set aside the impugned order, dated 04.11.2023 and direct the respondent to provide provisional pension from the date of retirement on 30.04.2015 and also to pay 16 months subsistence allowance with interest.

5. Both the Writ Petitions were taken up together and the Writ Court has passed a common order. The Writ Court has elaborately discussed all the points raised by the management and dismissed the Writ Petition filed by the management and allowed the Writ Petition filed by the employee. Aggrieved over the same, the present Writ Appeals have been filed.

6. Heard Mr.S.C.Herold Singh, the Learned Counsel appearing for the appellants in both the appeals and Mr.S.Govindan, the Learned Counsel appearing for the delinquent in both the writ appeals and perused the records.

7. The primary contention of the management is that when the



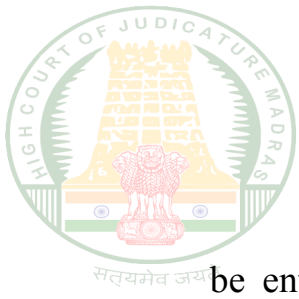
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approval petition in A.P.No.73 of 2011 was dismissed, the Writ Court has come to the conclusion that there is deemed reinstatement of the employee from the date of termination dated 23.11.2011. However, there is no reinstatement, as the case was remitted back to the authority for reconsideration. In such circumstances, there cannot be any reinstatement, especially from date of 23.11.2011.

8. It is a settled principal of law that when the approval petition was filed by the management to impose major punishment and the same is dismissed, then the employee is deemed to have reinstated into service. Once, the approval is granted, then alone the employee is not entitled to reinstatement. In the present case, even though there is no explicit order by the Deputy Commissioner for reinstatement, once the approval petition filed by the management was dismissed, it ought to be construed that the employee was reinstated into service.

9. Of course, when the employee was not worked from 2011 until 2015, then under the principle of no work no pay, the employee may not



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be entitled to salary. But the said principle can be applicable in the present case. When the employee deliberately failed to do work inspite of directed to join duty, then in such circumstances the delinquent was not entitled to wages during the non-work period. But in the present case the employer failed to allot any work to the delinquent, hence the said principle may not be applicable to the present case.

10. The next ground that was raised is that the Labour Commissioner rejected the approval by citing that no report was obtained from the driver and five passengers were not examined, but it is settled principle that it is not mandatory to examine the passengers in domestic enquiry. This Court is of the considered opinion that the passengers may not be enquiry but report ought to have been submitted from the driver. Even in domestic enquiry there ought to be some evidence apart from the allegations from the Checking Inspector. In domestic enquiry the standard of proof is preponderance of probability, but that also should be based on some independent evidence.



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11. It is seen that the delinquent had attained superannuation on 30.04.2015. Hence even if it is remand back, there will not be any useful purpose. At this juncture the Learned Counsel appearing for the management prayed to restrict the terminal benefits until the date of delinquent's retirement. This Court is not inclined to express any opinion. If the delinquent is agreeable the parties are at liberty for any settlement.

12. For the reasons stated supra, the Writ Appeals are dismissed.
No costs. Consequently, connected miscellaneous petitions are closed.

(J.N.B., J.) & (S.S.Y., J.)
.06.2025

Index :Yes / No
NCC :Yes / No

cmr

To

The Special Deputy Commissioner of Labour,

9/11



W.A.(MD)Nos.2399 and 2604 of 2024

O/o.Commissioner of Labour,
Chennai – 600 006.

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J.NISHA BANU, J.

and

S.SRIMATHY, J.

cmr

Pre-delivery Judgment made in
W.A.(MD)Nos.2399 and 2604 of 2024

.06.2025