



In both the Writ Petitions:

For Petitioner(s): Mr.M.Aswin
For Respondent(s): Mr.K.V.Shanmuganathan

COMMON ORDER

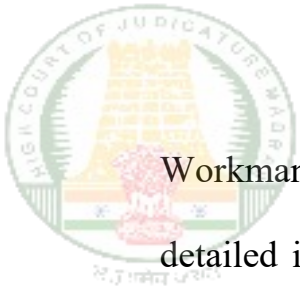
The W.P.No.6814 of 2021 is filed challenging the award dated 30.10.2019 passed by the Presiding Officer, Labour Court, Salem in I. D. No. 95 of 2014.

The W.P.No.8005 of 2024 is filed challenging the consequential award dated 10.08.2023 passed by the Presiding Officer, Principal Labour Court, Salem in C.P. No 61 of 2022, computing the arrears of wages.

2. The brief factual background in which these Writ Petitions arise is that the respondent – Workman was working as a Driver in the petitioner - Management. It is alleged that the Workman stopped reporting for work with effect from 26.03.2011. The petitioner – Management directed the Superintendent / co-employee to visit the Workman and inspect his residence and submit a report. When the co-employee visited the residence of the Workman, he stated that he was affected with jaundice and now, he is getting better and that he will report for work. However, upon enquiry in the local village, an information was given that the workman is having a Tata Ace mini van and a tractor and is also running a tea shop and therefore, he is not reporting for work. Thereafter, a charge of unauthorised absence was served on him and



5. The Industrial Dispute was resisted by the Management. It was stated that from 26.03.2001, the workman was unauthorisedly absent from duty. Upon inspection, it was found that since he was running a tea shop and having his own business by running a Tata ace and other vehicles, he was not reporting for duty. Thereafter, a charge memorandum was issued. After due enquiry, the punishment was imposed. The earlier details of punishments imposed on the



Workman which included the punishment for unauthorised absence, was detailed in the counter statement. In the counter statement, it was specifically prayed that if the Labour Court comes to a conclusion that the procedure adopted is unfair, the Management is willing to adduce evidence on merits in paragraph 13 of the counter statement.

6. Under the said circumstances, the Workman examined himself as P.W.1 and marked the documents in Exs.P.1 to P3. One *Mohan Kumar* and *Ravichandran* were examined as R.W.1 and R.W.2 and the documents in Exs.R1 to R7 were marked on behalf of the Management. Thereafter the Labour Court considered that when the Workman was suffering from jaundice, it should not have been treated as unauthorised absence and considering the fact that the Workman was working for more than 15 years as permanent employee held the non employment as unjustifiable and directed reinstatement of the Workman with continuity of service, back wages and attendant benefits.

7. Aggrieved by the same the present Writ Petition in W.P.No.6814 of 2021 is filed. At the outset, submissions were made that the Labour Court omitted to follow the due procedure. The Labour Court should have framed the first question as to the fairness of procedure and thereafter should have exercised the power under section 11 (A) of the Industrial Disputes Act, 1947, depending upon its finding. The said procedure is not followed and therefore the



award is vitiated.

8. The learned counsel for the Workman is not in a position to refute the same. However, it is evident that the Workman attained the age of superannuation on 31.03.2022. The charge against him pertains to unauthorised absence.

9. Considering the overall facts and circumstances of the case, it is noted that the Workman was dismissed in the year 2011 and initiated litigation in 2012 by raising a dispute after a lapse of one year from the date of dismissal. Subsequently, the claim petition was filed in 2014 and taken on file as I.D. No. 95 of 2014. In view of the lapse of time, remanding the matter back to the Labour Court at this stage would not be fair. Therefore, this Court deems it appropriate to decide the issue on the merits of the case.

10. Under these circumstances, this Court has to decide whether the enquiry was fair and proper and whether the charges stand true. It can be seen that the enquiry was conducted after serving a charge memorandum and due opportunity has been given. After recording of evidence in the domestic enquiry, the final order was passed. No other specific ground with reference to the unfairness in the procedure is raised. The grounds are general in nature. I hold that the enquiry was fair and proper.



11. The next question that has to be considered is with reference to the evidence for the charges and proportionality of punishment. In this regard, it can be seen that the attendance register is marked as Ex.R5 and therefore it cannot be said that there is no evidence at all. The Labour Court has considered the entire issue on the proportionality of punishment, in exercise of its power under section 11A of the Industrial Disputes Act, 1947. The Labour Court considered the plea of the Workman that he was suffering from jaundice and held that the non employment is unjustified. Such a finding though cannot be termed as perverse or without any basis, at the same time the Labour Court omitted to consider the fact that there was a delay on the part of the Workman, in raising the dispute and it can be seen that as per the claim statement the Workman only tried to inform the Management through co-employees and he did not even attempt to send a leave letter.

12. For all the above reasons, the Labour Court ought not to have granted back wages, even while holding that the dismissal was unjustified. While considering the question of proportionality, the Labour Court failed to examine what appropriate punishment could have been imposed on the Workman and mechanically ordered reinstatement with full back wages and continuity of service.



13. In the facts and circumstances of the case, and particularly in view of the fact that the Workman has already retired from service, I am of the considered view that the punishment of removal from service is liable to be set aside. The Workman shall be deemed to have been in service till the date of his superannuation, i.e., 31.03.2022, and shall be entitled to all retiral benefits accordingly. However, he shall not be entitled to any back wages from the date of dismissal till the date of retirement.

14. In view thereof,

(i) The W.P.No.6814 of 2021 is partly allowed, and the award passed by the Presiding Officer, Labour Court, Salem in I.D.No.95 of 2014 dated 30.10.2019 is modified on the following terms,

(a) The non-employment of the Workman is held to be unjustified. The Workman will be entitled to be reinstated into service with continuation of service, however, without any back wages from the date of dismissal till the date of retirement..

(b) Now, the Workman is said to have attained the age of superannuation with effect from 31.03.2022, by treating his service as continuous, the retiral benefits and all other amounts due to him shall be paid to the Workman.

(ii) In view of the above order passed in W.P.No.6814 of 2021,



modifying the award in I.D.No.95 of 2014, the W.P.No.8005 of 2024 stands allowed and the consequential order that is passed in C.P. No 61/ 2022 dated 10.08.2023 by the Presiding Officer, Principal Labour Court, Salem, shall stand set aside.

(iii) The retiral benefits due to the Workman shall be paid within a period of three months from the date of receipt of the website uploaded copy of this order, without waiting for the certified copy.

(iv) No costs. Consequently, the connected miscellaneous petitions are closed.

24-02-2026

Neutral Citation: Yes/No

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To
The Presiding Officer, Principal Labour Court, Salem.



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D.BHARATHA CHAKRAVARTHY, J.

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