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W.A.No.377 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

W.A.No.377 of 2023

D.Amaran @ Parabaran

..

Appellant

-VS-

1. The Managing Director,
State Express Transport Corporation,
(Erstwhile Thiruvalluvar Transport
Corporation),
Pallavan Salai, Chennai- 600 002.

2. The General Manager,
State Express Transport Corporation,
(Erstwhile Thiruvalluvar Transport
Corporation)
Pallavan Salai, Chennai- 600 002.

3. The Presiding Officer,
1st Additional Labour Court,
Chennai.

...

Respondents

Writ Appeal filed under Clause 15 of the Letters Patent Act, to set aside the
order dated 12.12.2022 in W.P.No.15622 of 2010.



W.A.No.15622 of 2010

For Appellant : Mr.R.Karunagaran

For Respondents : Mr.S.Sivasubramani
(R1 & R2)

J U D G M E N T

This Writ Appeal has been preferred by the Workman challenging the order dated 12.12.2022 made in W.P.No.15622 of 2010 preferred by the Management, in setting aside the Award dated 28.01.2009 passed by the Labour Court in I.D.No.606 of 2004, in directing the Management to reinstate the Appellant/Workman into service with continuity of service and without backwages.

2. The Appellant/Workman was appointed as Junior Assistant on 01.10.1981. As he was absent for duty from 17.12.1999, a charge memo was issued to him on 04.01.2000, for which he did not submit his explanation. Thereafter, domestic enquiry was conducted on 26.02.2000, in which he did not participate. Therefore, the same was adjourned to 18.03.2000. Even in the said enquiry, he did not participate. Despite several opportunities having being given to him on 27.04.2000, 23.05.2000, 03.06.2000, 22.06.2000 and 29.06.2000, he did not chose to participate in the enquiry. The notices sent him were returned unserved. On 01.07.2000, he sent a telegram to the Management for reporting to duty. But, it was also not complied with. As he failed to



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join duty, once again, enquiry proceedings were initiated. Another notice was sent to him on 13.07.2000 with an instruction that the enquiry will be closed if he failed to appear. Even then, he did not participate in the enquiry. The Enquiry Officer vide report dated 10.08.2000 held that charges 1 to 3 were proved. Thereafter, second show cause notice was sent to him by post and the same was returned to the Management. Therefore, the Respondent Management effected paper publication in the daily 'Dinakaran' on 13.01.2001. As no explanation was received from him, he was removed from service vide order dated 07.03.2001 passed by the Second Respondent. The operative portion of the said dismissal order is extracted hereunder:

"எனவே பொதுசேவையில் ஈடுபட்டுள்ள இந்நிறுவனத்தின் பணியிலிருக்கும் நீர் உமக்கு பல வாய்ப்புகள் அளித்தும், பணிக்கு முன் அறிவிப்பின்றியும், தன்னிச்சையாகவும் வராதிருப்பதால். இந்நிறுவன பணிகளில் முடக்கம் ஏற்படுத்தியுள்ளீர். எனவே இனியும் உம்மை பெயரளில் இந்நிறுவனத்தின் பணியில் தொடரச் செய்தால், நிறுவன நலனுக்கு உகந்ததாக இருக்காது என்பதால் நிறுவனந லன் கருதி உம்மை இந்நிறுவனத்தினின்றும் நிரந்தர பணிநீக்கம் செய்து உத்தரவிடப்படுகிறது.

நீர்உமது அடையாள அட்டை மற்றும் பிற உடமைகளை உடனடியாக அலுவலகத்தில் ஒப்படைக்கும்படி அறிவுறுத்தப்படுகிறார்.

நீர் வந்த கணக்குகளை தலைமையகத்தில் ஏதேனும் ஓர் பணிநாளில் வந்து நேர் செய்து கொள்ளவு்.

நீர்வாக இயக்குநரிடம் மேல்முறையிடு ஏதேனும் செய்யவிருப்பின், இரண்டு (2) மாத காலத்திற்குள் செய்ய வேண்டும், "

3. Challenging the said order of dismissal passed by the Respondents/Transport



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Corporation, the Appellant/Workman raised an Industrial Dispute in I.D.No.606 of 2004, before the Labour Court. The Labour Court passed an Award dated 28.01.2009 in the said Industrial Dispute, reinstating the Appellant/Workman into service with continuity of service and without backwages. The operative portion of the Award dated 28.01.2009 is extracted hereunder:

"13.Ex.M2 is the enquiry findings submitted by the enquiry officer on 10.08.2000. The enquiry officer in his findings stated that the Petitioner received the registered notice and acknowledged it and even then he failed to submit any explanation. Thereafter, in order to facilitate the petitioner to participate in the enquiry notices were ordered on 26.2.00, 18.03.00, 18.3.00, 11.04.00, 27-04-00, 23-5-00, 3-6-00, 22-6-00, 29-6-00, 13-7-00 and 08-08-00 respectively by registered post. According to the enquiry officer, the said letters were never served and were returned. The enquiry officer further stated that the petitioner expressed his willingness to join duty on 1-7-2000 through a telegram. Further it is stated in his report that the petitioner once again sent telegram on 4-7-2000 and sought time upto 15-7-00 and even after the date he did not report for duty. According to the enquiry officer the attitude of the petitioner showed his disinclination either to join duty or to participate in the enquiry. Therefore exparte enquiry was conducted. The enquiry officer based on the findings given by M.W.1 and M.W.2 came to the conclusion that the charges levelled against the petitioner were proved. But the relevant documents were not produced before this Court to substantiate the findings.

14.EX.M.3 is the second show cause notice issued to the petitioner. According to the Petitioner, Ex.M3 show cause notice was received by him. The management contended that the second show cause notice sent to the address given by the petitioner was returned unserved. Therefore the notice was published in the news



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paper and thereafter Ex.M4 termination order was passed. But the paper publication has also not been produced before this Court for better appreciation. Therefore, the respondent management failed to prove their stand also. The petitioner has not produced the copy of the leave applications submitted to the management from 15.12.99, copy of the telegram and other applications at the relevant time. Therefore, the bonafides of the petitioner has not been established before this Court. The petitioner also has not produced the relevant medical records to substantiate his stand that he was taking treatment continuously from 15.12.99. There is no document to show that the petitioner was ready to join duty. The petitioner cannot take advantage of the transfer orders Ex.W2 to W7 to substantiate his bonafides. These documents alone are not sufficient to place the petitioner in his original position. The alleged misconduct is also not a grievous misconduct. The attitude of the petitioner is also not upto the expectation of the management. Therefore considering the facts and circumstances of the case, this Court is of the view that it would suffice to order reinstatement to the petitioner with continuity of service and not with any back wages. Point 1 is answered accordingly.

15. Point No.2: In the result, in view of the observations made in Point No.1, this Industrial Dispute is allowed in part. The order of dismissal of the respondent management Miz vz; 46/108883/mtpnghf/99, dated 7-3-2001 is set aside. The respondents are directed to reinstate the petitioner with continuity of service but without backwages. No cost."

4. Being aggrieved, the Respondents 1 and 2 preferred a Writ Petition before this Court in W.P.No.15622 of 2010 and a learned Single Judge, vide order dated 12.12.2022, set aside the Award of the Labour Court dated 28.01.2009, as against which, the present Intra Court Appeal has been preferred by the Appellant/Workman.



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5. The learned counsel for the Appellant/Workman submitted that the Labour Court, by taking note of all aspects, has set aside the order of termination and reinstated the Workman with continuity of service and without backwages the same has been erroneously interfered with by the learned Single Judge. He further submitted that the learned Single Judge has not taken into consideration the fact that the Appellant got superannuated on 30.06.2011, i.e., 12 years ago and due to denial of pensionary and other attendant benefits to the Workman, he and his family are facing great difficulty and, hence prayed to set aside the order of the learned Single Judge.

6. The learned counsel appearing for the Respondents 1 and 2 submitted that unauthorized absence is a serious misconduct as per the model Standing Orders and earlier, the Workman has suffered 5 punishments and was warned on four occasions for various acts of misconduct. He further submitted that the learned Single Judge, by taking note of the lethargic attitude of the Appellant/Workman towards employment, has rightly set aside the Award of reinstatement passed by the Labour Court and hence, the order of the learned Single Judge does not warrant interference.

7. Heard both sides. Perused the records.

8. A perusal of the order passed by the Labour Court would go to show that the



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Labour Court disbelieved the fact that the Workman was put on notice before passing the dismissal order. The Labour Court also held that the Workman did not produce any medical records to substantiate the stand that he was continuously taking treatment from 15.12.1999. That apart, there was no document produced before the Labour Court to show that the Workman was ready to join duty. The Labour Court, by taking note of the fact that the misconduct alleged to have been committed by the Workman is not a serious misconduct, has passed the Award reinstating him with continuity of service and without backwages.

9. To be noted, though the Workman was warned on four occasions, no enquiry was conducted in this regard. However, enquiry was conducted with regard to non issuance of ticket and the charges were held to be proved.

10. A perusal of the proceedings passed by Mr.G.Ratnavelu, the Managing Director dated 06.11.1982 would go to show that initially, the Workman was imposed the punishment of stoppage of increment for a period of 2 years with cumulative effect, for the aforesaid irregularity said to have been committed in respect of non issuance of ticket and considering the unblemished past record of the Workman, by taking a lenient view, the aforesaid punishment was set aside by the Appellate Authority. That apart, it



is clearly seen that the Workman had no blemish from 1982 till the dismissal order was passed.

11. Though it is true that absenting from duty for a long period is a serious lapse, no Workman, under the guise of his absence, can be denied employment as the punishment should be in proportion to the proved misconduct. In this case, the Labour Court has rendered a finding of fact and made an observation in favour of the Employer as well as the Workman and by exercising powers conferred under Section 11 A of the Industrial Disputes Act, 1947, has set aside the dismissal order by depriving the entire backwages. The Workman who has rendered 20 years of service cannot be deprived of pension as he and his family solely depend on his pension for eking out their livelihood. Furthermore, any blemish in the past service of the Workman cannot be relied on to impose a punishment, when the present charges have not been proved.

12. Taking note of the aforesaid facts and circumstances, we are of the view that the punishment imposed by the employer with effect from 07.03.2001 be restored and converted into one of discharge from service as there are various punishments that can be imposed by the Employer under Clause 26 of the Certified Standing Orders.

13. When the aforesaid Certified Standing Orders produced by the Management



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are applicable only to Pallavan Transport Corporation Limited, the learned counsel for the Appellant Workman submitted that on account of bifurcation, each Transport Corporation has separate Standing Orders and now that all the Transport Corporations have been merged, this was one relied upon at the time of the Industrial Dispute.

14. Be that as it may, taking note of the fact that punishment of dismissal from service would not entitle the Workman to get pension and that there is no question of reinstatement as the Workman got superannuated on 30.06.2011, we convert the punishment of dismissal from service into one of discharge from service, which will enable the Workman to get pensionary benefits on account of 20 years of service rendered by him.

15. In view of the above discussion, the order of the learned Single Judge and the Award of the Labour Court are modified and the punishment of dismissal from service is converted into one of discharge from service, enabling the Workman to get pension and other terminal benefits. We expect the Respondents to extend the notional benefits and pay the eligible monetary benefits to the Appellant/Workman, within a period of four weeks from the date of receipt of a copy of this Judgment.



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This Writ Appeal is disposed of accordingly. No costs.

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[S.V.N., J.] [R.K.M., J]
12.04.2023

Index: Yes / No
Internet: Yes / No
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To

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Corporation),
Pallavan Salai, Chennai- 600 002.
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S. VAIDYANATHAN,J.,
and
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