

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.1698 of 2014
and
M.P.No.1 of 2014

The Management of
Tamil Nadu State Transport Corporation,
(Villupuram-III) Ltd.,
Kancheepuram Region,
Kancheepuram. ... Appellant/Petitioner

Vs.

1.The Presiding Officer,
II Additional Labour Court,
Chennai.
2.M.Anbazhagan ... Respondents/Respondents

This writ appeal is preferred under Clause 15 of the Letters Patent against the order of this court dated 18.11.2011 made in W.P.No.16326 of 2009.

W.P.No.16326 of 2009: Writ Petition filed under Article 226 of the constitution of India,praying for the issuance of writ of certiorari, to call for the records made in I.D. No. 516 of 2001 dt 28.11.2008 on the file of the 1st respondent and quash the same.

For Appellant : Mr.P.Paramasiva Doss
For 2nd Respondent : Mr.V.Ajay Khose

JUDGMENT

(Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

The second respondent in the instant appeal and also in the writ petition (hereinafter referred to as "employee") was working as a Driver since 6.5.1986. As recorded by the Labour Court, the employee remained absent from 1.4.1997 onwards, as he fell sick on 1.4.1997 and thereafter, on account of the death of the husband of his sister, he could not join duty for a period of eight days. Thereafter, he reported for duty along with the medical certificate. However, he was not permitted by the management appellant. Thereafter, a charge memo dated

14.5.1997 was issued to the employee and the employee, on receiving the said notice, submitted a representation on 16.10.1997. The enquiry was adjourned on request of the delinquent employee, which was subsequently adjourned to 4.12.1997 on the ground that the management witness was not available. On 4.12.1997, the delinquent employee could not appear. Without adjourning the proceedings further, the Enquiry Officer proceeded exparte. The second show cause notice was issued consequently on 19.1.1998, to which the employee submitted his explanation on 7.2.1998. Being dissatisfied with the explanation, the management appellant passed an order of dismissal on 21.2.1998.

2. The delinquent employee raised a dispute some times in the year 2001 before the II Additional Labour Court, Chennai in I.D.No.516 of 2001. The Labour Court, having recorded that the employee was not permitted to join duty after having completed eight days, it was also found that the management had not produced any witness when the employee had examined himself as W.W.1. It was also held that the domestic enquiry was not fair and proper. Accordingly, the learned Labour Court, by order dated 28.11.2008, set aside the order of dismissal, granting reinstatement with 50% of the consequential benefits. It was directed to comply with the order within a period of three months from the date of the order.

3. Being aggrieved, the management -appellant herein came up with the instant writ petition. The learned Single Judge, having examined all the facts of the case, held that the actual unauthorised absence was only for eight days and the subsequent absent was on account of denial by the management to permit the employee to join duty. The learned Single Judge also upheld the findings of the Labour Court that the enquiry was not fair and proper. Thus, it was found that even otherwise the punishment of dismissal from service was disproportionate to the alleged offence.

4. The management has come up with this intra-court appeal on altogether different grounds that the employee was an habitual absentee and it was a case of gross misconduct. It was also contended that he was habitually negligent of duty and lack of interest in work. Next, it was contended that the management lost confidence in the employee and non-availability of other punishment warrants for punishment of dismissal from service. The appellant has not made any challenge to the procedure or findings on the ground that it was perverse and illegal.

5. We have heard the learned counsel for the parties, perused the pleadings and documents appended thereto. The appellant has not produced a copy of the charge sheet and also the order of dismissal. On perusal of the impugned order passed by the Labour court as well as the learned Writ Court, it appears that the grounds raised by the appellant before us are new impermissible grounds and have not been raised earlier, as this is not the case of the appellant that despite raising the aforesaid grounds of habitual absentee, habitually negligent of duty and lack of devotion, the courts below have not adverted to.

6. In view of the foregoing, we do not find any irregularity or irrationality or perversity in the order passed by the Labour Court. We are of the considered opinion that the view taken by the learned Single Judge is flawless and does not warrant interference.

7. Resultantly, the writ appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Presiding Officer,
II Additional Labour Court,
Chennai.

2.The Management of
Tamil Nadu State Transport Corporation,
(Villupuram-III) Ltd.,
Kancheepuram Region,
Kancheepuram.

+1cc to Mr.V.Ajay Khose, Advocate Sr 1955
+1cc to Mr.P.Paramasiva Doss, Advocate Sr 1854

BKY(CO)
km/21.1.



W.A.No.1698 of 2014

सत्यमेव जयते

and
M.P.No.1 of 2014

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