

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON : 27/07/2015

DATED : 30/09/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.3032 of 2012

and

M.P.Nos.1 of 2012 and 1 of 2013

The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram) Limited,
Villupuram-605 602. Petitioner

vs.

1.The Presiding Officer,
Labour Court,
Cuddalore.

2.R.Rajendiran Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorari to call for the records dated 29.12.2010 made in I.D.No.21 of 2008, on the file of the Labour Court, Cuddalore, the first respondent herein and quash the same.

For Petitioner : Mr.V.R.Kamalanathan

For Respondents : Mr.C.Prakasam for R-2
(Labour Court - R1)

O R D E R

The petitioner-Transport Corporation has filed the above writ petitioner to quash the order made in I.D.No.21 of 2008, on the file of the Labour Court, Cuddalore, dated 29.12.2010. The petitioner-Transport Corporation is a Government of Tamil Nadu undertaking plying buses in and around Villupuram and for the convenience of general public without any profit.

2. The brief facts of the case are as follows:-

The second respondent joined as conductor in the petitioner Corporation on 06.11.1998. While he was in service,

he had absented from duty unauthorizedly from 21.04.2002 to 19.06.2002, 24.06.2002 to 26.06.2002, 01.07.2002, 02.07.2002, 05.07.2002 to 12.07.2002, 21.07.2002 to 01.08.2002, 06.08.2002, 07.08.2002 and from 12.08.2002. Since he was habitually absented from duty which lands to dislocation of work, the Corporation issued a charge memo dated 04.09.2002. The second respondent has received the charge memo on 30.09.2002, but failed to submit his explanation to the said memo. Hence, domestic enquiry was ordered and conducted on 23.12.2002 in which, the second respondent participated in the said enquiry and the Enquiry Officer read out the entire charges and explained in detail, for which, the second respondent accepted the charges in the said enquiry. Though opportunity was given to the second respondent to cross-examine the Management witness and also to examine his side witness, he failed to do so. Finally, the Enquiry Officer found that except the charge Nos.5 and 6, all the 1 to 4 and 7 to 8 charges were proved. Considering his past record of absence from duty in the previous years (i.e.) 2000- 106 days, 2001-237 days, 01.01.2002 to 20.10.2002-260 days, Management proposed to punish and sent a show cause notice dated 29.05.2003 to the second respondent and he replied for the said show cause notice and on perusal of the said reply it was not found satisfactory. Hence, the Management passed an order dated 05.02.2004 removing the second respondent from service and the said order, was received by the second respondent on 10.02.2004.

3. The petitioner has further submitted that in order to approve the order of dismissal, the Management preferred an Approval Petition in A.P.No.51 of 2004 under Section 33(2)(b) of the Industrial Dispute Act before the Commissioner of Labour, Chennai. The said approval petition was rejected by the Authority on 25.05.2002. The said order passed by the Joint Commissioner, Labour was challenged by the Management in W.P.No.37243 of 2005 before this Court. On 14.09.2006, this Court was pleased to allow the said writ petition filed by the Management and the order passed by the said authority in A.P.No.51/2004, dated 25.05.2005 was set-aside and approval was granted.

4. The petitioner has further submitted that after about two years, the second respondent raised an Industrial Dispute in I.D.No.21/2008 before the Labour Court, Cuddalore. In the said Dispute, the first respondent Labour Court found that since the second respondent was suffering from illness and taking medical treatment he had absented himself from duty and had come to a conclusion ordering reinstatement with continuity of service but without back-wages. Hence, the petitioner has filed the above writ petition.

5. The learned counsel appearing for the petitioner has submitted that the second respondent joined as Conductor in the petitioner Corporation on 06.11.1998. While he was in service, he was on unauthorized absence on nine occasions. Hence, the petitioner Corporation had issued a charge memo on him, but, he had not submitted any explanation. Subsequently, a domestic enquiry was conducted after affording him sufficient opportunity. The Enquiry Officer found that six charges out of eight charges were proved and submitted a report. Hence, the second respondent was dismissed from service. Subsequently, the Management sent an approval petition to the Commissioner of Labour, Chennai, who rejected the same on 25.05.2002. Challenging the same, the Management filed a writ petition, in W.P.No.37243 of 2005, before this Court and this Court, by order, dated 14.09.2006, allowed the writ petition and set aside the order, dated 25.05.2002, passed by the Commissioner of Labour, Chennai. Subsequently, the second respondent raised an industrial dispute, in I.D.No.21 of 2008, before the first respondent. The first respondent, without considering the detailed domestic enquiry report and findings, allowed the same and directed the Management to reinstate the the second respondent with continuity of service.

6. The learned counsel appearing for the second respondent has submitted that the second respondent had been appointed as a Conductor during 1998. Due to his health condition, he was unable to do his job from 21.04.2002. Hence, the Management had dismissed him from service on 05.02.2004. Therefore, the second respondent had filed a case before the first respondent. The first respondent, after hearing both sides and after perusing the relevant documents, set aside the order of dismissal and directed the Management to reinstate the second respondent with continuity of service, but without backwages. The second respondent's absence from duty is neither wilful nor wanton, but due to his illness and the same was established after production of medical report. Therefore, there is no shortcoming in the said impugned award passed by the first respondent.

7. On considering the facts and circumstances of the case, arguments advanced by the learned counsel on either side and on perusing the typed set of papers, it is seen that the second respondent was absent due to his illness and the same was proved after producing series of medical prescriptions and medical report. Besides, the second respondent was working as a permanent staff and therefore the highest punishment of dismissal from service is not appropriate. Therefore, the set aside of the dismissal order by the first respondent is appropriate. As such, the writ petition does not generate sufficient force to allow it and the same is liable to be dismissed.

8. In the result, the writ petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(J)

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Sub-Assistant Registrar

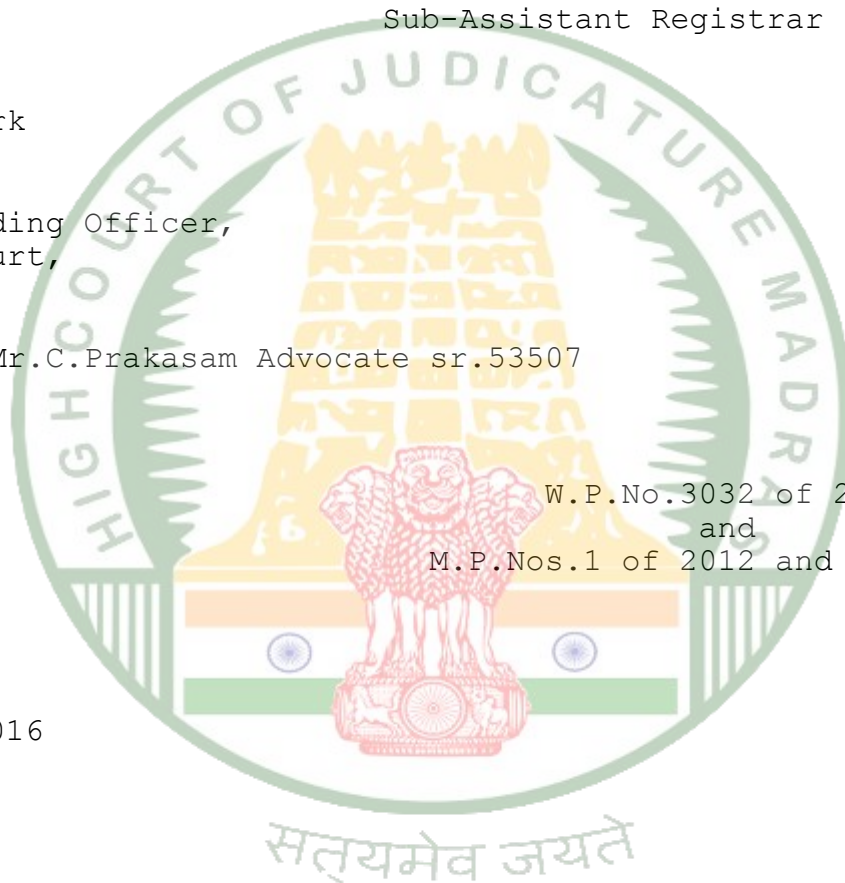
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To:
The Presiding Officer,
Labour Court,
Cuddalore.

+1 cc to Mr.C.Prakasam Advocate sr.53507

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