

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.33899 of 2006

The Managing Director
Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Kancheepuram Region

...Petitioner

-vs-

1. The Presiding Officer
Principal Labour Court
Chennai

2. T.Arularasan (deceased)

3. Tmt.Gnanagadevi

4. A.Kalaiarasan

5. Selvi A.Nandhidevi

6. A.Tamilarasan

(R3 to R6 substituted as legal heirs
in the place of the deceased R2
as per order dated 23.1.15 in M.P.No.1
of 2012 in W.P.No.33899 of 2006)

...Respondents

Petition under Article 226 of the Constitution of India, praying
for the issue of a Writ of Certiorari, calling for the records
relating to I.D.No.899 of 1999 dated 30.11.2005 on the file of the
first respondent and quash the same.

For Petitioner : Mr.T.Chandrasekaran

For Respondents : Mr.V.Ajoy Khose for R2 to R6
R1-Court

ORDER

The Managing Director of Tamil Nadu State Transport Corporation (Villupuram) Limited has challenged the impugned award made in I.D.No.899 of 1999 dated 30.11.2005 directing the reinstatement of the second respondent-Mr.T.Arularasan with continuity of service and all attendant benefits without backwages, on the ground that the first respondent-Principal Labour Court failed to consider that during the domestic enquiry, the management witnesses have clearly established that no leave letter or medical certificate was received from the second respondent. This vital aspect has been completely overlooked.

2. Mr.T.Chandrasekaran, learned counsel for the petitioner-Management, assailing the impugned award, submitted that the second respondent, having been working as a Conductor, absented himself for duty from 3.5.94 to 29.11.94 without getting any prior permission from the petitioner-Management or obtaining any leave for the said period. Therefore, the second respondent being a Conductor, whose services were necessary and essential for the transport Corporation, was issued with a charge memo calling upon him to submit his explanation as to why disciplinary action should not be taken against him. But he did not submit any explanation. However, to provide him a reasonable opportunity, domestic enquiry was conducted. When the second respondent was given ample opportunities during the enquiry proceedings, the second respondent did not even produce any medical certificate to substantiate his defence for the absence. Therefore, the conduct of domestic enquiry cannot be faulted. As the domestic enquiry was fairly and properly conducted following the principles of natural justice, after analysing the documents and evidence adduced by the petitioner-Management, the enquiry officer held the charges framed against the second respondent as proved. Only based on the report of the enquiry officer, a second show cause notice was issued to him. After receipt of the said notice, the second respondent submitted his explanation for the first time. Therefore, the disciplinary authority found the said explanation as unacceptable and finally passed the order of dismissal from service. But the first respondent-Principal Labour Court, taking completely a different stand that the second respondent was not cross examined about the genuineness of the document, namely, the leave letter sent by certificate of posting, wrongly taking note of the findings of the enquiry officer about the certificate of posting, that the certificate of posting were insufficiently stamped, cannot be accepted as a proper approach adopted by the enquiry officer, erroneously allowed the industrial dispute, particularly directing

the petitioner-Management to reinstate the second respondent with continuity of service with all attendant benefits, but without backwages. When the second respondent unauthorisedly absented himself for duty without any prior permission from the petitioner-Management, he does not deserve to continue as a Conductor in the petitioner transport Corporation. Adding further, he has stated that the second respondent, during the pendency of the writ petition, died on 26.12.2007. Therefore, the prayer for reinstatement has become an academic issue. On this basis, he prayed for allowing the writ petition.

3. Mr.V.Ajay Khose, learned counsel for the second respondent submitted that the allegation made by the petitioner-Management that the second respondent absented himself for duty from 3.5.94 to 29.11.94 was rightly gone into by the first respondent-Principal Labour Court based on the own admission made by the management witnesses, who had clearly admitted in the cross examination during the domestic enquiry that the second respondent's letter addressed to the Branch Manager through post was received, but the same was not sent to the control section. That apart, the second respondent was not even cross examined about the genuineness of the document sent to the management seeking permission for the said period. When the second respondent sent his leave letter through certificate of posting, it was marked in the domestic enquiry. But unfortunately, the petitioner-Management, having had an occasion to cross examine about the documents marked on the side of the second respondent, miserably failed to do so even during their own domestic enquiry. Therefore, when the second respondent was not cross examined on the genuineness of the document, the first respondent-Principal Labour Court, taking support of the admission of the management witnesses, came to the conclusion that the second respondent rightly sent his leave letter addressing the Branch Manager. Hence, the findings of the Principal Labour Court cannot be found fault with, he pleaded.

4. A reading of the reasoning and the conclusion given by the Principal Labour Court shows that when the petitioner-Management gave a show cause notice to the second respondent under Ex.M5 on a charge that he was unauthorisedly absent for duty from 3.5.94 to 29.11.94, in the dismissal order marked as Ex.M7, it has been indicated by the Principal Labour Court that the absence of the second respondent has been shown as though from 21.11.93 to 1.4.94, the period which was not even covered in the domestic enquiry. In addition thereto, the petitioner-Management having had an opportunity to cross examine the second respondent, miserably failed to do so to disprove the genuineness of the leave letter claimed to have been sent by the

second respondent through certificate of posting. Therefore, the finding of the enquiry officer about the certificate of posting stating that the certificate of posting were insufficiently stamped, was rightly rejected. When the second respondent has specifically stated during his enquiry about the sending of his leave letter with medical certificate to the original authority under certificate of posting, this has not been controverted by the petitioner-Management during the domestic enquiry. Moreover, the management witnesses also admitted in the cross examination during the domestic enquiry that the second respondent's letter addressed to the Branch Manager through post was received, but the same was not sent to the control section. Therefore, the case of the petitioner-Management was not accepted by the first respondent-Principal Labour Court and on this basis, the first respondent, partly allowing the industrial dispute raised by the second respondent, directed the petitioner-Management to reinstate him with continuity of service along with all attendant benefits, but without any backwages. However, when the said impugned award was challenged, the second respondent also sadly passed away on 26.12.2007 and in his place, the legal heirs have been brought on record. Therefore, this Court is not inclined to interfere with the impugned award. Accordingly, the writ petition fails and it is dismissed. Needless to mention that the petitioner-Management shall release all the service benefits of the employee to which the legal heirs are entitled to, within a period of six weeks from the date of receipt of a copy of this order. Consequently, interim order stands vacated and the M.P.No.1 of 2006 is also dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Presiding Officer
Principal Labour Court
Chennai

WEB COPY

2. The Managing Director
Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Kancheepuram Region.

1 CC to Mr.V.Ajoy Khose, Advocate SR.No. 6711

1 CC to Mr.T.Chandrasekaran, Advocate SR.No. 6475

W.P.No.33899 of 2006

MP (CO)
PSI (01.04.2015)



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