

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.39567 of 2004 & 11273 of 2006

W.P.No.39567 of 2004:

Tamil Nadu State Transport Corporation
(Salem) Limited

Salem rep. By its Managing Director .. Petitioner

-vs-

1. The Presiding Officer
Labour Court, Salem

2. C.Rathinam .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, to call for the records of the first respondent in I.D.No.272 of 2002 dated 13.11.2003 and quash the same.

For Petitioner :: Mr.P.Paramasivados

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

W.P.No.11273 of 2006:

C.Rathinam .. Petitioner

-vs-

1. The Presiding Officer
Labour Court
Salem

2. The Management
Tamil Nadu State Transport Corporation
(Salem Division-I) Ltd.,
No.12, Ramakrishna Road
Salem-7

.. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the

For Petitioner	::	Mr.V.Ajoy Khose
For Respondents	::	Mr.P.Paramasivadosh for R2 R1-Court

There are two writ petitions. Writ Petition No.39567 of 2004 is filed by the Tamil Nadu State Transport Corporation (Salem) Limited represented by its Managing Director challenging the correctness of the impugned award passed by the first respondent-Labour Court, Salem in I.D.No.272 of 2002 dated 13.11.2003 on the ground that the award is contrary to the well established principles of law, since the habitual absentee had been shown undue sympathy of reinstatement and continuity of service, without backwages and other attendant benefits. Writ Petition No.11273 of 2006 is filed by Mr.C.Rathinam challenging the very same award of denial of backwages and other benefits on the ground that the first respondent-Labour Court ought to have imposed a minor punishment such as warning, fine or increment cut without cumulative effect, instead of depriving him the entire backwages and other attendant benefits. Therefore, both the matters are taken up together and the parties will be referred to as the 'Transport Corporation' and the 'employee' in this order.

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the first respondent-Labour Court, having held that the charge against the employee was proved, again wrongly taking into account the explanation of the employee, set aside the order of dismissal and thereupon directed the Transport Corporation to reinsate the employee with continuity of service. When the first respondent-Labour Court accepted the case of the Transport Corporation that there was a fair and reasonable opportunity to the employee, in all fairness, ought not to have interfered with the order of dismissal. That apart, a direction was issued to reinstate the employee, of course, without backwages. In the meanwhile, when the impugned award was challenged before this Court in the present writ petition filed by the Transport Corporation, he was reinstated in service. Even after his reinstatement in the place of payment of Section 17-B wages, again the employee on two occasions remained unauthorisedly absent without taking prior permission. Therefore, the impugned award passed by the first respondent-Labour Court directing reinstatement into service should not be accepted. Concluding his arguments, it was contended that when the Labour Court has given its finding agreeing with the Transport Corporation that the domestic enquiry was fairly conducted, it ought not to have interfered with the impugned order of dismissal, without even imposing any reasonable punishment. On this score, he prayed for allowing the writ petition filed by the Transport Corporation.

3. In reply, Mr.V.Ajoy Khose, learned counsel appearing for the employee, assailing the contentions put forth by Mr.P.Paramasivadosh, submitted that the said contentions are totally untenable in the light of the ratio laid down by the Apex Court in the case of Mavji C.Lakum v. Central Bank of India, (2008) 5 MLJ 854 (SC), wherein the Apex Court, while considering a similar and identical issue, has held that even if the enquiry is found to be fair, that would be only a finding certifying that all possible opportunities were given to the delinquent and the principles of natural justice and fair play were observed. But that does not mean that the findings arrived at were essentially the correct findings. Adding further, he has stated that if the Labour Court comes to the conclusion that the punishment given is shockingly disproportionate, the Industrial Tribunal / Labour Court would still be justified in re-appreciating the evidence to interfere with the quantum of punishment. Therefore, it is not proper on the part of the learned counsel for the Transport Corporation to say that the Labour Court has committed an error in interfering with the order of dismissal. Adding further, he has submitted that since the employee's father's elder brother, who was under his care and custody, died on 15.9.2001, the employee was unable to attend the work from 13.9.2001, hence, he sent a telegram on 15.9.2001 seeking leave. He continued to argue that upon the death of the employee's father's elder brother, the employee was unable to take food for two days until his burial was over. This had aggravated the employee's health and he also became mentally depressed with shivering and nervousness. In view of the peculiar facts and compulsory

circumstances, the employee was unable to attend the office, however, he had sent a telegram seeking leave. These aspects have been completely overlooked by the enquiry officer. Considering these vital aspects, the Labour Court, as rightly held by the Apex Court in the aforementioned judgment, has interfered with the impugned order of dismissal and directed the reinstatement of the employee in service without the benefit of backwages. The learned counsel also cited one another judgment of the Apex Court in the case of Chairman cum Managing Director, Coal India Limited and another v. Mukul Kumar Choudhuri and others, 2009-IV-LLJ 672 (SC) for the proposition that the doctrine of proportionality is a well recognised concept of judicial review in our jurisprudence. Therefore, within the discretionary domain and sole power of the decision maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review. In the light of the above ratio, the impugned award passed by the first respondent Labour Court directing reinstatement without giving the benefit of backwages surely needs the ends of justice. On this basis, seeking confirmation of the order of reinstatement, he sought for payment of full backwages.

4. In reply, Mr.P.Paramasivadosh for the Transport Corporation, relying heavily on the judgment of the Apex Court in the case of Delhi Transport Corporation v. Sardar Singh, (2004) 7SCC 574 submitted that in a similar circumstance, the Apex Court also has repeatedly held that the requirement of prior permission is a must for any employee working in the Transport Corporation before proceeding on long leave. The non observance of the said practice would naturally render the absence unauthorised. Therefore, when there has been a repeated unauthorised absence on the part of the employee, the Labour Court ought not to have disagreed with the reasonable punishment inflicted against the employee.

5. This Court, although finds some force in the submission made by the learned counsel for the Transport Corporation, is able to see that the second respondent, who was reinstated in service during the pendency of the writ petitions in lieu of payment of Section 17-B wages, had retired from service on 31.7.2010 on reaching the age of superannuation. In fact his written representation shows that his father's elder brother, who was under his custody and care, died on 15.9.2001, therefore, he claims to have sent a telegram on 15.9.2001 seeking leave. But his long absence from 13.9.2001 finally warranted the Transport Corporation to hold a domestic enquiry. Unfortunately, the employee has not given his explanation, however, he took part in the enquiry. But the enquiry officer found him guilty and the disciplinary authority awarded the aforementioned punishment. As mentioned above, as the employee was already reinstated and allowed

to retire from service, this Court, finding fault with the approach adopted by the first respondent Labour Court in giving a direction for reinstatement without imposing any punishment whatsoever on the employee, deems it fit to impose the punishment of stoppage of increment for one year with cumulative effect, as that would serve the ends of justice in the present case. Accordingly, with this modification in the impugned award, W.P.No.39567 of 2004 filed by the Transport Corporation stands disposed of and W.P.No.11273 of 2006 filed by the employee stands dismissed. Needless to mention that the Transport Corporation is directed to disburse the terminal benefits to the employee within a period of four weeks from the date of receipt of a copy of this order, since he had already retired from service on 31.7.2010. Consequently, W.P.M.P.Nos.47170 of 2004, 508 & 7255 of 2005 are closed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The Presiding Officer
Labour Court
Salem
2. The Managing Director
Tamil Nadu State Transport Corporation
(Salem Division-I) Ltd.,
No.12, Ramakrishna Road
Salem-7

+1 cc to Mr.V.Ajay Khose, Advocate, sR.13967

+1 cc to Mr.P.Paramasiva Doss, Advocate, SR.14101.

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