

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2016

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE N.AUTHINATHAN

Writ Appeal No.1740 of 2012

and

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

Tamil Nadu State Transport
Corporation (Villupuram) Ltd.,
Rep. by its General Manager
Vellore Appellant/Petitioner

vs.

1.The Joint Commissioner of Labour
(Conciliation) D.M.S. Compound
Tenampet, Chennai - 600 006

2.K.Umapathy
No.18, Othavadai Street
Kaveripakkam - 632 508 ... Respondents/Respondents

Writ Appeal filed under clause 15 of the Letters Patent against the order passed in W.P.No.35336 of 2006 dated 02.09.2010. Prayer in WP.35336/2006 writ petition filed under Article 226 of the constitution of india, praying for the issuance of a writ of certiorari to call for the records of the 1st respondent in Approval Petition 338 of 2003 dated 02.05.2005 and quash the same.

For Petitioner : Mr.P.Paramasiva Doss
For Respondents : Mr.K.V.Dhanapalan
Special Government Pleader for R1
Mr.S.Ravi for R2

JUDGMENT

(delivered by S.MANIKUMAR, J)

Challenge in this appeal is to an order made in W.P.No.35336/2006 dated 02.09.2010, by which, the writ court, declined to grant the prayer of the Tamil Nadu State Transport Corporation (Villupuram) Ltd., Vellore, and to quash the order dated 02.05.2005 made in Approval Petition No.338 of 2003.

2. The charges framed against the second respondent are that he was absent for the period from 18.08.2001 to 06.09.2001 without any prior intimation or getting leave from the authorities and he had caused loss to the Corporation due to his absence. He was terminated from service along with a cheque for a sum of Rs.5,251.50P towards one month wages.

3. Before the Joint Commissioner of Labour (Conciliation), Chennai, the first respondent herein, employee/respondent No.2, contended that while he was working in Arcot Depot, he was issued with a charge memo dated 27.09.2001 stating that he was unauthorisedly absent on duty from 08.08.2001 to 06.09.2001. Denying the same, the second respondent submitted an explanation dated 11.06.2002 stating that, due to chest pain, he could not attend the duty on 08.08.2001 and continued thereafter. Not satisfied with the explanation, a domestic enquiry was conducted and thereafter, he was dismissed.

4. The Management, Tamil Nadu State Transport Corporation (Villupuram) Ltd, Vellore, appellant herein, filed an application under Section 33(2)(b) of the Industrial Disputes Act, 1947, seeking for approval of the above said authority, for the punishment of dismissal, imposed on the second respondent/workman. After adjudication of the petition, considering the evidence adduced on both sides, and the submissions made by the parties, vide order in Approval Petition No.338/2003 dated 02.05.2005, the said authority, declined to grant approval for the dismissal of the second respondent/workman, on the grounds that (1) the disciplinary action against the second respondent for the charges framed against him was not conducted according to the principles of natural justice; (2) the findings of the enquiry officer that the charges are proved have to be held as perverse; and (3) the appellant herein has not come to a bona fide conclusion that the opposite party was guilty.

5. Assailing the correctness of the order of the Joint Commissioner of Labour (Conciliation), Chennai, the adjudicating authority, Management, Tamil Nadu State Transport Corporation (Villupuram) Ltd, Vellore, has filed the writ petition.

6. Before the writ court, the appellant transport corporation has contended that a prima facie case of unauthorized absence has been made out against the second respondent/workman and that due procedure has been followed, before imposing the penalty of dismissal, and therefore, the Joint Commissioner of Labour (Conciliation), Chennai, the competent authority, ought to have granted approval. Transport Corporation has also submitted that there is no violation of principles of natural justice.

7. Contention has also been made that the second respondent himself has admitted the charge of unauthorized absence during enquiry. In the above said circumstances, finding of guilt of an unauthorized absence cannot be said to be perverse and therefore, Joint Commissioner of Labour (Conciliation), Chennai/respondent No.1, ought to have granted approval of dismissal.

8. Adverting to the above said submissions, the writ court, vide order in W.P.No.35336 of 2006 dated 02.09.2010, at paragraph Nos.5 and 6, ordered as hereunder:

"5. In the instant case, merely because one month salary was sent by way of cheque or draft it would not be sufficient for the compliance of principles of natural justice. If the finding of the enquiry officer is perverse, the authority can reject the plea seeking the approval of termination of the workman. Similarly, if principle of natural justice is not followed, the authority namely, the first respondent can reject the plea seeking approval for the dismissal. In the instant case, the second respondent was absent from less than a month from 08.08.2001 to 06.09.2001. The second respondent has disputed the allegation that he remained absent without any intimation. According to him, due to heart ailment he could not attend his duty, however, that was intimated to the management and the same is available in his counter. On perusal of the impugned order and other material papers available on record, I could find no error in the findings of the first respondent though the principle of natural justice was not followed by the petitioner herein. Similarly, the first respondent has held that the finding of the enquiry officer is perverse and that there is no

bona fide conclusion holding that the guilt of the second respondent is proved.

6. On the facts and circumstances of the case, I am of the view that there is no illegality in the impugned order to interfere with the same. However, considering the view that the second respondent is not entitled to any back wages for the period between 08.08.2001 to 06.09.2001 as he was dismissed from service, without following the principles of natural justice and the findings seems to be perverse. Accordingly, I find it just and reasonable to direct the petitioner Tamil Nadu State Transport Corporation, Vellore to pay 25% of back wages from 07.09.2001 to till date of reinstatement. It is an admitted fact that in view of the dismissal of the application seeking approval for the dismissal of the second respondent was not reinstated in service. The writ petitioner has not obtained any stay against the impugned order under such circumstances, the second respondent is entitled to get 25% of backwages. The writ petitioner is directed to disburse the amount to the second respondent within a period of eight weeks from the date of receipt of a copy of this order. Accordingly, this writ petition is dismissed. No order as to costs. Consequently, connected miscellaneous petition is closed."

9. By inviting the attention of this court to the proceedings dated 11.06.2002, of the Enquiry Officer, enclosed in the typed set of papers, Mr.P.Paramasiva Doss, learned counsel for the appellant, reiterated that there was an admission on the part of the second respondent to the charge of unauthorized absence and contended that in such circumstances, there is no perversity in the finding.

10. Per contra, Mr.S.Ravi, learned counsel for the second respondent contended that on 11.06.2002, during the enquiry proceedings, the second respondent has also stated the fact that he had already called up the office at 6.00 a.m informing, that he was suffering from chest pain and hence he could not attend duty and the said fact has not been disputed.

11. It is also the contention of the learned counsel for the second respondent that past conduct has been taken into account for the purpose of imposing the punishment of dismissal, and that there was violation of principles of natural justice.

12. On the contrary, Mr.P.Paramasiva Doss, learned counsel for the appellant submitted that in the memorandum dated 29.06.2002 calling upon the second respondent, to make his further representation on the penalty of dismissal, past conduct

of the second respondent and punishments imposed were clearly mentioned and that therefore, it cannot be contended that there was violation of principles of natural justice. Learned counsel for the appellant further submitted that on earlier occasions, the second respondent had unauthorisedly absented for which, suitable orders were passed.

13. The Joint Commissioner of Labour (Conciliation), Chennai, has considered as to whether the domestic enquiry has been conducted in accordance with the Rules/Standing Orders and principles of natural justice and while doing so, he has also taken note of the decisions of this court in the Management of Madras Fertilisers Limited, Manali Madras Vs. the Presiding Officer and others reported in 1990 (1) LLJ 298 and A.R.Engineering Works vs. Somarajan reported in 1984 I LLN 607 and has observed that the proceedings dated 29.06.2002, namely a show-cause notice dated 29.06.2002 now placed before us, calling upon the second respondent to offer his further representation on the proposal to inflict the penalty of dismissal, taking note of past conduct and the punishments indicated, was not produced before the authority to substantiate the contention that there was no violation of principles of natural justice and thus, concluded that there is no substantial compliance.

14. In State of Mysore vs. K.Manche Gowda reported in AIR 1964 SC 506 at paragraph 8, the Hon'ble Apex Court, held as follows:

(8) Before we close, it would be necessary to make one point clear. It is suggested that the past record of a Government servant, if it is intended to be relied upon for imposing a punishment, should be made specific charge in the first stage of the enquiry itself and if it is not so done, it cannot be relied upon after the enquiry is closed and the report is submitted to the authority entitled to impose the punishment. An enquiry against a Government servant is one continuous process, though for convenience it is done in two stages. The report submitted by the Enquiry Officer is only recommendatory in nature and the final authority which scrutinizes it and imposes punishment is the authority empowered to impose the same. Whether a particular person has a reasonable opportunity or not depends, to some extent, upon the nature of the subject matter of the enquiry. But it is not necessary in this case to decide whether such previous record can be made the subject matter of charge at the first stage of the enquiry. But, nothing in law prevents the punishing authority from taking that fact into consideration during the

second stage of the enquiry, for essentially it relates more to the domain of punishment rather than to that of guilt. But what is essential is that the Government servant shall be given a reasonable opportunity to know that fact and meet the same." (emphasis supplied).

15. In Mohd. Yunus Khan v. State of Uttar Pradesh reported in 2010 (10) SCC 539, at paragraph No.33, the Apex Court held as follows:

"33. The courts below and the statutory authorities failed to appreciate that if the disciplinary authority wants to consider the past conduct of the employee in imposing a punishment, the delinquent is entitled to notice thereof and generally the charge-sheet should contain such an article or at least he should be informed of the same at the stage of the show cause notice, before imposing the punishment."

16. In the case on hand, the second respondent has already attained the age of superannuation. Before the authority, the Corporation has filed five documents: (1) Ex.A1 - copy of the order dismissing the second respondent from service; (2) Ex.A2 - Findings of the enquiry officer into the charges; (3) Ex.A3 - copy of the last pay certificate; (4) xerox copy of the acknowledgment of the dismissal order; and (5) copy of the enquiry proceedings. Thus the show cause notice dated 29.06.2002, has not been produced to substantiate that the second respondent was given opportunity, to offer his explanation on the past misconduct. We have gone through the orders of the adjudicating authority and that of the writ court. We find violation of principles of natural justice, has been established. Hence we are not inclined to interfere with the same.

17. Record of proceedings shows that during the pendency of writ petition, directions were issued to pay wages under Section 17-B of the Industrial Disputes Act, 1947 and the writ petition has been disposed of on 02.09.2010 directing reinstatement, with backwages of 25% from 17.09.2001 till the date of reinstatement. However, the appellant has preferred this appeal.

18. While, at the time of admitting instant writ appeal, in M.P.No.1 of 2012 in W.A.No.1740 of 2012 dated 24.08.2012, a Division Bench of this court has granted interim stay on payment of 50% of the backwages from the date of dismissal order till the disposal of the writ petition within a period of four weeks from 24.08.2012, failing which interim stay would stand vacated automatically. Learned counsel for the appellant/transport

corporation submitted that the appellant/transport corporation, has deposited the above said amount.

19. The second respondent/employee filed M.P.No.1 of 2013 in W.A.No.1740 of 2012 to vacate the interim stay granted on 24.08.2012. On 31.07.2013, a Division Bench of this court, heard both the miscellaneous petitions and passed the following order:

"This court, while granting interim order on 24.08.2012 directed the appellant/management to pay 50% of the backwages from the date of dismissal order till the disposal of the writ appeal and it is represented by the learned counsel for the appellant that the said order has been complied with and the learned counsel appearing for the second respondent/workman would also state that he has received the said amount.

2. It is submitted by the learned counsel for appearing for the second respondent that since the learned single Judge has also orderd that the workman is entitled to get 25% of the backwages, the balance amount is also to be paid.

3. On the said submission, we heard the learned counsel appearing for the appellant/management.

4. As per the impugned order passed in the writ petition in W.P.No.35336 of 2006 dated 02.09.2010, reinstatement with backwages from 07.09.2011 to till the date of reinstatement has been ordered and further direction was given to the management to pay 25% of the backwages and as per the interim order, 50% of the backwages has been paid.

5. Since, Section 17-B of the Industrial Disputes Act, 1947 mandates that the workman is entitled to backwages, this court is of the view that appellant/management has to deposit balance amount of backwages.

6. Therefore, the appellant/management is permitted to deposit remaining 50% of the amount due and payable to the second respondent/workman to the credit of Approval Petition NO.338 of 2003 on the file of the Joint Commissioner of Labour (Conciliation), Teynampet, Chennai-6 on or before four weks from teh date of receipt of copy of this order, failing which the interim order granted on 24.08.2012, would stand automatically vacated, without further reference to the court. Call after four weeks.

20. During the pendency of the instant appeal, the second

respondent herein/employee has filed another miscellaneous petition in M.P.No.2 of 2013 to pay the last drawn wages under Section 17-B of the Industrial Disputes Act, 1947, to him from the date of award till disposal of the appeal. A Division Bench of this court on 15.12.2014, passed the following order:

"Heard Mr.S.Ravi, learned counsel appearing for the petitioner/workman and Mrs.A.Shrijayanthi, learned Special Government Pleader appearing for the 1st respondent and Mr.P.Paramasivadas, learned counsel appearing for the second respondent.

2. This petition is filed by the petitioner/workman praying for issuance of direction, directing the appellant Management to pay last drawn wages to the petitioner under Section 17-B of the Industrial Disputes Act, 1947 from the date of award pending disposal of the writ appeal.

3. The learned single Judge has passed an order in W.P.No.35336 of 2006, dated 02.09.2010 wherein the appellant Management have challenged the order passed in the Approval Petition No.338 of 2003, dated 02.05.2005. In W.P.No.35336 of 2016, the learned single Judge directed the appellant to pay 25% of back wages from 07.09.2001 till the date of reinstatement and the said order was directed to be implemented, within a period of eight weeks from the date of receipt of the copy of the order. As against the said order, the writ appeal is filed and interim stay was also obtained.

4. During the pendency of the writ appeal, the workman filed application seeking Section 17-B wages, wherein it is stated that the petitioner/workman is not employed elsewhere and he is struggling to lead his family without any income. Hence, he is entitled to get last drawn wages under Section 17-B of the Industrial Disputes Act, 1947.

5. The said position is not disputed by the appellant Management by filing any counter-affidavit or showing material documents to the effect that the petitioner/workman is employed elsewhere.

6. In such circumstances, M.P.No.2 of 2013 is ordered with a direction to the appellant Management to pay last drawn wages to the petitioner/workman from 02.09.2010, within a period of eight weeks from the date of receipt of a copy of this order. The arrears payable from 02.09.2010 till the end of December, 2014 is to be calculated and paid, within a period of eight weeks, as stated

supra and the appellant Management is also directed to pay Section 17-B wages payable from January, 2015 on or before 10th of every succeeding month."

21. Learned counsel for the appellant submitted that the respondent was not reinstated in service, but, attained superannuation on 31.05.2016. Backwages has to be computed till the date of retirement. As we have already taken a decision to sustain the order made by the writ court, appellant is directed to take note of the aforesaid orders and accordingly, disburse the differential amount representing 25% of the backwages, to the second respondent/workman, within a period of eight weeks from the date of receipt of a copy of this order.

Writ appeal is dismissed with the above direction. However, there shall be no order as to cost. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Asr

The Joint Commissioner of Labour
(Conciliation) D.M.S. Compound
Teynampet, Chennai - 600 006

+lcc to Mr.P. Paramasivadoss, Advocate, S.R.No.68259
+lcc to Mr.S. Ravi, Advocate, S.R.No.68044

nrjk(CO)
cp(29/12/2016)

W.A.No.1740 of 2012

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