



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:14.12.2016

CORAM:

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

**W.P. (MD) No.24 of 2014
and
M.P (MD) No.1 of 2014**

The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam Division II) Limited,
Periyamilaguparai,
Tiruchirapalli.

... Petitioner

Vs.

1.T.S.Balasubramanian

2.The Presiding Officer,
Labour Court,
Tiruchirapalli.

... Respondents

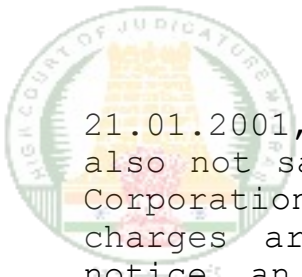
PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the 2nd Respondent herein dated 28.08.2012 in ID No.170 of 2002 and quash the same.

For Petitioner	: Mr.D.Sivaraman
For R1	: Mr.A.Arun prasad
For R 2	: Court

O R D E R

The Transport Corporation is challenging the award of the Labour Court, dated 28.08.2012, in I.D.No.170 of 2002.

2.The workman joined the service of the Transport Corporation on 01.04.1974, as technical staff and according to him, he has rendered 27 years of unblemished service. During his service period, he was one of the members of the Trade Union and at that time the Government had taken a policy decision to decide the pension scheme applicable to the transport employees, for which, the Trade Union decided to celebrate the announcement of the pension scheme granted to the transport employees; that the petitioner also attended the celebration and at that time, he fell down and sustained injury at his hip which resulted in immobilization. He duly informed the same to the Branch Manager over phone about his injury. But to his shock and surprise, while the petitioner was taking treatment, on



21.01.2001, a charge-memo was issued for his absence in service and also not satisfied with the explanation given by him, the Transport Corporation proceeded to conduct an enquiry and found that the charges are proved and after the issuance of second show-cause notice, an order of dismissal was passed on 29.09.2001.

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3. Aggrieved by the dismissal order, the workman raised an industrial dispute, which ultimately ended in failure and the employee approached the Labour Court, Trichy, by filing I.D.No.170 of 2002. The Labour Court after adjudication, came to the conclusion that the employee is entitled to re-instatement with backwages and other benefits and since he attained the age of superannuation, the petitioner would be entitled to wages from the date of dismissal till he attained the age of superannuation and also ordered to extend the benefits within the period of 60 days from the date of the award.

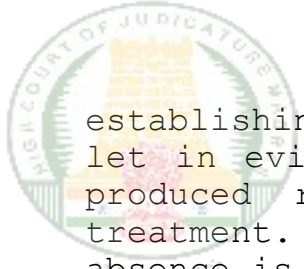
4.The Transport Corporation contended that it is true that the employee joined in service as technical staff on 01.04.1974. But it is incorrect to state that the petitioner had rendered un-blemished service. According to the corporation, as many as 34 past misconducts are against the petitioner and out of which the present punishment imposed was 17th one. That apart, the petitioner had also faced other punishments and punishments have been imposed after detailed enquiry except the cases, where fine was imposed.

5.According to the Transport Corporation, the labour Court erroneously came to the conclusion that the charges have not been established in the enquiry and awarded re-instatement and as the employee has attained the age of superannuation, the Labour Court directed to extend the benefits within 60 days from the date of the award.

6.Heard both parties.

7.It is not in dispute with regard to the date of joining and the date of dismissal. The only ground for interference by the Labour Court is that the enquiry was defective and that the employer has not established the charges in the enquiry and hence interfered with the punishment. Even though, the past record of the petitioner was referred to, the Labour Court interfered with the punishment and granted the full relief, by considering the employee's contention that he suffered injury in his hip and because of that he was unable to attend work, but there is no iota of documentary evidence filed before the Labour Court, with reference to his treatment taken in any of the hospitals.

8. That apart, he has also not questioned the domestic enquiry. Even assuming that, it has been questioned, it is categorically averred in Paragraph 8 in the counter by the Transport Corporation filed before Labour Court that in case, domestic enquiry is held to be not fair, then the corporation should be given an opportunity for



establishing the charges before the Labour Court. The workman has let in evidence and filed 9 exhibits. Nowhere, the petitioner has produced relevant documents to the effect that he was under treatment. The only attack by the workman is that the period of absence is shown as the 17th instance and that was the reason for the dismissal and that the Transport Corporation has not applied its mind, which has been rightly interfered with by the Labour Court.

9. This Court is unable to accept the said contention. Once the domestic enquiry held to be unfair and proper, the petitioner management will have to be given an opportunity to establish the charges before the Labour Court. If they had not taken the plea that they have given an opportunity to establish the case, the Labour Court proposed to be justified in ordering the relief, as the said principle has been upheld by the Apex Court in a decision in **Sankar Chakaravarthi vs. Britania Biscuit Co. Ltd., and Another reported in 1979 SCC (3) 371**. The Supreme Court in yet another case in **Karnataka State Transport Corporation vs. Lakshmi Devamna and another reported in (2001) 5 SCC 433** held that the management should be given an opportunity to establish the charges before the Labour Court. The Labour Court has failed to take into consideration the said factor and has proceeded only on the presumption that it is just a case of absence from duty and therefore, by invoking the provisions of Section 11(A) of the Act, it has interfered with the punishment, finding that the punishment is disproportionate to the misconduct committed.

10. It is pertinent to mention here that if the Workman has committed the misconduct for the first time, then there is every justification for modification of the punishment. But, in the case on hand, on perusal of the 2nd show cause notice with regard to the past records of the Workman, it would unravel that there were 34 misconducts referred to by the Management in the said notice as well as in the dismissal order. However, there is no whisper in the notice and the order as to the punishment imposed on the employee.

11. Mr. Sivaraman learned counsel for the Transport Corporation would submit that there need not be any enquiry with regard to minor misconduct, but whereas in respect of major misconduct, enquiry should be conducted and punishment in proportionate to the punishment to be awarded. The past antecedents of the Workman are not appreciative, warranting the Management to show mercy/sympathy upon him and therefore, the employee is not entitled to any relief and the Award of the Labour Court is perverse.

12. I find much force in the contention of the petitioner. Hence, this Writ Petition is allowed and this Court set aside the award and the order of dismissal passed by the management is restored. No Costs. Consequently, connected miscellaneous petition is closed. This Court makes it very clear that the order of dismissal passed by the management dated 29.09.2001 is not a bar for the management in settling the payments like gratuity, provident



fund and pension if any applicable up-to the date of dismissal, if he is otherwise eligible and if there are no legal impediments.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar

To

The Presiding Officer,

Labour Court,

Tiruchirapalli.

+1 CC to M/s.D.SIVARAMAN, Advocate, SR No. 80976

PJL

PSM/SV/SAR4/12.04.2017/4P/3C

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