

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.8.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH  
AND  
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.A.No.761 of 2017

D.Aasaithambi ..Appellant/5th Respondent

Versus

1. The Managing Director,  
Tamil Nadu State Transport Corporation  
(Salem Division II) Ltd.,  
Bharathipuram, Dharmapuri.
2. The Presiding Officer,  
Labour Court, Salem. ...Respondents/2nd Respondent

Prayer: Writ Appeal filed filed under Clause 15 of the Letters Patent against the order dated 17.2.2017 passed in W.P.No.17119 of 2003 on the file of this court. This petition filed under Article 226 of the constitution of India, praying for a writ of certiorari calling for the records dated 17/07/2002 and made in I.D.NO.48 of 2000 on the file of the Labour Court, Salem, the Second Respondent herein and quash the same.

For appellant : Mr.T.Ananthasekar  
For R1 : Mr.P.Paramasivadoss

JUDGMENT

(Judgment of the court was made by HULUVADI G. RAMESH, J.)

Heard the learned counsel appearing for the appellant and the learned counsel appearing for the first respondent..

2. It appears that in connection with frequent absenteeism of the appellant/petitioner by way of unauthorised absence, after holding domestic enquiry, order of termination has been passed. Subsequently, an Industrial Dispute has been raised before the Labour Court, wherein he had been ordered to be reinstated without backwages. However, the same was challenged before the learned Single Judge. While confirming the order of the disciplinary authority, the learned Single Judge set aside the order of the Labour Court, as against which this writ appeal has been filed.

3. It appears that the petitioner had joined service in the respondent-Transport Corporation in the year 1984 and put in 13 years of service and while he was working as Assistant, in the year 1996, he had absented unauthorisedly, in two spills, one for 8 days and another for 21 days, according to the appellant/petitioner, whereas, he had absented himself for 161 days in total according to the Management.

4. Per contra, it is the contention of the appellant/petitioner that he was ready to join duty and approached the Management, but, it is only due to the subsequent development like enquiry, he could not join duty.

5. Be that as it may, for the unauthorised absence, the workman cannot go scot-free. But, we are of the view that the punishment of dismissal from service, imposed for unauthorised absence, after completing the disciplinary proceedings ex parte, when the workman claims to have been physically indisposed, seems to be disproportionate with the charges. Now, it is brought to our notice that the appellant/petitioner had attained the age of superannuation. Therefore, we deem it proper to modify the punishment of dismissal from service into one of compulsory retirement with proportionate pension, in modification of the order passed by the learned Single Judge as well as the order passed by the disciplinary authority. The respondent-Transport Corporation is directed to do the needful in this regard, within a period of two months from the date of receipt of a copy of this judgment.

6. The writ appeal is disposed of accordingly. No costs.

Sd/-

Assistant Registrar(CS-III )

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

ssk.

To

1. The Managing Director,  
Tamil Nadu State Transport Corporation  
(Salem Division II) Ltd.,  
Bharathipuram, Dharmapuri.
2. The Presiding Officer,  
Labour Court, Salem.

+ 1 cc to Mr. T. Ananthasekar, Advocate Sr.58751

+ 1 cc to Mr.P. Paramasivados, Advocate Sr.58809

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SR(CO)

EU 14.09.17