IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2017

CORAM

THE HON'BLE Mr. JUSTICE M.M.SUNDRESH

W.P.No.18419 of 2015
and
M.P.No.1 of 2015 and
W.M.P.No.6161 of 2017

The General Manager,
Tamil Nadu State Transport Corporation Ltd,
Cuddalore Region,
No.2, Imperial Road,
Cuddalore - 2. ...Petitioner

Vs.

1.S.Sathiyavel,

2.The Special Deputy Commissioner of
Labour, DMS Compound,
Chennai - 6. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for records of the order passed by the 2nd respondent in A.P.No.154/2011 dated 29.04.2014 and quash the same.

For Petitioner : Mr.P.Paramasiva Doss

For Respondents: Mr.L.S.M.Hasan Fizal for R1
Mr.R.A.S.Senthilvel,
Addl. Govt. Pleader for R2

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ORDER

Though the miscellaneous petitions are listed for hearing, by consent, the writ petition itself is taken up for hearing.

2.The charge against the first respondent is one of unauthorised absence. After considering the reply of the first respondent, an enquiry was ordered. During the domestic enquiry, opportunity was given to the first respondent and pursuant to the same, enquiry officer found that the charges are duly

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proved. On receipt of the same, the first respondent was communicated with a copy and thereafter, an order of dismissal was passed by taking into consideration the past conduct as well.

3.The second respondent found that the enquiry officer as well as the disciplinary authority took into consideration the materials relied upon by the presenting officer and not the first respondent. The first respondent was allowed to work in the interregnum. Though 60 days time was provided for filing appeal, the dismissal order was given prior to that. Consequently, approval petition was filed by the management and the same was rejected.

4.Learned counsel appearing for the petitioner would submit that the past conduct of the first respondent was not taken into consideration. There is no wilfulness involved in seeking approval. The order of dismissal was passed by taking into consideration the relevant materials. The second respondent has not taken into consideration the relevant materials but passed the order on the materials which were not germane to the case. Therefore, the order impugned will have to be set aside.

5.Learned counsel appearing for the first respondent would submit that the power of judicial review against the order passed by the first respondent is rather limited. Cogent reasonings have been assigned. The cheque was made ready even before the receipt of dismissal order. The case of the first respondent has not been considered at all. Therefore, from the above, the second respondent has come to the conclusion that the order of dismissal is vindictive.

6.By way of reply, learned counsel appearing for the petitioner would submit that in any case it is not automatic that an employee would be entitled for all the consequential benefits. The records would indicate that on several occasions, the first respondent was indulging in the same activity of unauthorised absence. Therefore, this Court will have to pass appropriate orders.

7.A perusal of the order passed in the approval petition would show that it is not bordering on perversity. On facts, it was held that the cheque was drawn even much prior to the order of dismissal having been furnished. The finding that the case of the first respondent has not been considered, being a finding of fact, does not warrant interference. However, this Court finds that it is a case of unauthorised absence not for the first time. The first respondent was unauthorisedly absent on numerous earlier occasions. Even though he was unauthorisedly absent, seeks to justify it on the ground of his personal tragedy.

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8.In such view of the matter, while confirming the order passed by the second respondent, it is hereby ordered the the first respondent is entitled for only 25% of the backwages along with continuity of service and other benefits which would otherwise accrue at the time of retirement.

9.The writ petition stands allowed to the extent indicated above. Insofar as the provident fund contribution is concerned, it is fairly submitted by the learned counsel that out of 25% of the backwages, the same can be adjusted towards the provident fund contribution for the entire salary. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

mmi

To

The Special Deputy Commissioner of
Labour, DMS Compound,
Chennai - 6.

+1cc to Government Pleader,sr.44511

+1cc to Mr.P.Paramasivadoss,Advocate sr.44915

+1cc to Mr.K.Arunagiri,Advocate sr.44223

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