

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.09.2017

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.30310 of 2012

and

M.P.Nos.1 of 2012 and 1 of 2015

The Management of Tamil Nadu
State Transport Corporation Ltd.,
Villupuram - 605 602. .. Petitioner

Vs.

1.P.Edwin Gnananatham
2.The Presiding Officer,
Labour Court, Cuddalore,
Cuddalore. .. Respondents

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 second respondent made in I.D.No.53 of 2009 dated 27.06.2011 and to quash the order to the extent of granting reinstatement of service with continuity of service.

For Petitioner .. Mr.P.Paramasiva Doss

For Respondents.. Mr.L.S.M.Hasan Fizal for R1
R2 - Court

ORDER

The petitioner has approached this Court seeking the following relief:

to issue a writ of certiorari to call for the records of the second respondent made in I.D.No.53 of 2009 dated 27.06.2011 and to quash the order to the extent of granting reinstatement of service with continuity of service.

2.The case of the petitioner management is that the first respondent/workman joined as a Driver in the petitioner

management on 05.10.1998. Subsequently, he was brought into regular cadre with effect from 01.08.1999. He was issued with a charge memo on 15.06.1998 for unauthorised absence for a specified period of time. In response to the charge memo, the first respondent/workman submitted an explanation on 29.06.1998. Not satisfied with the explanation, domestic enquiry was ordered. On conclusion of the enquiry, a report was submitted holding the charges proved. Thereafter, a second show cause notice was issued on 26.08.1998 and the first respondent/workman submitted his explanation to the second show cause notice on 04.09.1998. Ultimately, the petitioner management has imposed the punishment of dismissal from service on the first respondent/workman by order dated 14.05.1999.

3.The case of the first respondent/workman is that he submitted an appeal to the Managing Director of the Transport Corporation against the order of dismissal but the same was kept pending for years together. Since no orders were passed in the appeal submitted to the Managing Director, the first respondent/workman raised an industrial dispute against the dismissal of service imposed upon him in I.D.No.53 of 2009 and the same was referred to the second respondent Labour Court for adjudication.

4.In the proceedings before the Labour Court, the first respondent/workman did not challenge the validity of the departmental enquiry conducted. However, the Labour Court, after adverting to the evidence both oral and documentary adduced before it, had come to the conclusion that the punishment of dismissal from service imposed upon the first respondent/workman was excessive and harsh and ordered reinstatement with continuity of service and without backwages vide Award dated 27.06.2011. The Award passed by the second respondent/Labour Court is under challenge before this Court.

5.Mr.P.Paramasiva Doss, learned counsel appearing for the petitioner management would vehemently contend that the interference by the Labour Court in regard to the punishment meted out to the first respondent/workman by invoking Section 11A of the Industrial Disputes Act, 1947 is uncalled for and the exercise of discretion by the Labour Court in this regard cannot be countenanced both on facts and in law. According to the learned counsel, there are no mitigating circumstances warranting interference in the matter of penalty but only in view of the fact that the first respondent/workman was imposed with the penalties earlier for unauthorised absence for brief spells of period. In the said circumstances, it was not in public interest, if the first respondent/workman was to be allowed to join duty on the basis of the Award passed by the Labour Court. Moreover, he would contend that the workman himself has raised the dispute after ten long years in 2009 and

therefore, the interference by the Labour Court in regard to the penalty, overlooking the said aspect is unsustainable in law.

6. Learned counsel for the petitioner would also rely upon the judgment of the Supreme Court in L & T Komatsu Limited Vs. N. Udayakumar ((2008) 1 SCC 224), in which the Supreme Court has held that unauthorised absence on several occasions has to be viewed very strictly and punishment of dismissal from service ought not to be treated as harsh in such circumstances. Learned counsel would also rely on another decision of the Supreme Court in New India Assurance Co. Ltd., Vs. Vipin Behari Lal Srivastava ((2008) 3 SCC 446), wherein the Supreme Court has set aside the order passed by the High Court, confirming the reinstatement ordered by the Labour Court. In the said case also, there was unauthorised absence by the workman for more than 600 days and the Supreme Court has held that no interference was called for in the punishment of dismissal from service.

7. In the above circumstances, learned counsel for the petitioner would impress upon this Court that the Award of the Labour Court is required to be interfered with as the same cannot be sustained in law.

8. On the otherhand, learned counsel for the first respondent/workman would submit that the second respondent/Labour Court has given cogent reasons for invoking its power under Section 11A of the Industrial Disputes Act for interfering with the punishment imposed on the petitioner. He would draw this Court's attention to paragraphs 8 and 9 of the Award wherein the Labour Court has given reasons on the basis of evidence adduced before it.

9. In such circumstances, learned counsel for the petitioner would submit that no interference is called for from this Court since the Labour Court has applied its mind to the facts and circumstances and exercised its discretion properly in favour of the workman. Moreover, the Labour Court has also taken into consideration the long delay in raising the dispute and denied the workman the backwages for a long period from 1999 till the Award was passed in 2011. Therefore, the workman indeed suffered a penalty of denial of backwages for more than a decade.

10. This Court has given its anxious consideration to the rival submissions of the learned counsels and perused the materials and pleadings placed on record. At the outset, this Court is of the view that although the first respondent/workman had been absent on a few occasions earlier without proper leave but ultimately the imposition of harsh penalty of dismissal from service for unauthorised absence cannot be justified in the facts and circumstances of the case as set out above. The

reasoning of the Labour Court as found in paragraphs 8 and 9 of the Award cannot be faulted with since the Labour Court has taken a view on the basis of the entirety of the evidence made available before it. Unless the discretion exercised by the Labour Court is grossly perverse and contrary to law, the same need not call for interference from this Court, which is exercising its jurisdiction under Article 226 of the Constitution of India.

11. Moreover, this Court has to see whether the decisions relied on by the learned counsel for the petitioner management would be applied to the present case for overturning the verdict of the Labour Court. Both the decisions relied on by the learned counsel for the petitioner management do not relate to the discretion exercised by the Labour Court under Section 11 A of the Industrial Disputes Act. The Labour Court or the Tribunal is vested with the extraordinary jurisdiction and power under Section 11A of the Industrial Disputes Act and such exercise of power by the Labour Court or the Tribunal cannot be interfered with unless the same is found to be contrary to any law or the power has been exercised wrongly with undue consideration of the facts and circumstances of the case. In the instant case, the Labour Court has given cogent reasons for interfering with the quantum of penalty and the reasons cannot be construed to be of perverse finding or wrongful. In the said circumstances, the decisions relied on by the learned counsel for the petitioner management would not be of any help to him. In any event, the decisions relied on by the learned counsel for the petitioner management applied to the factual matrix of that case and the same cannot be applied in the instant case where the Labour Court has given a clear finding in favour of the workman for the purpose of invoking its power under Section 11A of the Industrial Disputes Act.

12. For all the abovesaid reasons, this Court does not find any merit in the writ petition filed by the petitioner management and therefore, the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

The Presiding Officer,
Labour Court, Cuddalore.

+lcc to Mr.K.Aruna Giri, Advocate sr,.64850

W.P.No.30310 of 2012

pvs (co)

ss(13/10/2017)