

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.No.27124 of 2015

and

M.P.No.1 of 2015

and

W.M.P.Nos.12403 & 12404 of 2017

The Management,
Rep. by its Managing Director,
State Express Transport Corporation Ltd.,
Pallavan Salai,
Chennai 600 002. ... Petitioner

Vs.

1. S.Easwaramoorthy
2. The Special Deputy Commissioner of Labour,
DMS Compound,
Chennai 600 006. ... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the 2nd respondent made in A.P.No.326/2011 on 07.07.2014 and quash the same.

For Petitioner : Mr.P.Paramasiva Doss

For Respondents : Mr.R.Krishnaswamy for R1
Mr.S.Diwakar,
Special Government Pleader for R2

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O R D E R

By consent, the main writ petition itself is taken up for final disposal.

2.Against the order of the second respondent in A.P.No.326 of 2011 by which the Approval Petition was rejected, the present writ petition has been filed.

3.The learned counsel appearing for the petitioner would submit that having found that the enquiry is free and fair, the second respondent ought not have dismissed the Approval Petition by going into the merits of the case.

4.The learned counsel appearing for the first respondent would submit that the Approval Petition was rejected on the ground that there was no sufficient evidence to prove the charges.

5.The issue is with respect to the unauthorised absence on the part of the first respondent. This Court finds that the approach of the second respondent may not be legally sustainable. The decision was rendered on the ground that there is no material to substantiate the charges without giving any factual basis for it. Incidentally, it was also held that there is no sufficient material to come to the conclusion that Ex.P4 involves actual one month salary. However, remitting the matter either to the second respondent or to the writ petitioner with respect to the quantum of punishment would lead to unnecessary delay. In a similar matter, this Court has already taken a view that remitting the matter to the writ petitioner for considering the lesser punishment, having found that the punishment is disproportionate to the charges. This Court does not want to undertake the said exercise at this stage.

6. It appears that the punishment is not proportionate to the charges. It is a case of unauthorised absence, though, for a longer period. Remitting the matter would extend the agony of the first respondent/workman. Learned counsel appearing for the first respondent also would submit that a reasonable order may be passed by this Court, taking into consideration the interest of the first respondent/workman.

7. The learned counsel appearing for the petitioner would submit that taking note of the unauthorised absence, there cannot be any question of back wages.

8. Considering the above, this Court is inclined to dispose of the writ petition in the following manner:

- (i) The order passed by the second respondent is set aside.
- (ii) The order passed by the Writ Petitioner so far as the imposition of punishments is also set aside.
- (iii) The first respondent / workman is directed to be reinstated by the Writ petitioner within a period of eight weeks from the date of receipt of copy of this order. The first respondent/workman is not entitled for back wages till the date of reinstatement

(iv)The first respondent/workman is entitled for continuity of service and other incidental benefits which would arise at the time of his retirement.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mmi/kas

To

The Special Deputy Commissioner of Labour,
DMS Compound,
Chennai 600 006.

+lcc to Mr.P.Paramasiva Doss, Advocate, S.R.No.41777

+lcc to Mr.V.Ajay Khose, Advocate, S.R.No.41105

W.P.No.27124 of 2015

RR(CO)
CA(20/06/2017)



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