IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2017

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

W.A.No.2555 of 2010

S.A.Gani ..Appellant/2nd Respondent

-vs-

1. The Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Tirunelveli
rep.by its Managing Director. ..Respondent/Petitioner

2. The Joint Commissioner of Labour
(Conciliation)
Teynampet, Chennai 600 006 ..Respondent/1st Respondent

Appeal under Clause 15 of the Letters Patent, against the order dated 27.09.2010 made in W.P.No.19772 of 2006. Petition under Article 226 of the constitution of India praying for the issuance of writ of certiorari calling for the records of the 1st respondent in Approval petition No.1 of 2005 dated 1.6.2005 and quash the same

For Appellant :: Mr.M.Venkatachalapathy
Senior Counsel for
Mr.M.Sriram

For Respondents:: No appearance for R1
R2-Court

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

Heard the learned senior counsel appearing for the appellant. None represented the first respondent.

2. It appears that the appellant, who was working as Driver in the first respondent-Transport Corporation, was made to face a domestic enquiry on the charge of unauthorised absence for 25 days and based upon the findings of the enquiry officer, he was sought to be dismissed from service. Consequently, when an application was filed by the first respondent under Section 33 (2)(b) of the Industrial Disputes Act, 1947 before the second respondent seeking approval of the dismissal order, the second

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respondent, holding that the enquiry was conducted in an improper manner without following the principles of natural justice and that the findings of the enquiry officer were also perverse without considering the evidence placed before him, disapproved the order of dismissal. When the writ petition was filed by the first respondent challenging the said order, the learned single Judge, setting aside the order passed by the second respondent, has allowed the writ petition approving the order of dismissal passed against the appellant. Challenging the same, the present appeal has been filed.

3. As submitted by the learned senior counsel for the appellant/workman, the appellant is basically a Driver and he had not attended duty on account of his illness, for which he had also produced a medical certificate in regard to his illness. Moreover, an alternative arrangement was also made by deputing a Driver in the place of the appellant. Despite that, the learned single Judge is found to have confirmed the order of dismissal. However, we differ with the order of the learned single Judge, for the reason that for the absence of the appellant from duty for 25 days due to illness after production of medical certificate, the punishment of dismissal is to be held as too harsh, on the facts of this case. Now the appellant is also said to have retired from service. Accordingly, we reduce the punishment of dismissal into one of stoppage of increment for two years without cumulative effect on the appellant. Though generally on the principle of 'no work-no pay', the delinquent may not be entitled to the payment of backwages, on the facts of this case, despite the order of status quo granted by this Court, the appellant was not allowed to continue in service, pending disposal of the appeal. In these circumstances, we hereby direct the first respondent to pay 25% of backwages to the appellant with continuity of service for the purpose of pensionary benefits. The first respondent is directed to settle the entire terminal benefits to the appellant within a period of three months from the date of receipt of a copy of this order. With this direction, the writ appeal stands disposed of accordingly. Consequently, M.P.No.1 of 2010 is closed. No costs.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Managing Director
   Tamil Nadu State Transport Corporation
   (Madurai) Ltd., Tirunelveli

2. The Joint Commissioner of Labour
   (Conciliation)
   Teynampet, Chennai 600 006.

+ 1 cc to Mr.M. Sriram, Advocate Sr.48844

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