

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

WRIT PETITION No. 26495 of 2016

AND

W.M.P.Nos.22707 of 2016, 7750 & 7751 of 2017

The Management,
Rep.by its General Manager,
Tamil Nadu State Transport Corporation
(Kumbakonam Ltd.)
Trichy Region, Trichy. ...Petitioner

Vs.

1. The Special Deputy Commissioner of Labour,
DMS Compound, Anna Salai, Chennai.
2. R.Dhanasekarn ...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari to call for the records pertaining to the order passed by the first respondent in A.P.No.53 of 2013 dated 28.09.2015 and to quash the same.

For Petitioner : Mr.P.Paramasiva Doss
For Respondents : R1 - Court
Mr.V.Ajay Khose for R2

O R D E R

This writ petition has been filed by the petitioner to call for the records pertaining to the order passed by the first respondent in A. P. No.53 of 2013 dated 28.09.2015 and to quash the same.

2.The second respondent was working as a driver in the petitioner corporation. Since the petitioner was unauthorizedly absent, a charge memo dated 17.12.2009 was issued. After conducting an enquiry, the second respondent herein was dismissed from service by the order dated 19.01.2013 by holding that the charges are proved. The charge was with respect to the unauthorized absence between 11.07.2009 to 14.12.2009.

3. Such dispute raised by the Union is pending, in which the second respondent is a member, an approval was sought for by the petitioner under Section 33(2) (b) of the Industrial Disputes Act.

4. The approval petition was dismissed on the ground that the charge has not been proved since, there are no sufficient evidence to substantiate it. Incidentally, it was held that the second respondent was not given one month full salary before passing the order of dismissal. A further finding has been given that the application has been filed in a hurried manner. Challenging the same, the present writ petition has been filed.

5. The learned counsel appearing for the petitioner would submit that the findings rendered by the first respondent was perverse. Therefore, the interference is required. It is also submitted that in view of the earlier finding given that an enquiry has not been conducted as per the standing order, the order passed cannot be sustained in the eye of law.

6. The learned counsel appearing for the respondents would submit that there is no error in the order passed warranting interference. In the departmental enquiry, it is for the management to prove the charges. The second respondent has let in sufficient evidence to disprove the charges. However, notwithstanding the same, the order of dismissal was passed in a wrong premise. The factum is taken into consideration by the Tribunal and therefore, no interference required.

7. A perusal of the order would clearly show, that the relevant material has been taken into consideration. It has taken note of the fact that the second respondent was suffering from cancer. The Branch Manager to whom the information was given has not been examined. The application has also been filed in a period of two days from the date of the order of dismissal.

8. Thus, such findings given by the first respondent cannot held to be perverse. After all a charge has to be proved against the delinquent employee which has not been done. In the case on hand the charge is only with respect to the unauthorized absence which has not been proved.

9. In a writ of Certiorari, this Court is concerned with the decision making process of an Industrial Tribunal and not the decision itself. Thus, the writ petition is liable to be dismissed. There is no merit to interfere with the order passed.

10. The learned counsel appearing for the petitioner would make a submission that considering the facts and circumstances of the case and taking note of the factum of continued absence

of the second respondent while confirming the award of the Labour Court this Court can consider the reduction of back wages.

11.This Court is of the view that the said submission merits consideration. Back wages is not a matter of right, in all cases. The second respondent has also not given any written request. Hence, considering the same, while confirming the award of the Labour Court with respect to the reinstatement, the back wages ordered by the first respondent is reduced to 50%. It is made clear that the entire period will have to be treated as a period on duty and consequently, the second respondent is entitled for compensation as per law.

12.The petitioner shall comply with the aforesaid order within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

maya/abr

To

1. The Special Deputy Commissioner of Labour,
DMS Compound,
Anna Salai,
Chennai.

+1cc to Mr.P. Paramasivadoss, Advocate Sr. 26332

+1cc to Mr.V. Ajay Khose, Advocate Sr. 26076

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KS (CO)
VR(9/5/2017)