

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.02.2017

Coram

The Hon'ble Mr.Justice P.N.Prakash

Writ Petition No.13634 of 2003

Managing Director,
Tamil Nadu State Transport Corporation,
(Salem Division II) Ltd.,
Bharathipuram,
Dharmapuri -5.

...Petitioner

Vs.

1. C.Jayaprakasam

2. The Presiding Officer,
Labour Court, Salem.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records pertaining to the order, dated 23.10.2002, made in I.D.No.638 of 2001, from the file of the Labour Court, Salem, the second respondent herein and to quash the same.

For Petitioner : Mr.Paramasivadosh
For Respondent-1 : Mr.Ajay Khose, Amicus curiae
For Respondent-2 : Labour Court

O R D E R

The petitioner, viz., Tamil Nadu State Transport Corporation, is the Management, and the first respondent, by name C.Jayaprakasam, is the workman herein, and they shall be referred to as such, through out this judgment and order.

2. The workman was employed as driver in the Management-Corporation. He was on unauthorized absence from 01.09.1997 to 09.09.1997 and from 14.09.1997 onwards. Therefore, he was issued with a charge memo, dated 06.10.1997, by the Management. Since the workman did not give any reply/explanation to the charge memo, the Management decided to proceed against him departmentally. Accordingly, an Enquiry Officer was appointed by the Management to enquire into the charges levelled against him. Though the workman participated in the enquiry, he did not

refute the charges, but, he literally pleaded for mercy, by contending that, since he was unwell, and had undergone piles operation, and faced with certain family problems, he had gone on leave, without obtaining prior permission. The Enquiry Officer submitted a report holding that the charges levelled against the workman are proved. Based on the said report, the Management issued a second show cause notice, dated 21.04.1998, enclosing a copy of the Enquiry Officer's report, and called upon the workman to explain as to why he should not be terminated from service. On receipt of the second show cause notice, the workman filed a Mercy Petition, praying to show mercy on him, and he also assured the Management that, he would not commit the same error in future. However, the Management, not being satisfied with the explanation offered by the workman to the show cause notice, dismissed him from service by order dated 18.07.1998. Aggrieved by the said order, the workman raised an Industrial Dispute under Section 2-A (ii) of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'I.D.Act'). On failure of the Conciliation Proceedings, the Government referred the matter for adjudication before the Labour Court, Salem, which was taken on file as I.D.No.638 of 2001. The Management resisted the dispute by filing a counter statement.

3. Before the Labour Court, both the workman and the Management did not choose to examine any witness. Insofar as marking of documents is concerned, the workman marked two documents, and on the Management's side, eight documents were marked.

4. The Labour Court, on analysis of the averments set out both in the Dispute Petition and the counter statement, framed the following issues for consideration:-

- i) Whether the punishment of dismissal from service imposed on the workman is justified?
- ii) To what relief, the workman is entitled to?

5. The Labour Court, after considering the evidence on record, and hearing the parties, passed an award, dated 23.10.2002, (impugned herein) holding that the punishment of dismissal from service imposed on the workman was highly disproportionate, and therefore, directed the Management to reinstate the workman in service without backwages and imposed the punishment of stoppage of increment for one year, with cumulative effect. Challenging the award of the Labour Court, the present Writ Petition has been filed by the Management.

6. At the time, when the writ petition was admitted, i.e., on 29.04.2003, though this Court stayed the impugned award of the Labour Court, by granting an order of interim stay, yet, the Management, by order, dated 16.06.2003, reinstated the workman

in service, without prejudice to the outcome of the Writ Petition.

7. Since the workman could not be served in this Writ Petition, this Court appointed Mr.Ajay Khose, an Advocate, who has good standing on the labour side to appear pro bono for the workman.

8. Heard Mr.Paramasivadosh, learned counsel for the Management. and Mr.Ajay Khose, learned Amicus Curiae on behalf of the workman.

9. The learned counsel for the Management assailed the impugned award of the Labour Court on three grounds. Firstly, by contending that when the workman was issued with a charge memo, he did not submit any reply to the same, denying the charges mentioned thereunder, and hence, the Management proceeded to initiate departmental action against him, for which purpose, an Enquiry Officer was appointed to enquire into the charges. Though the workman participated in the enquiry proceedings, he did not refute the charges levelled against him. Therefore, the Enquiry Officer filed a report holding that the charges are proved. Even when the workman has been issued with notice for the second time to show cause as to why he should not be dismissed from service, he filed a mercy petition, reiterating the same contention, as put forth before the Enquiry Officer, and pleaded to show mercy on him, and also assured the Management that he would not commit the same trivial errors in the future. Secondly, the learned counsel contended that when the workman himself has repented and regretted for his mistake, and pleaded for mercy, which would per se, prove his guilt, the Labour Court ought not to have interfered with the punishment imposed on him. Thirdly, it is contended that, the Management, while passing the order of dismissal, dated 18.07.1998, has not only taken into consideration the present misconduct of the workman, but also borne in mind his past track records, where, the workman was unauthorizedly absent, which formed the basis for passing the dismissal order. Therefore, the learned counsel contended that the award passed by the Labour Court calls for interference of this Court.

10. Per contra, Mr.Ajay Khose, learned counsel for the workman submitted that, only in the order of dismissal, the Management has catalogued the earlier instances, where, the workman had gone on unauthorized absence, and not in the second show cause notice. It is his further submission that, before relying upon the earlier acts of misconduct, for imposing the punishment of dismissal from service, the Management ought to have given an opportunity to the workman to explain his stance. In support of this contention, the learned counsel placed

reliance on the judgments mentioned infra as i) and ii). Thus, the learned counsel contended that, in the absence of the Management giving such an opportunity, earlier acts of misconduct of the workman ought not to have been relied upon by the Management to dismiss him from service.

- i) (Sri Bharathi Mills Vs. N.S.Mohan) reported in [(1991) 1 LLN 565]
- and
- ii) (The Management of Eswaran and sons Engineers Pvt. Ltd., Vs. III Additional Labour Court, Madras and another) reported in [(1997) Volume LLJ 698].

11. Repelling the afore said contention of the learned counsel for the workman, the learned counsel for the Management contended that, even if the past track record of the workman is eschewed, the proved misconduct, per se, is sufficient to justify the order of dismissal passed by the Management.

12. In support of the rival contentions, both sides produced before this Court, several Rulings. This Court gave its anxious consideration to the rival submissions. It is true that, with regard to unauthorized absence, there are Rulings, where, extreme penalty of dismissal have been upheld and they are also rulings, where, the Courts have interfered with the punishment on the ground of proportionality. What ultimately emerges from the perusal of these Rulings is that Courts have either interfered with the punishment of dismissal, or upheld the penalty of dismissal, depending upon the fact situation in a given case. In fact, the Hon'ble Supreme Court has not laid down any inexorable thumb rule either way.

13. Thus, in the given facts of the present case, it is evident that the workman was unauthorizedly absent during the period mentioned in the charge memo. Even though he participated in the Enquiry proceedings, he did not deny the charges before the Enquiry Officer, rather, he pleaded for mercy, stating that, since he suffered ill health and underwent piles operation and due to some family problems, he had gone on leave without obtaining prior permission. Even, in his reply to the second show cause notice, he assigned the same reasons by filing a Mercy Petition, and assured the Management that he will not repeat the same mistake in future. The judgments relied upon the learned counsel for the workman, referred to supra, in support of the proposition that, 'before relying upon the past conduct of the workman for imposing the extreme penalty of dismissal from service, he should be put on notice by the Management', applies squarely to the facts of the case at hand, as in this case also, the past acts of misconduct relating to unauthorized absence was not put to the workman by the Management, in the second show cause notice.

14. De hors that, if the misconduct of unauthorized absence alleged against the workman in the present proceedings is viewed, in the light of his conduct of pleading for mercy and for reformation, both before the Enquiry Officer and the Management, it cannot be stated that, interference by the Labour Court by substituting the punishment of dismissal from service with an order of reinstatement without backwages and punishment of stoppage of increment for one year with cumulative effect, as unjustifiable, warranting interference of this Court in exercise of power conferred under Article 226 of the Constitution of India.

15. In the result, the Writ Petition is dismissed. This Court, places on records, its appreciation to Mr.Ajay Khose, the learned counsel for having taken up the case of the workman pro bono. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To
The Presiding Officer,
Labour Court, Salem.

+1 cc to Mr.P.Paramasivados Advocate sr 10687

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