



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 31.07.2017

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A(MD)No.284 of 2011

and

M.P(MD).No.1 of 2011

S.Kutralingam

... Appellant/2nd Respondent

Vs.

1.The Management,

Tamil Nadu State Transport Corporation,

Rep.by its Managing Director, Madurai Road,

Virudhunagar District.

...Respondent/Writ Petitioner

2.The Joint Commissioner of Labour,

(Conciliation), D.M.S.Compound,

Teynampet, Chennai-600 006. ... Respondent/1st Respondent

Prayer : This Writ Appeal is filed under Clause 15 of Letters Patent, to set aside the order dated 28.01.2011 passed in WP(MD). No.5307 of 2006 on the file of this Court.

Prayer in WP(MD). 5307/ 2006 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records of the 1st respondent in his proceedings in Approval Petition No. 67/2004 dated 01/02/2006, quash the same.

For Appellant : Mr.V.Kannan

For Respondents : Mr.A.Jeyaraman for R1.

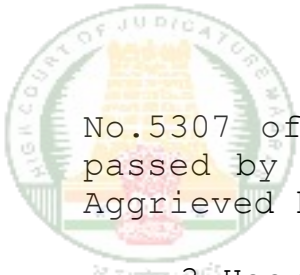
No appearance for R2.

J U D G M E N T

(Judgment of the Court was made by G.R.SWAMINATHAN, J.)

The appellant was employed as a Conductor in Tamil Nadu State Transport Corporation (Madurai, Division - V) Ltd.

2.It was alleged that the appellant herein was absent without prior intimation or permission for more than 10 days from 12.06.2003. A charge memo came to be issued on 29.06.2003. Enquiry was conducted and it was held that the charges were proved. The appellant was dismissed from service. The management filed an application under section 33(2) (b) of the Industrial Disputes Act, 1947 before the second respondent herein. The second respondent by order dated 01.02.2006 refused to accord approval for the dismissal of the appellant herein. This order declining approval in Approval Petition No.67 of 2004 was challenged by the first respondent Corporation in W.P(MD).



No.5307 of 2006. The learned Single Judge set aside the order passed by second respondent herein and allowed the writ petition. Aggrieved by the same this writ appeal has been filed.

3. Heard the learned counsel for the appellant and the first respondent Corporation. We have carefully gone through the entire materials on record.

4. The charge against the appellant is that he was absent for a period beyond 10 days. It is seen that on the seventeenth day of the unauthorized absence of the appellant herein, the charge memo came to be issued. Awarding the punishment of dismissal from service appears to be shockingly disproportionate to our judicial conscience. The allegation against the writ petitioner does not involve moral turpitude. It cannot be said to be serious or grave in nature. At the same time, a person working in an essential service like Transport Corporation cannot get away with his delinquency. Therefore interest of justice would be served if the punishment of dismissal from service is converted to one of compulsory retirement.

5. We are informed that during the pendency of the proceedings pursuant to the direction given by this Court, deposit of arrears of the money payable to the appellant was made before the second respondent herein. Since the punishment imposed on the appellant is modified, the appellant is permitted to withdraw the said amount. The first respondent is directed to settle the terminal and other benefits payable to the appellant herein within a period of four months from the date of receipt of the order.

6. This writ appeal stands allowed. The order dated 28.01.2011 made in WP(MD)No.5307 of 2006 is modified as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Management,
Tamil Nadu State Transport Corporation,
Rep. by its Managing Director,
Madurai Road, Virudhunagar District.

2. The Joint Commissioner of Labour,
(Conciliation), D.M.S. Compound,
Teynampet, Chennai-600 006.

+1cc to Mr.V.KANNAN Advocate in SR. NO.68823

SKN/ARUL

JS/MB/KKR/SAR_1/4.8.2017/2P-4C

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