



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 21.11.2017

CORAM :
THE HONOURABLE MR.JUSTICE P.D.AUDIKESSAVALU

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W.P(MD)No.5348 of 2011
and M.P. (MD) Nos.1 & 2 of 2011

The Management,
Tamilnadu State Transport Corporation
(Madurai) Limited,
Dindigul Region,
Bye - Pass Road, Collectorate P.O.,
Dindigul - 624 004.

... Petitioner

vs.

1.The Presiding Officer,
Labour Court,
Thiruchirapalli (Dindigul Camp).
2.R.Elangovan

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records on the file of the 1st respondent pertaining to its proceeding in I.D.No.34 of 2008 dated 05.04.2010 and quash the same.

For Petitioner : Mr.S.C.Herold Singh

1st Respondent : Court

For 2nd Respondent : Mr.J.Lawrance

ORDER

Heard Mr.S.C.Herold Singh, learned counsel appearing for the petitioner and Mr.J.Lawrence, learned counsel appearing for the second respondent.

2.This Writ Petition challenges the award of the 1st respondent dated 05.04.2010 in I.D.No.34 of 2008. The second respondent, who was removed from service for "unauthorised absence" on 16.04.2002, raised an industrial dispute before the first respondent. The first respondent in the award dated 05.04.2010 in I.D.No.34 of 2008 came to the conclusion that the charges levelled against the petitioner had been proved in the domestic enquiry, but, exercising power conferred under Section 11-A of the Industrial Disputes Act, converted the order of removal of service into



reinstatement without backwages with continuity of service and stoppage of increment for 5 years without cumulative effect on finding that the punishment awarded by the petitioner to the second respondent was disproportionate to the gravity of the misconduct.

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3. This Court at the time of admission of the Writ Petition on 29.04.2011 had granted interim stay of the impugned order, which was made absolute on 12.07.2011 in M.P.(MD) No.1 of 2011. At the same time, the second respondent has filed an application under Section 17-B of the Industrial Disputes Act for payment of last drawn wages, which was ordered by this Court on 12.07.2011. It is accepted by both sides that the petitioner was reinstated in service on 10.08.2012 and continued to work till attaining the age of superannuation. In consequence thereof, the award of the Labour Court has been substantially implemented.

4. In ***State of Punjab -vs- DR. P.L. Singla [(2008) 8 SCC 469]***, the Hon'ble Supreme Court of India at para 14 has succinctly set out the legal proposition as follows:-

"14. Where the employee who is unauthorisedly absent does not report back to duty and offer any satisfactory explanation, or where the explanation offered by the employee is not satisfactory, the employer will take recourse to disciplinary action in regard to the unauthorised absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments without cumulative effect. The extent of penalty will depend upon the nature of service, the position held by the employee, the period of absence and the cause/explanation for the absence. Where the punishment is either dismissal or removal, it may not be necessary to pass any consequential orders relating to the period of unauthorised absence (unless the rules require otherwise). Where the punishment awarded for the unauthorised absence, does not result in severance of employment and the employee continues in service, it will be necessary to pass some consequential order as to how the period of absence should be accounted for and dealt with in the service record. If the unauthorised absence remains unaccounted it will result in break in service, thereby affecting the seniority, pension, pay, etc. of the employee. Any consequential order directing how the period of absence should be accounted, is an accounting an administrative procedure, which does not affect or supercede the order imposing punishment."

Reference may also be made in this regard to the decision of the Hon'ble Apex Court in ***M/s. Bharat Coking Coal Ltd. etc., -vs- Bihar Colliery Kamgar Union through Workmen [(2005) 3 SCC 331]***,



for the following observations:-

"It is well established principle in law that in a given circumstance, it is open to the Industrial Tribunal acting under Section 11-A of the Industrial Disputes Act, 1947 has the jurisdiction to interfere with the punishment awarded in the domestic inquiry for good and valid reasons. If the Tribunal decides to interfere with such punishment it should bear in mind the principle of proportionality between the gravity of the offence and the stringency of the punishment."

5. On a reading of the reasons attributed by the first respondent for granting the relief to the petitioner under Section 11-A of the Industrial Disputes Act, it is noticed that the same is in consonance with the settled legal principle that the punishment awarded should be proportionate to the gravity of the misconduct. That apart, the second respondent has also worked from 10.08.2012 onwards after the impugned award was passed till date of superannuation and no complaint has been reported regarding the performance of the petitioner during that period.

6. In these circumstances, this Court does not find any infirmity in the impugned award warranting interference by this Court by exercising its judicial review under Article 226 of the Constitution of India. Resultantly, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To

1. The Presiding Officer,
Labour Court,
Thiruchirapalli (Dindigul Camp).

+1cc to Mr. J. LAWRENCE, Advocate, SR. 88431

+1cc to Mr. S. C. HEROLD SINGH, Advocate, SR. 88460

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SJ

KK/GT/SAR 4/11.01.2018/ 3P- 4C/