

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2018

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

Writ Petition Nos.10782 of 2016 & 12089 of 2012
& M.P.Nos.1 & 2 of 2012

The Management,
Tamil Nadu State Transport Corporation (Salem) Ltd.,
12 Ramakrishna Road,
Salem 636 007
Rep. by its General Manager ... Petitioner in W.P.No.10782/2016

P.Marimuthu ...Petitioner in W.P.No.12089/2012

Vs.

1. The Special Deputy Commissioner of Labour,
DMS Compound, Anna Salai,
Chennai
2. P.Marimuthu ...Respondents 1&2 in W.P.10782/2016

1. The Managing Director,
TN State Transport Corporation,
12 Ramakrishna Road,
Salem - 7 ... R-1 in WP No.12089/2012
2. The General Manager,
TN State Transport Corporation,
12 Ramakrishna Road,
Salem - 7 ... R-2 in WP No.12089/2012

Prayer in W.P.No.10782/2016:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the the records of the order passed by the first respondent in A.P.No.59 of 2012 dated 20.05.2015 and to quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

Prayer in W.P.No.12089/2012:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the the records connected with the order of dismissal dated 13.02.2012 passed by the second respondent in proceedings Pa.Mu.No.661-8432-D3-STC-2011-12, quash the same and also to

direct the respondents to reinstate the petitioner with continuity of service and other attendant benefits in a suitable post after identifying his fitness by referring him to the Medical Board as requested by him in his explanation dated 23.04.2011 submitted to 2nd show cause notice as well as in the Appeal, dated 10.03.2012, pending with the first respondent.

In W.P.No.10782/2016:

For Petitioner : Mrs. Rajeni Ramadoss
For Respondents : Ms. S.Girija

In W.P.No.12089/2012:

For Petitioner : Ms. S.Girija
For Respondents : Mrs. Rajeni Ramadoss

C O M M O N O R D E R

The Approval Petition filed by the Management under Section 33 (2) (b) of the Industrial Disputes Act, seeking approval of the dismissal of the workman, dated 18.02.2012, is under challenge in Writ Petition No.10782 of 2016 by the Management.

2. The charge against the workman was that he did not report for duty continuously from 21.03.2011 and that it was the misconduct, as per clause 19 (1) (f) of the Certified Standing Orders. The charge memo was issued, for which a reply was given by the workman. As the reply was not satisfactory, an enquiry was conducted. The enquiry officer gave a finding that the charges are proved. Thereafter, the management issued the second show cause notice asking the workman to show cause, as to why the punishment of dismissal should not be imposed.

3. The workman submitted a letter dated 10.11.2011 asking for duty and he was permitted to perform duty, pending disposal of the disciplinary proceedings.

4. It is the case of the Management that even thereafter, on and from 18.11.2011, the workman was absenting himself from duty without any prior intimation. Therefore, the Management passed the order of dismissal on 18.02.2012.

5. Since there was a wage dispute on the file of the Special Deputy Commissioner of Labour, Chennai, the Management filed the Approval Petition. The Approval Petition got dismissed on 20.05.2015 and challenging the same, the Management has filed a writ petition in W.P.No.10782 of 2016.

6. Challenging the order of dismissal passed by the Management, a writ petition has been filed by the workman in W.P.No.12089 of 2012.

7. The impugned order of dismissal dated 13.02.2012 would go to show that the management has taken into account the following factors:-

1. The workman was unauthorizedly absenting himself from 29.03.2011. In respect of the same, a show cause notice has been issued on 21.04.2011. The workman has replied stating that the parents of him died and therefore, he was not able to report for duty.
2. The Management gave the workman an opportunity to join duty with a direction to meet the General Manager, through the letter dated 26.04.2011.
3. The Management has conducted a domestic enquiry and the Enquiry Officer has given a finding that the charges against the workman has been proved; according to the death certificate, the father of the workman died on 24.01.2011 and his mother died on 02.03.2011; the workman has been granted leave from 02.03.2011 to 28.03.2011; the workman did not file any medical document to show that he was not well even after 28.03.2011.
4. The past conduct would reveal that he had been on unauthorised absent for 35 days, 83 days, 5 days, 22 days, 5 days, 8 days, 10 days, 12 days, 93 days, 291 days, 40 days, 37 days, 42 days, 53 days and 400 days, respectively.

8. From the above data, it is clear that the conduct of the workman during yester years had been highly irregular and indisciplined.

9. In a Transport Corporation, which is involved in discharge of a public duty, if drivers do not attend duty, in time, it will create innumerable problems for the Management. Even if leave taken for two digit days are tolerated, the leave taken for three digit days, which has exceeded a year also, in the last minute, cannot be condoned at all.

10. At this juncture, it is necessary to consider the reason for dismissal of the Approval Petition.

11. A perusal of the order passed in A.P.No.59 of 2012 would go to show that the authority concerned has given a finding that the Management did not consider the documents submitted by the workman. The documents submitted are medical records and prescription given by the Doctor.

11.1. It is not the case of the workman that those documents were filed before the Management and leave was sought. Now, as an excuse for unauthorized absence, those documents are filed.

11.2. The Approving Authority has taken note of the decision reported in 2011 (1) L.L.J. 646 (TNSTC Ltd., v. Joint Commissioner of Labour, Conciliation and other) wherein it has been held that dismissal of the workman for unauthorized absence is too harsh.

11.3. This proposition is not an universal proposition. Even in the reported case, the decision of the Hon'ble Apex Court reported in (2004) 4 SCC 560 (Bhagwanlal Arya v. Commissioner of Police, Delhi) is relied upon, where-under, it was held the case of habitual absentee stand on a different footing.

11.4. The case on hand is also a case of a habitual absentee who stands on a different footing.

12. The learned counsel appearing for the workman has filed the typed set of papers, and a perusal of which discloses that on the date of hearing, the workman wanted light duty on account of asthma and that was not given and a medical certificate has been filed showing that the workman is an asthma patient.

12.1. These documents ought to have been filed before the concerned authorities and not at the time of final hearing.

13. The conduct of the workman clearly goes to show that he is guilty of unauthorized absence and he is a habitual absentee also. Under the circumstances, the non-approval accorded by the authority concerned for the dismissal of the workman is hereby sustained.

14. The writ petition (W.P.No.12089 of 2012) filed by the workman challenging the order of dismissal is dismissed. The appropriate remedy for the workman is to have raised an industrial dispute before the Labour Court and W.P.No.12089 of 2012 ought not to have been filed by the workman. In fact, this writ petition is not even fit for admission.

15. Under such circumstances, the writ petition (W.P.No.12089 of 2012) filed by the workman is dismissed and the writ petition (W.P.No.10782 of 2016) filed by the Management is allowed. No costs. Consequently, the connected MPs are closed.

srk

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

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

+1CC To Mrs.S.Girija, Advocate, SR.NO.71356

+1CC To M/s.S.Rajeni Ramadoss, Advocate, SR.NO.71400

W.P.Nos.10782 of 2016 & 12089 of 2012
& M.P.Nos.1 & 2 of 2012

NMI (CO)
KAK(20/12/2018)