

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2018

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA

Writ Petition No.12339 of 2016

The Management,
Tamil Nadu State Transport Corporation (Salem) Ltd.,
12 Ramakrishna Road, Salem 636 007
Rep. by its General Manager

... Petitioner

Vs.

1. M.Ramasamy, Technical Staff,
2. The Special Deputy Commissioner of Labour,
DMS Compound, Anna Salai,
Chennai

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records passed by the second respondent in A.P.No.361 of 2012, dated 20.05.2015, and to quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

For Petitioners : M/s. Rajeni Ramadoss
For R-2 : Mr. K.K.Ramesh, Govt. Advocate

O R D E R

This writ petition has been filed by the Management challenging the rejection of the Approval Petition in A.P.No.361 of 2012, dated 20.05.2015, filed by the Management. The Management sought approval for the dismissal order, dated 31.08.2012, passed by the Management of its employee / first respondent.

2. The Special Deputy Commissioner of Labour came to the conclusion that: (a) the dismissal was out of victimization; (b) the domestic enquiry was not conducted following the principles of natural justice; and (c) there was no legal evidence to come to the conclusion that the charges are proved. On account of these findings, the Special Deputy Commissioner of Labour did not give approval for the dismissal of the workman.

2.1. These findings are under challenge by the Management in this writ petition.

3. The main charge against the workman is that he used abusive language against his superior, i.e., Assistant Engineer. The findings in the enquiry report is that the management failed to prove the occurrence by examination of the eye witness, namely, one L.Ramaswamy.

3.1. The learned counsel appearing for the Management would point out that the non-examination of L.Ramaswamy is not fatal, as the defence taken by the workman himself would show that he is guilty of the charges of using abusive language.

3.2. The defence taken by the workman is that on the day when he was going to shop in a two-wheeler, he had a quarrel with a drunkard; at that point of time, his cell-phone fell down and it automatically got switched on and the conversation between himself and the drunkard person would have been overheard by the Assistant Engineer.

3.3. The nature of the defence taken coupled with the way in which the occurrence is said to have taken place would go to show that the defence taken is inherently improbable. Considering the defence along with the other evidence, the logical conclusion is that only in order to cover up the use of abusive language, the theory of cell phone might have been introduced. The conclusion that could be derived from the circumstances is that the charge of using abusive language must be true. However, the nature of conversation and the consequences of the conversation is not known.

4. The contention of the learned counsel appearing for the workman is that the punishment of dismissal from service is disproportionate to the charges and therefore, the punishment must be set-aside.

4.1. The learned counsel appearing for the Management would submit that the past conduct of the workman would show that he is not entitled to any lenience and if at all the Court considers reinstatement, at least the punishment of increment cut for two years with cumulative effect should be imposed.

5. The learned counsel appearing for the workman would rely upon the decision in the case of Collector Singh Vs. L.M.L. Ltd., Kanpur, in [Civil Appeal No. 10125 of 2014 arising out of SLP (Civil) 37619/2012], wherein it was held that the punishment of dismissal from service for the charge of using abusive language is harsh and it cannot be sustained. The relevant observation reads as under:-

"... On the facts and circumstances of the case, we are of the considered view that the imposition of punishment of dismissal from service is harsh and disproportionate to the gravity of

charge imputed to the delinquent constable. Accordingly, we set aside the dismissal order....." Reference may also be made to the decisions of this Court in Rama Kant Misra vs. State of Uttar Pradesh & Ors., (1982) 3 SCC 346 and Ved Prakash Gupta vs. Delton Cable India(P) Ltd.; (1984) 2 SCC 569.

14. The High Court has relied on the judgment in Mahindra and Mahindra Ltd. vs. N.B.Narawade, (2005) 3 SCC 134, wherein it was held that the penalty of dismissal on the alleged use of filthy language is not disproportionate to the charge as it disturbs the discipline in the factory. We are of the view that in the facts and circumstances of the present case, the above decision may not be applicable. Considering the totality of the circumstances, in our view, the punishment of dismissal from service is harsh and disproportionate and the same has to be set aside."

5.1. In this case also, in the absence of evidence showing the circumstances under which the workman used the abusive language, the punishment is disproportionate.

6. Considering the nature of the charges, this Court is of the view that the punishment of cut in the increment without cumulative effect for a period of two years would be an appropriate punishment and it is imposed accordingly. Instead of remanding the matter, following the decision of the Hon'ble Supreme Court reported in AIR 1996 SC 484 (B.C.Chaturvedi v. Union of India) this court imposes the punishment by itself.

7. In the result, the award of the Labour Court confirming the dismissal is set-aside. The workman shall be reinstated in service with continuity of service (only for the purpose of calculation of qualifying service for pension and gratuity), with attendant benefits, but without back-wages. There shall be cut in the increment in the wages for a period of two years, but without cumulative effect.

8. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected MP is closed.

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar

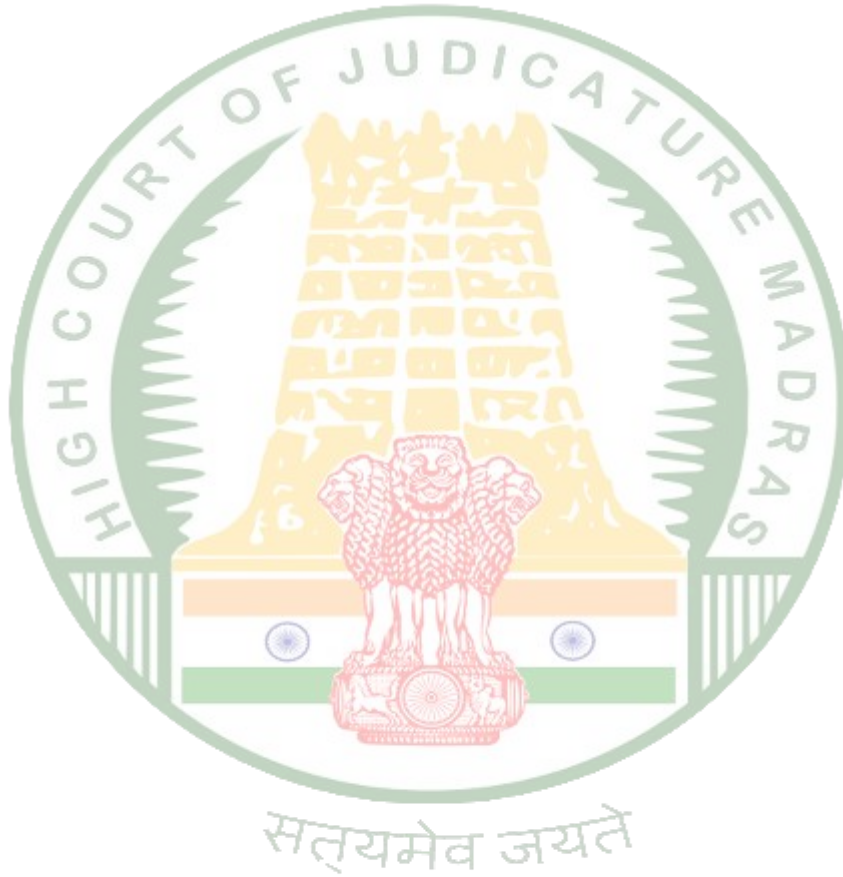
To

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

+1cc to Mr.S.Rajeni Ramadass, Advocate, S.R.No.70078

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RR (CO)
GSP (26/11/2018)



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