

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2018

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

W.P.NO.23799 of 2004

J.Kishan Singh

...Petitioner

Vs

1. The Presiding Officer
Labour Court, Salem.

2.The Management of Tamilnadu State
Transport Corporation, Bharathipuram
Dharmapuri District,
rep.by its Managing Director

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified mandamus calling for the records pertaining to I.D.No.653 of 2000 on the file of the first respondent and quash that portion of the award dated 24.10.2001 passed by the first respondent denying entire backwages to the petitioner and directing cut of one increment without cumulative effect and further direct the second respondent to reinstate the petitioner in service with full backwages and continuity of service and all other attendant benefits.

For Petitioner : Mr.K.V.Shanmuganathan

For Respondents : Ms.Rajeni Ramadoss - for R2
R1 - Labour Court

O R D E R

This writ petition has been filed by the workman, challenging the modification of punishment as ordered by the labour court in I.D.No.653 of 2000 .

2. The second respondent is the employer under whom the petitioner has been serving admittedly from the year 1979. He has rendered continuous service for nearly 17 years and he was terminated from service on and from 20.11.1996. He was found guilty of unauthorised absence from 20.05.1996 to 31.05.1996. In the domestic enquiry conducted, it was held that the unauthorised absence was proved and therefore he is liable to be terminated from service. The order of termination dated 20.11.1996 was challenged by the workman before the labour court in I.D.No.653 of 2000. The labour court found that the punishment is disproportionate to the charges levelled and therefore the punishment was modified. The labour court, while setting aside the order of termination, directed reinstatement without backwages, and to cut one increment without cumulative effect. This award is under challenge by the workman in this writ petition.

3. The contention raised by the learned counsel for the workman is that the denial of entire backwages is not commensurate with the misconduct proved against the petitioner / workman and therefore it must be set aside. It is also pointed out that the increment cut for one year without cumulative effect is also excessive and there it must also be set aside by this Court.

4. The issue to be considered in this writ petition is whether the labour court is right in not granting backwages and imposing the punishment of increment cut for one year without cumulative effect. A perusal of the award of the labour court would go to show that the labour court has discussed in detail the issue of unauthorised absence and the contentions raised by the management with respect to the past conduct of the employee in absenting himself without intimation. Hence, considering that there was no documentary proof substantiating the claim of ill health by the employee and that the punishment of dismissal is excessive for the misconduct of 12 days absence, concluded that the dismissal from service is disproportionate and therefore set aside the order of dismissal, while imposing the punishment of denial of backwages. The labour court has also considered that there is admission by the workman that there was no document to show that he was not well from the period 20.05.1996 to 31.05.1996. The labour court has also considered length of service of the workman in the Corporation and passed the award of reinstatement without backwages.

5. Under the circumstances, the labour court has rightly concluded that the increment cut should be the appropriate punishment. The discretion having been exercised rightly by the labour court, cannot be found fault with. The writ petition has no merits and it is dismissed. No costs.

kst

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

To

1. The Presiding Officer
Labour Court, Salem.

2.The Management of Tamilnadu State
Transport Corporation, Bharathipuram
Dharmapuri District, rep.by its Managing Director

+1cc M/s.K.V.Shanmuganathan, Advocate SR.NO.72866

+1cc M/s.S.Rajeni Ramadass, Advocate SR.NO.73169

W.P.No.23799 of 2004

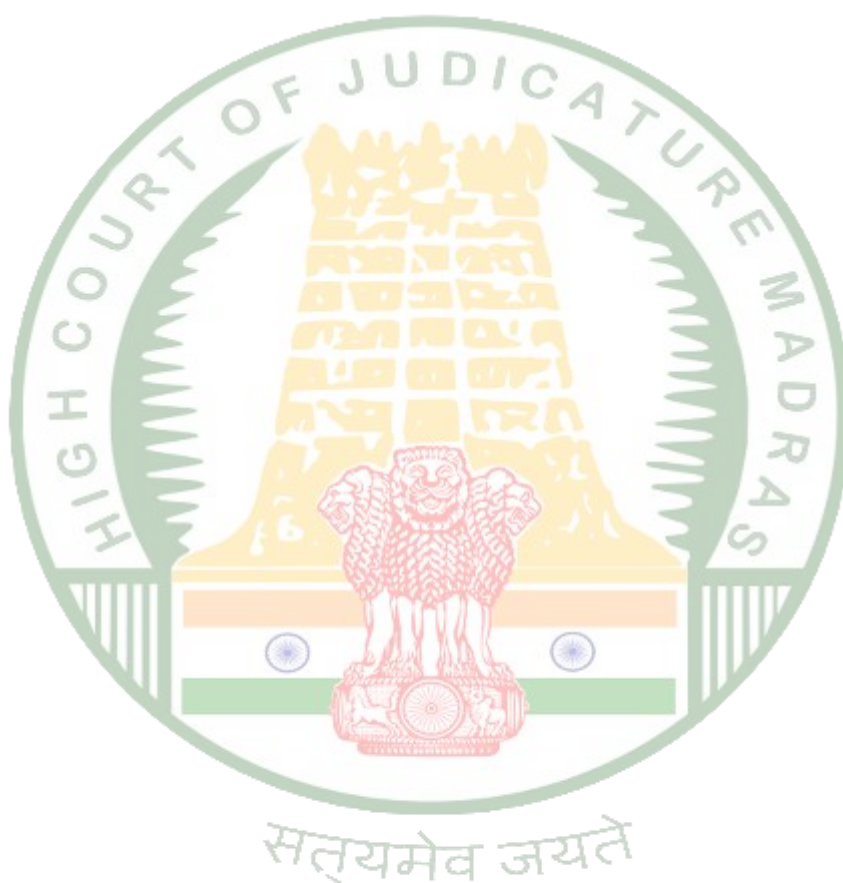
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