

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2018

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA
W.P.NO.25433 of 2004

Tamilnadu State Transport Corporation (Salem)
Ltd., rep.by its Managing Director,
12, Ramakrishna Road, Salem.

....Petitioner

Vs

1.The Presiding Officer
Labour Court, Salem.

2.G.Varadharajan

...Respondents

Prayer : Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari
calling for the records of the first respondent in I.D.No.376 of
2002 dated 17.11.2003 and quash the same.

For Petitioner : Ms.Rajeni Ramadoss

For Respondents : R1 - Court
R2 - No appearance

O R D E R

The award passed by the labour court, directing
reinstatement with continuity of service, but without backwages,
is under challenge in this writ petition.

2. The brief facts leading to the present writ petition is
as follows. The second respondent / workman joined the services
of the Corporation on 20.02.1985 as Clerk and he has been
terminated from service by the order dated 02.01.2001 on the
ground that he was a habitual absentee and he absented himself
from duty on and from 22.10.2000, without prior intimation or
sanction of leave. A charge memo dated 14.11.2000 was issued,
calling for his explanation and thereafter domestic enquiry was
conducted. On the side of the management, Exs.R1 to R9 were
marked. In the domestic enquiry, no specific defence has been
taken by the workman, though he examined himself as witness.
After the enquiry, the enquiry officer came to the conclusion
that the workman is guilty of the charges levelled against him.
On the basis of the findings of the enquiry officer, the workman

was asked to submit his explanation as to why he should not be terminated from service. In the explanation submitted to the said second show cause notice, the workman has stated that he was mentally affected due to some family problem. He has further stated that his wife deserted him without sufficient cause and while he was searching for his wife, he missed informing his absence to the management and therefore, the labour court has rightly held that the charges are proved and has only interfered in the quantum of punishment on the ground that the punishment of dismissal from service is disproportionate to the charges levelled against him.

3. Learned counsel for the management submits that the absence of the workman to duty especially in establishments of public importance would cause great impediment in the discharge of duty and therefore the absence should be viewed seriously and the labour court is not correct in holding that the punishment is disproportionate to the charges. Learned counsel for the management insisted that the workman is a habitual absentee and therefore the punishment should be upheld.

4. No doubt the petitioner had been absenting himself for duty without intimation. No document has been filed to show that prior intimation has been given to the management. But, in the explanation offered by the workman to the second show cause notice, he has stated that due to his family circumstances, he was driven to the extent of losing his mental balance and therefore he was not able to join duty. Having regard to the fairness on the part of the workman in admitting the misconduct, which involves an element of opportunity to correct himself, the labour court has rightly ordered reinstatement but declined backwages, which itself will be the appropriate punishment for the misconduct. Even though it is alleged that he is an habitual absentee, no document has been enclosed along with the second show cause notice to substantiate that the absence is unjustified or wilful or otherwise.

5. Under the circumstances, the finding the labour court that the punishment is disproportionate to the charges levelled cannot be found fault with and the award of the labour court is confirmed. The writ petition is liable to be dismissed and it is accordingly dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

kst

To

The Presiding Officer,
Labour Court,
Salem.

+1cc to Mr.Rajeni Ramadass, Advocate, S.R.No.73168

W.P.No.25433 of 2004

RSK(CO)

rrs 29/11/2018



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