

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 20.12.2018

CORAM
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.4022 of 2008

V.Lakshmanan

... Petitioner

Vs.

1. The Management,
Tamil Nadu Transport Corporation
Salem Division - II,
Dharmapuri - 2.

2. The Proceeding Officer,
Labour Court, Salem. ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 2nd respondent in I.D.No.548/2004 by order dated 21.11.2006, and quash the same was illegal and unlawful, and consequently, directing the 1st respondent to reinstate the petitioner with all continuity of service and other monetary benefits.

For Petitioner : Mr.V.Thirupathi

For R1 : Mr.R.K.Gandhi

R2 - Labour Court

ORDER

This Writ Petition has been filed to call for the records relating to the impugned order of the 2nd respondent in I.D.No.548/2004 dated 21.11.2006 and quash the same, and consequently, direct the 1st respondent to reinstate the petitioner with all continuity of service and other monetary benefits.

2. The petitioner seems to have been appointed initially on daily wages from 29.04.1987 and subsequently, regularised on 01.04.1988. Thereafter, until 18.10.2002, he was working as a conductor in the Transport Corporation. The petitioner was on medical leave from 18.10.2002 to 28.10.2002 and after completion of the medical leave on 28.10.2002, the petitioner was not permitted to join the duty. However, a charge memo dated 03.01.2003 was issued to the petitioner that from 08.11.2002,

(1) The petitioner was continuously absent from service (2) The petitioner acted without duty conscious and irresponsible in his duty 3) The petitioner had given unnecessary inconvenience to the 1st respondent and acted against the standing order 16(E).

3. Followed by the charge memo, a domestic enquiry was conducted and the enquiry officer held all the charges proved by the said enquiry, and he filed a report dated 24.06.2003. Subsequently, a show cause notice dated 07.08.2003 was issued, followed by a dismissal order dated 15.10.2003.

4. The petitioner had represented before the Labour officer, Krishnagiri, for reconciliation. However, the Labour Officer, by order dated 10.02.2004, had found and given that the conciliation had broken on account of non appearance by the 1st respondent. Hence, the petitioner filed I.D.No.548 of 2004 before the 2nd respondent and the 2nd respondent, by order dated 21.11.2006, had dismissed the petition, confirming the dismissal order dated 15.10.2003. As against which, the present Writ Petition is filed.

5. The learned counsel for the petitioner would contend that the petitioner, who was on medical leave from 18.10.2002 to 28.10.2002, which was subsequently extended on the representation made by the petitioner up to 07.11.2002. Thereafter, on 08.11.2002, when the petitioner approached the 1st respondent for reporting duty, the same was refused and was malafidely considered as unauthorised absence by the 1st respondent.

6. The learned counsel for the petitioner would further argue that no opportunity was given to the petitioner during the departmental enquiry and no copies of documents were issued by the 1st respondent to the petitioner herein.

7. The learned counsel for the petitioner would further contend that even assuming that the petitioner was unauthorisedly absent, the petitioner having put in 15 years of service, the order of dismissal from the service is a major punishment, which is disproportionate to the charges levelled against the petitioner and hence, he sought for quashing the said order passed by the Tribunal and consequently, to reinstate the petitioner with continuity of service and all monetary benefits.

8. The learned counsel for the 1st respondent would vehemently contend that the petitioner unauthorisedly absented himself without any prior intimation from 08.11.2002 and thereafter, a charge memo was issued, which is served on the petitioner by following the principles of natural Justice and an inhouse enquiry was conducted. Despite receiving the communication with regard to the enquiry, the petitioner did not participate in the enquiry and thereafter only, an exparte

enquiry report was filed. A second show cause notice was issued on 07.08.2003, which the petitioner received, however, did not offer any explanation for the same. Thereafter, on 22.10.2003, the petitioner was dismissed from service.

9. The learned counsel for the 1st respondent would submit that the order of dismissal from service is a punishment for unauthorised absence and it is appropriate. As the petitioner without any prior intimation or permission has absented himself for duty, the Labour Court has properly considered the evidences and sustained the order of termination.

10. Heard the learned counsel for the petitioner and the learned counsel for the respondent, and perused the materials available on record.

11. It is not disputed by the petitioner that he was unauthorisedly absented himself from 08.11.2002, for which, the petitioner neither before the Lower Court nor before this Court, has filed any proof of obtaining permission or getting sanction for leave.

12. In contrary, the 1st respondent management, the Transport Corporation, has produced defence Exhibits D1 to D19, which includes the copy of the show cause notice along with the acknowledgment card signed by the petitioner. Ex.D7 the acknowledgment card signed by the petitioner for receiving the enquiry report, was also filed by the Transport Corporation. However, it could be seen that the petitioner has neither chosen to produce any evidence nor examined himself as witness before the 2nd respondent. The petitioner has miserably failed to adduce any evidence before the 2nd respondent to substantiate his claim, which culminated into the dismissal of the Industrial Dispute raised by the petitioner.

13. After weighing the materials on record, this Court does not find any infirmity in the orders passed by the 2nd respondent, confirming the dismissal of the petitioner. However, this Court is of the view that the proportionality of the dismissal order for unauthorised absence is a major punishment, that too, considering 15 years of service put in by the petitioner prior to the order of termination. The reason stated by the petitioner that he was not well and admitted in the private hospital, was not considered by the respondents. That apart, the respondent management neither before the enquiry officer nor before the Labour Court has stated that the petitioner was a habitual unauthorised absentee. The only incident, wherein, the charge memo issued against the petitioner, was he absented himself from 08.11.2002 unauthorisedly. Under these circumstances, there being no prior antecedents or charge memos issued on the petitioner, the order of dismissal seems to be on the higher side, as a punishment.

14. Under the above circumstances, this Court is of the view that the order of the dismissal can be modified to an order of compulsory retirement as the petitioner seems to have attained the age of superannuation if he had been in service. Hence, the Writ Petition is disposed of, modifying the order of dismissal into an order of compulsory retirement with effect from 22.10.2003. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

raja

To

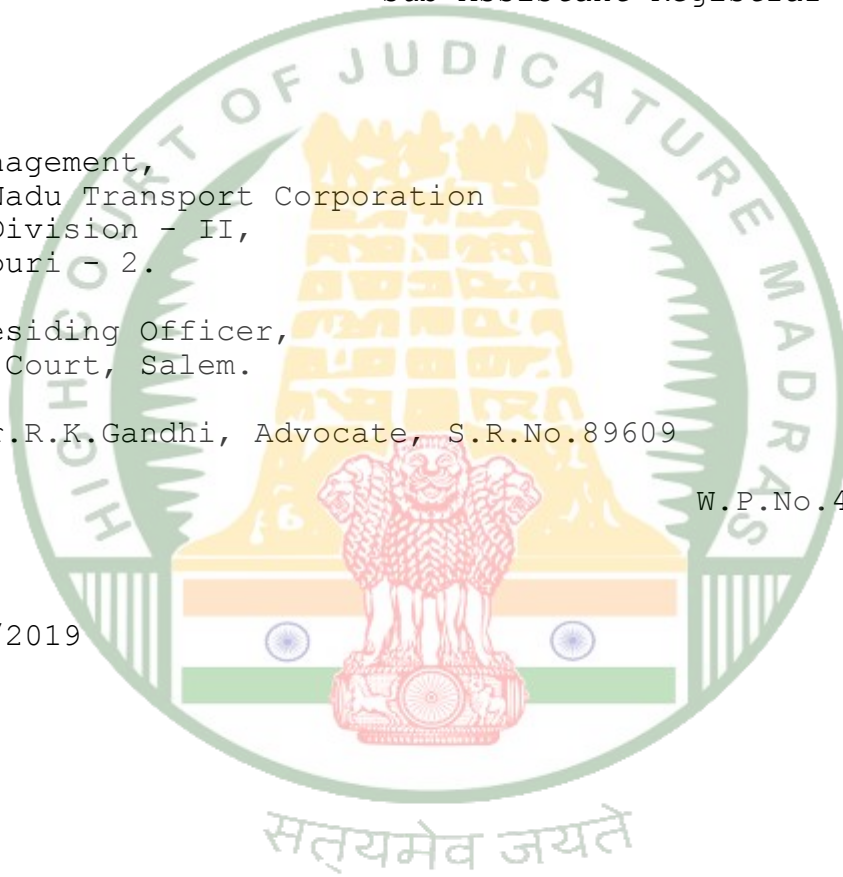
1. The Management,
Tamil Nadu Transport Corporation
Salem Division - II,
Dharmapuri - 2.
2. The Presiding Officer,
Labour Court, Salem.

+1cc to Mr.R.K.Gandhi, Advocate, S.R.No.89609

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PA(CO)

rrs 07/03/2019



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