

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2018

CORAM:

THE HON'BLE DR.JUSTICE S.VIMALA

W.P.No.5725 of 2014
and M.P.Nos.2 and 3 of 2014

The General Manager,
Tamil Nadu State Transport
Corporation (Salem) Ltd.,
No.12, Ramakrishna Salai,
Salem - 7.

... Petitioner

Vs.

1. The Special Deputy Commissioner
of Labour,
D.M.S.Compound,
Chennai.

2. K.Senthil Raja

.. Respondents

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 of the order passed by the 1st respondent in Approval Petition in A.P.No.124 of 2012 dated 27.12.2012 and to quash the same as illegal.

For Petitioner : M/s.Rajeni Ramadass

For Respondents : Mr.N.Srinivasan,
Additional Govt. Pleader for R1
Mr.M.Palani for R2

O R D E R

This writ petition has been filed by the Management challenging the dismissal of approval petition which was filed in A.P.No.124 of 2012 under Section 33(2)(b) of the Industrial Dispute Act.

Brief facts:

2. The second respondent was employed in the Technical Division of the petitioner Corporation from 07.12.1984. The second respondent was served with a charge memo dated 03.09.2011 alleging use of abusive language against his supervisor. As there was no explanation, Domestic Enquiry was ordered. The

second respondent participated in the Domestic Enquiry and the Enquiry Officer submitted a report, holding that the charges are proved.

2.1. A second show cause notice was also issued to the second respondent, asking his explanation as to why he should not be dismissed from service to which the 2nd respondent submitted his explanation. However, without considering the explanation submitted by the second respondent, the Corporation dismissed him from service. In view of certain pending disputes, during the pendency of the enquiry proceedings, the Management filed Approval Petition before the first respondent, Special Commissioner of Labour Court, Chennai, who by order dated 27.12.2012 dismissed the approval petition, holding that no prima facie case has been made out for grant of approval. There was a further finding that since the second respondent was a leader in the Union, the dismissal seems to be more of victimization action against the second respondent. Thus, the dismissal of the approval petition is under challenge by the Management.

3. The learned counsel appearing for the Management submits that if the past conduct of the employee is considered, it would be evident that there is consistent misconduct on the part of the employee right from the year he joined the service and therefore, the finding of the Enquiry Committee that the employee is liable to be removed from service is justified.

4. The learned counsel appearing for the workman submitted that the first respondent has considered the case of the employee in proper perspective and having found that the finding in the domestic enquiry is perverse and is based on no evidence, has rightly set aside the order of dismissal passed by the Management and therefore, no interference is called for with the said order.

4.1. It is pointed out by the learned counsel appearing for the workman that the workman went on medical leave from 15.08.2011 to 26.08.2011, but, the incident of using filthy language against his supervisor is said to have taken place prior to the completion of medical leave on 24.08.2011. According to the allegation made by the Management, the workman is stated to have asked for day shift duty before the Branch Manager and during that time only, the workman is stated to have used abusive language.

4.2. The contention of the learned counsel for the workman is that before the expiry of the medical leave, there is no necessity for the workman to meet the employer and especially, the Branch Manager, who has no authority to offer day shift duty

and when the probability of the employee meeting the Branch Manager itself is doubtful, the finding that the charges are proved has been rightly set aside.

4.3. It is also pointed out that excepting the Branch Manager, nobody else was examined to prove that the employee met the Branch Manager. It is claimed that not even the exact words or nature of words used have been furnished by the Management in the evidence. It is to be pointed out that when the workman is a trade union leader, definitely, it must be within his knowledge that the Branch Manager has no authority to allot any duty and therefore, the probability of the workman meeting the Branch Manager to ask for light duty is less. Even assuming that the workman met the Branch Manager, the origin of the altercation itself is doubtful and has not been established through acceptable evidence.

5. Having regard to the entire facts and circumstances of the case, there are only two conclusions. One is that there is no necessity for the workman to meet the Branch Manager, who is admittedly incompetent to give required assignment to the workman. Even assuming that he met the Branch Manager and asked for the same, the workman would have been aggrieved over the refusal to assign day shift duty, when he was suffering from ill-health. Secondly, the exact conversation between both is not available to assess whether there was any intention for the workman to defame the Branch Manager.

6. Under such circumstances, the refusal to grant approval for the dismissal of the workman is justified, especially, when the findings are perverse.

7. So far as the backwages are concerned, though backwages is claimed, however, it is for the employee to show that he was not gainfully employed during the period of suspension, i.e., from 30.03.2012. Therefore, the backwages cannot be granted. However, the workman is entitled to continuity of service for the purpose of computation of terminal benefits.

8. In the result, the writ petition filed by the Management is dismissed with the aforesaid modification. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

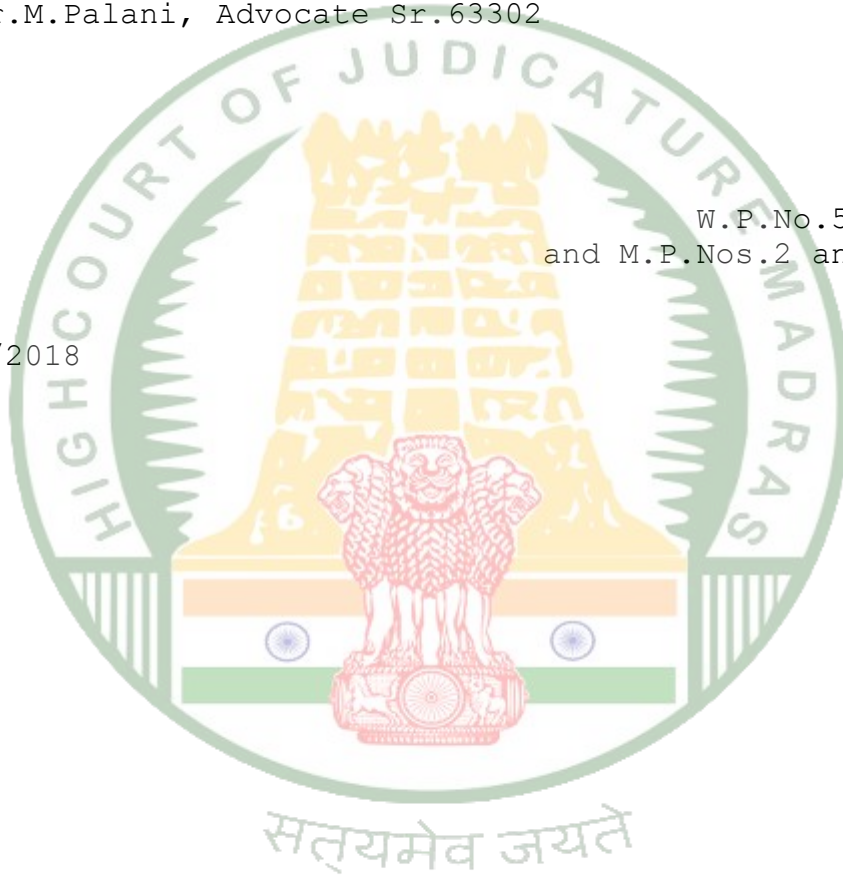
The Special Deputy Commissioner
of Labour,
D.M.S.Compound,
Chennai.

+lcc to Mr.S.Rajeni Ramadass, Advocate Sr.63620

+lcc to Mr.M.Palani, Advocate Sr.63302

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