

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE : 12.10.2018

CORAM
THE HONOURABLE DR. JUSTICE S.VIMALA

W.P. NO. 23066 OF 2015
M.P. NO. 1 OF 2015
AND
W.M.P. NO.11711 OF 2016

The Management
State Express Transport
Corporation Ltd.
Pallavan Salai, Chennai 600 002
rep. by its Managing Director. .. Petitioner

- Vs -

1. R.Peter
2. The Special Deputy Commissioner of Labour
DMS Compound, Chennai 600 006. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the records on the file of the 2nd respondent, made in A.P. No.343/2011 dated 5.12.2013 and quash the same.

For Petitioner : Ms. Rajeni Ramdoss
For Respondents : Mr. R.Ganesan for R-1
Mr. K.K.Ramesh for R-2

ORDER

The petitioner/Management has filed the writ petition challenging the dismissal of the approval petition filed in A.P. No.343/2011 vide order dated 5.12.2013.

2. The allegation against the 1st respondent herein is that he was unauthorisedly absenting himself from service on 30.8.2011. Therefore, enquiry was initiated and after full fledged enquiry, the 1st respondent was dismissed from service. However, as bonus dispute was under consideration, the Management was driven to the necessity of taking approval from the concerned authority by filing necessary approval petition. The approving authority has considered all the relevant materials placed before it and following the decision in Lalaram - Vs - Management, DCM Chemical Works Ltd. (AIR 1978 SC 1404), the approving authority held that the punishment awarded is

grossly disproportionate to the delinquency and, accordingly rejected the approval petition. Aggrieved by the said order, the present petition has been preferred before this Court.

3. The main contention advanced on behalf of the Management is that the approving authority is not competent to consider the issue of the punishment being disproportionate and, therefore, the rejection of the approval petition must be set aside.

4. Per contra, learned counsel for the workman relied upon the following three decisions to drive home the point that the approving authority is empowered to consider the disproportionate nature of punishment and in the event of the approving authority coming to the conclusion that the punishment imposed is disproportionate, it is open to the approving authority to interfere with the punishment awarded :-

- i) P.S.Karikalan & Anr. - Vs - The Management of Tamil Nadu Co-operative Textiles Processing Mills & Ors. (CDJ 2012 MHC 5385)
- ii) Lalaram - Vs - Management, DCM Chemical Works Ltd. (AIR 1978 SC 1404)
- iii) Jaipur Zilla Sahakari Bhoomi Vikas Bank Ltd. - Vs - Ramgopal Sharma & Ors. (2002 (2) SCC 244)

5. Learned counsel for the Management/petitioner relied upon the decision of this Court in W.P. No.38595/06 dated 17.06.2009 (B.Govindaswamy - Vs - The Inspector General of Police & Ors.) wherein the implication of habitual absence has been considered and it has been held that when it is proved that the workman is a habitual absentee, there is no need to interfere with the punishment awarded. In the abovesaid decision, reliance was placed on the decision reported in The Govt. of A.P. & Ors. - Vs - Mohd. Taher Ali (2007 (8) SCC 656) wherein refusal of a police constable to go for election duty was considered and though it was a solitary incident in which the policeman did not want to take up the responsibility and considering the nature of duty, it was held that the conduct is reprehensible.

6. Keeping the above ratio laid down in the various decisions brought to the notice of this Court by the learned counsel on either side, it is to be pointed out that the issue regarding habitual absence has also been dealt with in the decision in Taher Ali's case (supra), relied on by the Management, wherein it was held that absence for 21 days by a member of a disciplined force is sufficient to justify compulsory retirement.

7. However, in the case on hand, the issue that arises for consideration is whether the absence of the workman is wilful absence/calculated absence or absence, which is beyond the

control of the workman.

8. A perusal of the materials available on record, including the findings and evidence in the enquiry reveals that it is the stand of the workman that he informed the authority over telephone, however, the same was disputed in the enquiry by the Management witness. Therefore, finding itself is that, unable to prove the fact that he had informed the authority over telephone, the workman finally tendered his apology. The above attitude and approach of the workman would clearly reveal that he had committed a mistake and not able to prove the same, rather than trying to justify his mistake, the workman has offered his apology.

9. Considering the attitude and conduct of the workman herein, this Court feels that this is not a case of wilful absence and, therefore, warrants only a lesser punishment. The punishment of dismissal from service, in the considered opinion of this Court, is rather disproportionate.

10. However, considering the overall circumstances of the case, this Court is of the considered view that a lesser punishment would secure the ends of justice. Accordingly, while setting aside the punishment of dismissal from service, this Court deems that it would be appropriate to award a punishment of stoppage of increment for two years without cumulative effect. It is further made clear that while the workman will not be entitled for backwages from the date of dismissal till the date of his joining the service, however, the workman would be entitled to "continuity of service" for the purpose of computation of terminal benefits.

11. Accordingly, this writ petition is disposed of in the above terms and the petitioner/Management is directed to reinstate the workman in service, without backwages, but with continuity of service within a period of two weeks from the date of receipt of a copy/production of a copy of this order. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

GLN

To

The Managing Director,
State Express Transport Corporation Ltd.,
Pallavan Salai,
Chennai 600 002.

+2ccs to Mr.R.Ganesan, Advocate, S.R.No.71218

+1cc to Mr.S.Rajeni Ramadass, Advocate, S.R.No.71399

W.P. NO.23066 OF 2015

rrs 29/11/2018



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