

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A.No.942 of 2017

and C.M.P.No.13078 of 2017

The Management
Tamil Nadu State Transport Corporation
(Villupuram), Ltd.,
Cuddalore Division
Rep. by its General Manager ...Appellant/Petitioner

Vs

1.R.Ramasamy
2.The Presiding Officer
Labour Court, Cuddalore. ...Respondents/Respondents

Prayer:- Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the order passed by this Court in W.P.No.17256 of 2014 dated 17.03.2016.

WP.No.17256 of 2014:To pass a Writ of Certiorari or any writ, order or direction to call for the records of the order passed by the 1st Respondent I.D.No.14 of 2012 dated 07.10.2013 and to quash the same as illegal.

For Appellant : Mr.A.Antony Arockiaraja

JUDGMENT

(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

The punishment imposed by the appellant on account of the unauthorised absence of the first respondent was set aside by the Labour Court and a lesser punishment of stoppage of one increment with cumulative effect was awarded as the punishment. The Labour Court directed the appellant to give the first respondent continuity of service and back wages from the date of dismissal to the date of superannuation. The order was upheld by the learned Single Judge in W.P.No.17256 of 2014. Feeling aggrieved, the Management is before us.

2. We have heard the learned counsel for the appellant. None appeared on behalf of the respondents.

3. The appellant initiated disciplinary proceedings against the first respondent who was working as a conductor on account of his unauthorised absence. The appellant issued a charge memo on 19 March, 2008 and thereafter, conducted enquiry. Before the Enquiry Officer, the first respondent was given sufficient indulgence to canvass evidence. The Enquiry Officer by following a fair procedure submitted a report to the disciplinary authority. The disciplinary authority issued second show cause notice to the first respondent and thereafter, imposed the punishment of dismissal from service. The first respondent raised an industrial dispute before the Labour Court at Cuddalore. The dispute was registered as I.D.No.14 of 2012.

4. The Labour Court found that the enquiry was conducted fairly. In fact, the contention taken by the first respondent that the enquiry was not conducted in a fair manner was subsequently withdrawn. Therefore, the only issue before the Labour Court was as to whether the punishment was disproportionate to the charges framed against the first respondent.

5. The Labour Court by placing reliance on the decisions of High Court held that the punishment was disproportionate to the misconduct. The Labour Court, therefore, modified the punishment into one of stoppage of one increment with cumulative effect. There was a further direction to grant continuity of service and back wages to the first respondent.

6. The learned Single Judge without discussing the contention taken by the appellant, confirmed the order passed by the Labour Court.

7. There is no dispute that after the introduction of Section 11-A of the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court. It is open to the Labour Court to interfere with the quantum of punishment awarded by the Management, in case the workman is found guilty of the misconduct. It is true that an element of discretion is permitted under Section 11-A, whereby and whereunder, the Labour Court can modify the punishment. The area of discretion given to the Labour Court has been very well defined by the judgments of the Hon'ble Supreme Court. The Hon'ble Supreme Court made it very clear that the discretion is not unlimited and the Court has to consider the background facts to arrive at a decision as to whether the punishment is disproportionate to the charges framed against the employee.

8. The Labour Court, in the subject case, found that the punishment was disproportionate. The Labour Court, had therefore, rightly modified the punishment. However, while awarding the modified punishment, the Labour Court directed the

appellant to pay back wages to the first respondent. It is also not in dispute that the appellant was not in service for a considerable period. Even then, the Labour Court directed the appellant to grant back wages to the first respondent. Though a contention was taken by the appellant with respect to the award of back wages by the Labour Court, the said issue appears to have not been considered by the learned Single Judge. In any case, the Labour Court was not correct in awarding back wages to the first respondent.

9. In the result, the Award passed by the Labour Court in I.D.No.14 of 2012 dated 07 October, 2013, is modified. We sustain the punishment of stoppage of increment for a period of one year with cumulative effect. We also confirm the direction to give continuity of service to the first respondent. However, we set aside the direction given by the Labour Court for payment of back wages to the first respondent. In short, the first respondent is not entitled to back wages for the entire period.

10. The Award passed by the Labour Court is modified to the above extent.

In the upshot, we allow the intra court appeal in part. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gms

To

1.The Presiding Officer
Labour Court, Cuddalore.

2.The General Manager
The Management
Tamil Nadu State Transport
Corporation Villupuram Ltd
Cuddalore District

W.A.No.942 of 2017

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