

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.07.2018

Pronounced on : 20.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P. No. 8269 of 2009

R.Kandasamy

... Petitioner

vs.

1.The Presiding Officer,
Labour Court, Salem.

2.The Managing Director,
Tamil Nadu State Transport Corporation
(Salem) Ltd,
No.12, Ramakrishna Road,
Salem-7

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, prayed that this Court to issue a writ of certiorarified mandamus calling for the records connected with the award passed by the first respondent/ Labour Court in I.D.No.245 of 2005 dated 24.04.2008, quash the same and also direct the second respondent reinstate the petitioner into the service with continuity of service backwages and attendant benefits .

For Petitioner : M/s.Girija

For Respondents: Mr. S.Rajini Ramadoss

O R D E R

The petitioner has filed this writ petition for a writ of Certiorarified mandamus calling for the records connected with award dated 24.04.2008 passed by the Presiding Officer, Labour Court, Salem in I.D. No. 245 of 2005 and quash the same and for a further direction to the Management of Tamil Nadu State Transport Corporation (Salem) to reinstate the petitioner with continuity of service backwages and other benefits.

2.The petitioner was appointed as driver in Transport Corporation. He joined a service on 21.01.1993. The petitioner was issued a charge memo and was asked to give his explanation. The following charges were framed against the petitioner:-

1. that he was unauthorisedly absent from duty from 26.08.1995 to 11.09.1995 without permission or prior intimation;
2. that the absence of he petitioner caused inconvenience to the Transport Corporation to arrange alternate driver to execute the work allotted to the petitioner and thereby caused inconvenience to the travelling public;
3. that the petitioner acted dishonestly and irresponsible manner by absenting himself from duty without intimation or prior permission.

3.Since the petitioner did not furnish any explanation domestic enquiry was conducted and the charges were held to be proved. A second show cause notice dated 27.09.1995 was issued citing all the previous instances where the petitioner was absent without permission. The details of the instances of unauthorized leave and punishment awarded to the petitioner as stated in the second show cause notice reads as under:-

Sl.No.	Date	Nature of offence	Details of punishment
1.	From 09.02.1994 to 19.02.1994	Not appeared for duty	Fine of Rs.25/- was imposed
2.	From 01.03.1994 to 13.04.1994	Not appeared for duty	Fine of Rs.20/- was imposed
3.	24.04.1994	TML 7494-Accident	Order passed to deduct Rs.100/-
4.	From 15.10.1994 to 24.10.1994	Not appeared for duty	Fine of Rs.20/- was imposed
5.	From 26.12.1994 to 04.01.1995	Not appeared for duty	Fine of Rs.20/- was imposed
6.	From 26.05.1995 to 27.05.1995	Not appeared for duty	Fine of Rs.20/- was imposed

7.	From 17.03.1995 to 28.03.1995	Not appeared for duty	Stoppage of increment for a period of 3 months without cumulative effect
8.	From 23.04.1995 to 07.05.1995	Not appeared for duty	Stoppage of increment for a period of six months without cumulative effect
9.	13.06.1995	Not appeared for duty	Fine of Rs.20/- was imposed
10.	12.06.1995	Not appeared for duty	Fine of Rs.20/- was imposed
11.	From 14.06.1995 to .08.1995	Not appeared for duty	Reduction of basic pay in two stages
12.	From 09.04.1996 to 04.04.1996	Not appeared for duty	Stoppage of increment for a period of 3 months without cumulative effect

4.The petitioner was thus ask to show cause to why he should not be dismissed from the service. The petitioner replied to the show cause notice stating that he was often absent from duty because of severe stomach pain which was diagnosed as ulcer and he also got typhoid. It was also stated that at the same time his wife who was pregnant was unwell and was admitted to hospital. The petitioner stated that his health has improved and that he will now be reporting to duty regularly.

5.The petitioner was dismissed from service by vide order dated 30.12.1996 in Pa.Mu.No.40/3418/D8/TNSTC/1996. This order was challenged by raising an industrial dispute before the Labour Officer. No settlement could be arrived at and the Labour Officer issued a failure report. A petition under Section 2-A (2) was filed before the Labour Court challenging the order dismissing the petitioner from his service. The Labour Court has found that the petitioner was absent 11 times for a period of 250 days. It found that the Management was taken a lenient view and was only imposing fines on earlier occasions. The Labour Court found that the petitioner has not produced any medical record to substantiate that he was suffering from any

illness. In fact, the Labour Court found that in the reply to the show cause notice he stated that he was suffering from stomach ulcer but in the claim petition it is stated that he was suffering from jaundice. The Labour Court held that the finding of guilt by the Management cannot be said to be perverse. The Labour Court by the award dated 28.04.2005 has dismissed the petition and hence the petitioner has approached this Court by filing the writ petition.

6.Heard, M/s.Girija, learned counsel for the petitioner and Mr.S.Rajini Ramadoss, learned counsel for the respondents.

7.The learned counsel for the petitioner states that there were valid reasons for the absence of the petitioner from duty. The petitioner was not keeping good health and had informed the respondents regarding his ill-health. It was also submitted that the order of the dismissal from service is disproportionate to the misconduct alleged. On the other hand, the learned counsel for the TNSCTC submits that the petitioner has been repeatedly absent from duty and that the award of the Labour Court does not require any interference.

8.Having heard the counsel on both sides and having perused the materials available on records, this Court is of the opinion that the order of the Labour Court does not require any interference under Article 226 of the Constitution of India.

9.The petitioner was appointed as a driver in a Transport Corporation. Absence of a driver results in cancellation of bus services and this causes inconvenience to the public. The evidence adduced by the Corporation before the Labour Court suggest that due to the absence of the petitioner from 25.08.1995 to 11.09.1995 and from 15.09.1995 to 02.10.1995 without prior permission or intimation the corporation found it difficult to arrange an alternate driver causing inconvenience to the travelling public. Though the charge memo dated 08.02.1996 was served on the petitioner, he did not participate in the enquiry and the Enquiry Officer gave a finding that the petitioner was guilty of unauthorised absence.

10.The second show cause notice highlights the various instances where the petitioner was absent without prior intimation. The petitioner being a driver in a Transport Corporation cannot afford to absent himself without permission. The petitioner has not learnt his lessons and infact has taken advantage of the leniency show by the Corporation.

11.The material on record shows that the petitioner after receipt of the second show cause notice again absented from duty from 08.02.1996. Therefore, another charge memo dated 08.02.1996

was issued. The petitioner received the charge memo dated 08.02.1996 marked as Ex.R.15. The petitioner did not give any explanation for the charge memo dated 08.02.1996. Therefore, again an ex-parte domestic enquiry was conducted and Enquiry Officer has given a finding guilt of unauthorised absence. The petitioner is a chronic absentee from duty.

12.The Labour Court has found that there is no medical record to substantiate the contention of the petitioner that he was suffering from any ailment. In fact, the Labour Court has pointed out the change in stand of the petitioner between the reply to the show cause notice and the petition filed in the Labour Court. In the first instance, the petitioner stated that he is suffering from stomach ulcer where as the petitioner claimed that suffering from jaundice in the Labour Court. In the writ petition also he has not filed any document to substantiate the ailment he is suffering from.

13.This is not a case where the petitioner has been terminated for unauthorised absence for one single instance. Being absent on 11 occasions for about 250 days without any permission cannot be taken lightly. The punishment cannot be held to be disproportionate to the charge framed against the petitioner. Awarding a lesser punishment to the petitioner would amount to giving a premium on indiscipline shown by the petitioner in repeatedly taking leave without permission. The order of the Labour Court does not warrant any interference. The writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

gsp

To

1.The Presiding Officer,
Labour Court, Salem.

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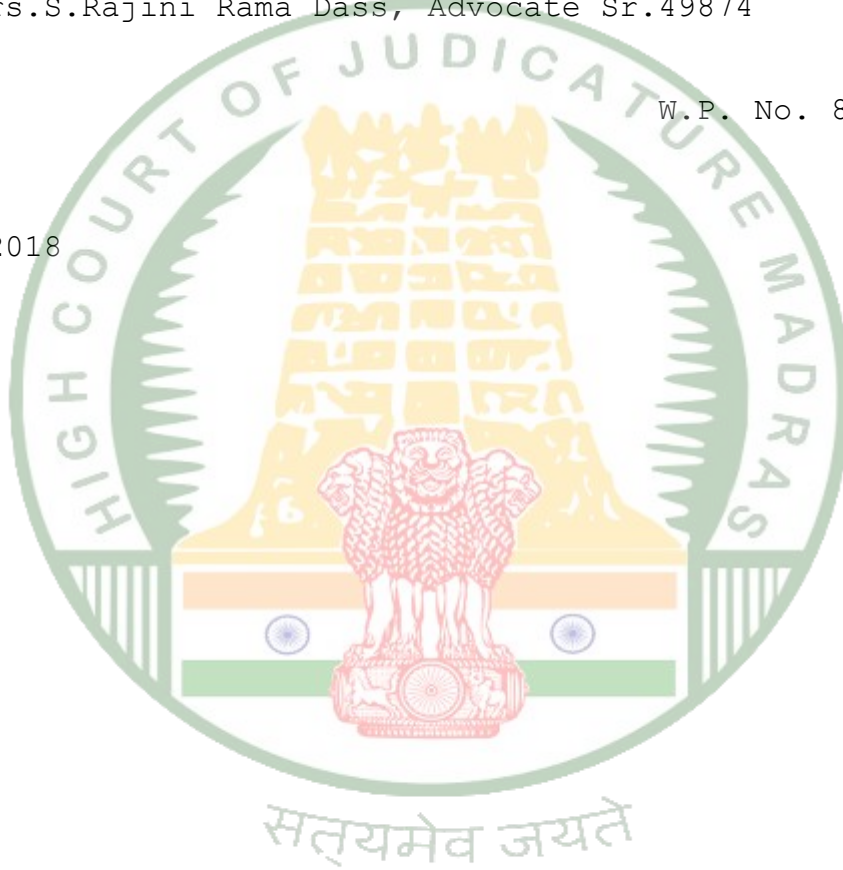
2.The Managing Director,
Tamil Nadu State Transport Corporation
(Salem) Ltd,
No.12, Ramakrishna Road,
Salem-7.

+1cc to M/S.S.Girija, Advocate Sr.46286

+1cc to Mrs.S.Rajini Rama Dass, Advocate Sr.49874

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pvs[co]
srg 3/08/2018



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