

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.03.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.2080 of 2013 and
MP.No.1 of 2013

A.Jayabal

... Appellant

-Vs-

1.The Management of Tamilnadu
State Transport Corporation
(Kumbakonam Division - I) Ltd.,
Rep. by its General Manager,
Railway Station New Road,
Kumbakonam 612 001.

2.The Joint Commissioner of Labour
(Conciliation), Chennai - 600 006. Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent
against the order passed in W.P.No.5066 of 2006 dated 13.06.2013.

W.P.No.5066 of 2006:

Writ Petition filed under Article 226 of the constitution of
India, praying for issuance of Writ of Certiorari calling for
the records relating to the order of the 1st respondent in
Approval petition No. 122/2003 dated 10.12.2004 and to quash the
same.

For Appellant : Mr.V.Ajoy Khose

For Respondents: Mr.D.Venkatachalam
Senior Counsel for R1
Mrs.A.Sri Jayanthi
Spl.Govt.Pleader for R2

J U D G M E N T

[Judgment of the Court was made by
K.K. SASIDHARAN, J.]

This intra court appeal is directed against the order dated
13 June 2013 in W.P.No.5066 of 2006, whereby and where under,
the learned single Judge set aside the order dated 10 December

2004 on the file of the Joint Commissioner of Labour (Conciliation), Chennai.

2. We have heard the learned counsel for the appellant and the learned Standing Counsel for the first respondent.

3. The appellant without submitting application for leave remained absent for a period of 19 days. The Management therefore issued a charge memo. Thereafter, enquiry was conducted. The disciplinary authority based on the enquiry report dismissed the appellant from service.

4. The Management made an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 before the Joint Commissioner of Labour for approval. The approval application was rejected by order dated 10 December 2004. The order was set aside by the Writ Court on the ground that by setting aside the order passed by the disciplinary authority in an approval petition, the Statutory authority exceeded its jurisdiction. The order is under challenge at the instance of the employee.

5. The charge framed against the appellant is refuted on the ground that there was no denial of his statement on oath that a leave letter was given and that there was no communication sent by the Branch Manager rejecting the application.

6. The charge memo contained a clear charge that there was no leave application submitted by the appellant for the period from 01.04.2002 to 19.04.002. The appellant miserably failed to plead and prove that a leave application was submitted by him and that it was kept pending by the Branch Manager.

7. Before the second respondent, the Management examined the Senior Assistant. The Senior Assistant in his chief examination stated that there was no leave letter given by the appellant. However, in the cross examination, it was stated that the Branch Manager alone is competent to grant leave and that he was not aware as to whether any leave application was submitted by the appellant to the Branch Manager. This piece of evidence is taken by the appellant to contend that it was clearly proved on the basis of materials that a leave letter was given to the Branch Manager. There is absolutely no merit in the said contention. The appellant has not produced even a scrap of paper to prove that leave letter was given and that there was no communication from the Management, rejecting the request.

8. It is a matter of record that the appellant was punished on multiple occasions for similar charges. In fact, the documents available on record indicates that the appellant suffered altogether 43 punishments and majority of them were on the ground of unauthorised absence.

9. The second respondent exceeded the brief by analysing each and every evidence adduced by the Management in a petition for approval. When it is made out that there was no material produced by the appellant to show that leave letter was given and order was not communicated by the Branch Manager declining to sanction, the Joint Commissioner was not correct in giving the benefit to the appellant.

10. The learned single Judge scanned the entire materials and arrived at a clear finding that the second respondent was not correct in analysing the materials for the purpose of forming a different opinion in a proceeding under Section 33(2) (b) of the Industrial Disputes Act, 1947. We do not find any ground made out by the appellant in this appeal to take a different view.

11. In the result, the intra court appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

svki
To

1.The General Manager,
The Management of Tamilnadu
State Transport Corporation
(Kumbakonam Division - I) Ltd.,
Railway Station New Road,
Kumbakonam 612 001.

2. The Joint Commissioner of Labour
(Conciliation), Chennai - 600 006.

+1 CC to Mr.V. Ajoy Khose, Advocate sr 16792.

+1 CC to The Govt. Pleader sr 17130.

+1 CC to Mr.D. Venkatachalam, Advocate sr 16587.

W.A No.2080 of 2013

NRL (CO)
SP(06/04/2018)