

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.02.2018
CORAM
THE HONOURABLE Mr.JUSTICE V.PARTHIBAN
W.P.No.12268 of 2010

The Management of
Tamil Nadu State Transport Corporation,
(Coimbatore Division-II) Ltd.,
Erode Region,
Chennimalai Road, Erode-1
Rep by its Managing Director. ... Petitioner

Vs

1.The Presiding Officer,
Labour Court, Salem.

2.P.Sivajothi (Deceased)

3.S.Baby

4.S.Prabu

R3 and R4 are substituted as LR's of deceased
R2, as per order dated 04.12.2017 in
WMP.No.2905 of 2017 in W.P.No.12268 of 2010 ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution
of India, praying to issue a Writ of Certiorari, to call for
the records concerning with I.D.No.132 of 2005, dated
17.11.2008 on the file of the 1st respondent and quash the
same.

For Petitioner : Ms.S.Vijaya for
Mr.T.Chandrasekaran

For Respondents : Ms.S.Girija for R3 and R4

ORDER

Heard Ms.S.Vijaya, learned counsel for the petitioner and
Ms.S.Girija, learned counsel appearing for the third and
fourth respondents.

2. The petitioner has approached this Court, seeking the
following relief,

"To call for the records concerning with
I.D.No.132 of 2005, dated 17.11.2008 on the file of
the 1st respondent and quash the same."

3. The case of the petitioner is as follows:-

The Transport Corporation is the petitioner before this
court. The second respondent employee was employed as

Conductor in the petitioner Corporation since 22.08.1990. During the period of his employment, he remained absent continuously from duty from 09.06.2001 onwards without prior intimation to the Management. Therefore, a charge sheet was issued on 30.06.2001 and a domestic enquiry was also conducted and the employee was given all opportunity to participate in the domestic enquiry. However, the employee did not choose to participate in the enquiry and in fact, according to the Corporation, no intimation had been sent by the employee for not participating in the enquiry.

4. The Enquiry Officer after analysing the evidence, came to the conclusion that the charges were established and accordingly, submitted his report on 31.08.2001, to the Management. Even in response to the enquiry report, no explanation was submitted by the second respondent employee, despite the receipt of the second show cause notice on 12.11.2001.

5. In view of the above circumstances, the Corporation has passed an order on 06.12.2001, terminating the service of the second respondent employee with effect from 09.12.2001. Against the termination order, the employee raised an industrial dispute in I.D.No.132 of 2005, which was taken up for adjudication by the first respondent - Labour Court. The Labour Court passed an award on 17.11.2008, directing reinstatement of the second respondent employee with continuity of service and back wages. The said award dated 17.11.2008, passed in I.D.No.132 of 2005, is put to challenge in the present writ petition.

6. The learned counsel for the petitioner Corporation would at the outset submit that the Labour Court did not take into consideration that the second respondent employee was punished for similar misconduct in the past on 14 occasions. From the past record, it would made clear that the employee was a habitual absentee and therefore, the Corporation felt that it was not in public interest to retain such employee. In the said circumstances, the Corporation had no other option except to dismiss the employee from service. It was more so, when the employee himself had not availed of the opportunity to participate in domestic enquiry and has not even chosen to respond to the findings of the domestic enquiry, such conduct on the part of the employee does call for severe action and hence, the Corporation thought fit to impose the penalty of dismissal from service.

7. According to the learned counsel for the Corporation, the first respondent - Labour Court has merely proceeded on the fact that the employee was absent only for 21 days, for which, he had proper explanation viz., he remained absent on medical grounds. Therefore, the Labour Court felt that the punishment imposed on the employee was excessive and disproportionate. In any event, learned counsel would submit that such employee cannot be rewarded with reinstatement and

continuity of service, besides full back wages. Such relief granted to the employee would run against the public interest, as the employee had very bad past record for remaining absent frequently without prior intimation.

8. Upon notice, learned counsel appearing for the third and fourth respondents entered appearance and made her submissions.

9. The learned counsel for the respondents would submit that during the pendency of this litigation, the second respondent employee died on 15.07.2016 and the legal representatives had been brought on record. The learned counsel would submit that the legal representatives of the second respondent employee are willing to forego part of the back wages awarded by the Labour Court as any interference with the award would take away the terminal benefits otherwise payable to the family of the employee, particularly, after the death of the employee.

10. This Court has given its anxious consideration to the rival submissions of the learned counsel on either side. Although there is some force in the contention put forth by the learned counsel for the Corporation that the employee concerned remained absent for 14 occasions unauthorizedly and the Corporation was forced to take a severe action against the employee concerned, nevertheless the first respondent - Labour Court felt that the employee concerned had valid explanation for the charges which was a subject matter of challenge before the Labour Court. In the teeth of such valid explanation viz., medical grounds, the dismissal of the employee was not warranted and the punishment was found to be excessive and disproportionate. Such findings of the fact does not call for re-appreciation by this Court, unless the same is found to be legally unacceptable and perverse.

11. This Court does not find any perversity in such finding and at the same time, this Court has also conscious of the fact that the second respondent employee was punished for similar misconduct on 14 occasions and this fact would unequivocally demonstrate that the employee has the habit of absenting himself frequently, by which act on the part of the second respondent employee, was against the public interest. Therefore, the award of the Labour Court granting full back wages for the period of non-employment, cannot be countenanced by this Court both in law and on facts. Such grant of full back wages by the Labour Court amounts to reward an errant employee of the Corporation and such bestowal of benefits would only demoralize other employees who work with loyalty towards the Corporation, without committing any act of misconduct.

12. In the above said circumstances, this Court is unable to comprehend as to the basis of grant of full back wages to

the second respondent employee. In fact, the Labour Court itself has referred to the order passed by the Hon'ble Supreme Court of India, in which, the Court has granted only 50% of the back wages as just and reasonable. In such situation, the conclusion of the Labour Court has found in paragraph Nos.6 and 7 of the award are reproduced below:-

"6. The counsel for the petitioner during his argument submits that if the petitioner remained absent voluntarily without any ground it is open to the respondent to take action and also cut off his salary for the absent period. Once there is a reasonable ground to remain absent, the petitioner is entitled to be reinstated with continuity of service and back wages. He also cited the ruling of our Hon'ble Supreme Court of India, in the case of Hariyana Urban Development Authority and Deva Dhayalan (2002 (2) LLN Page 450), the Apex Court considering the circumstances of frequent absence without leads to the probability of gainfully employed by the workman in somewhere else, awarding 50% of back wages would be proper. Ex.R.1 shows that he remained absent on 09.06.2001. Immediately he was issued charge sheet on 30.06.2001. Enquiry notices were ordered on 23.07.2000. So, if the days are calculated, he absented for a short spell of 21 days. Ex.P.3.4 shows that the absence of the petitioner was necessitated due to his illness till 05.12.2001. So, the petitioner is entitled for back wages, since the absence was not voluntary it is only on medical ground, if the petitioner is eligible account. Hence, I decide that the dismissal of the petitioner for the alleged absence from 09.06.2001 is disproportionate to the charge and it has to be set aside. I answer this issues accordingly.

7. Point No.3:- In the result, this Court passed the following award:- The dismissal of the petitioner from service for his absence from 09.06.2001 is disproportionate and it has to be set aside. The respondent is directed to reinstate the petitioner with continuity of service with back wages. However, there is no order for costs."

13. When such is the finding of the Labour Court, this Court is unable to appreciate as to the basis of grant of full back wages to the second respondent employee. Therefore, this Court is of the considered view that grant of full back wages to the employee is not legally sustainable and the same has to be interfered with. In the said circumstances, this Court modifies the award to the extent of grant of full back wages to the deceased second respondent employee and restrict the back wages to 50% of the back wages. As regards the reinstatement and continuity of service, the same shall remain as it is as ordered by the Labour Court in its award. The award is therefore modified to the extent indicated above. It

is clarified that the Corporation shall make Provident Fund Contribution as admissible and pay all the retirement benefits to the legal heirs of the deceased second respondent employee.

14. With the above observation, the writ petition stands disposed of. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gsk
To

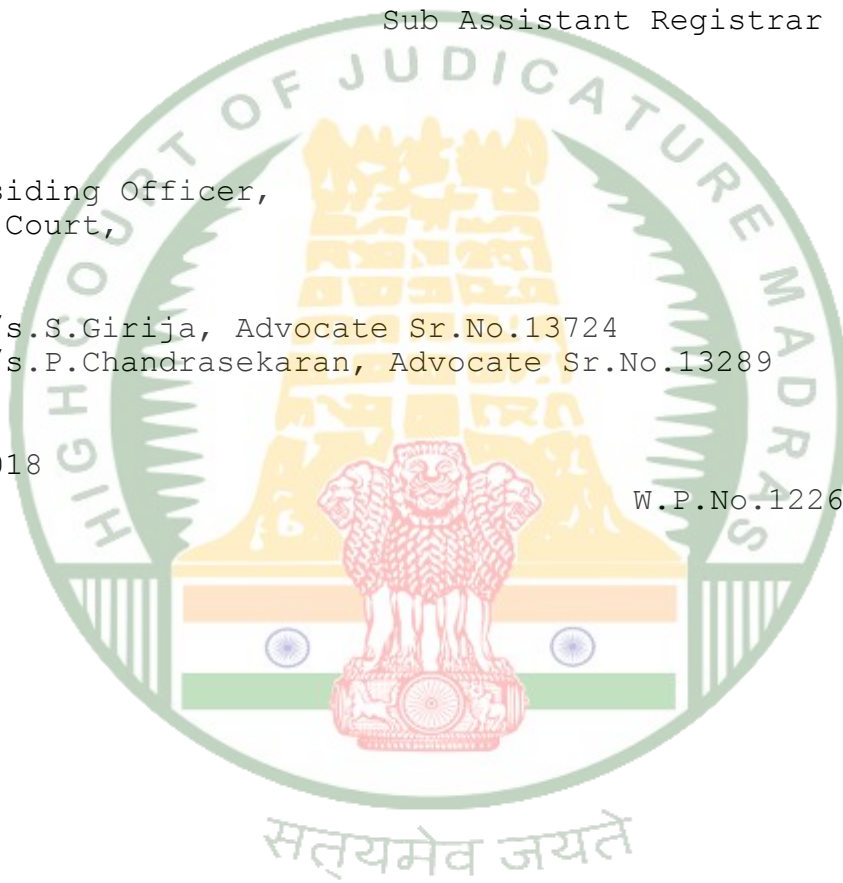
1.The Presiding Officer,
Labour Court,
Salem.

+1cc to M/s.S.Girija, Advocate Sr.No.13724

+1cc to M/s.P.Chandrasekaran, Advocate Sr.No.13289

PPA(CO)
sm:19.3.2018

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