

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2018

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.5637 of 2006

And

W.P.M.P.No.6085 of 2006

Tamilnadu State Transport
Corporation (Villupuram) Ltd
Kancheepuram
rep. by its Managing Director

... Petitioner

Vs.

1.The Joint Commissioner of
Labour (Conciliation)
Chennai – 6.

2.D.Govindaraj

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to
issue a Writ of Certiorari to call for the records of the first respondent
in Approval Petition No.211/2003 dated 10.11.2004 and quash the
same.

For Petitioner : Mr.T.Chandrasekaran
For Respondents : Mr.K.Ravikumar for R1
Additional Government Pleader
Mr.G.Jeremiah for R2

ORDER

The State Transport Corporation has filed this writ petition against the dismissal of Approval Petition filed by the Management before the first respondent on 10.11.2004 in Approval Petition No.211 of 2003.

2.The case of the petitioner Management is that the second respondent was working as Driver attached to the Kalpakkam Depot. The second respondent absented himself without prior permission or intimation. Based on the intimation of the Controller of the concerned Depot dated 08.11.2002, the Management issued a charge memo on 13.11.2002 and the same was sent to the workman. Since the explanation given by the workman for his un-authorised absence was not satisfactory, domestic enquiry was conducted and after following the principles of natural justice, punishment of dismissal from service was imposed. Thereafter, the petitioner Management filed approval petition before the first respondent under Section 33 (2) (b) of the Industrial Disputes Act in Approval Petition No.211 of 2003. The first respondent after perusing the entire records and documents produced on the side of the Management as well as the workman, rejected the approval petition.

3.The learned counsel appearing for the petitioner would submit that the dismissal order was passed by the Management in the year 2003 and the approval petition was dismissed on 10.11.2004. Thereafter, the petitioner Management approached this Court by way of filing this writ petition. This Court while entertaining the writ petition has granted interim injunction and thereafter on 29.06.2010, by way of interim direction has directed the petitioner Management to pay the second respondent the last drawn wages by way of 17(B) wages under the Industrial Disputes Act from 24.04.2008 till the end of June, 2010 and to continue to pay 17(B) wages from July, 2010 on or before 10th of every succeeding month.

4.The learned counsel appearing for the petitioner Management would submit that as against the interim order passed by this Court on 29.06.2010, the Management preferred appeal in W.A.No.2062 of 2010 and the same was dismissed.

5.The learned counsel appearing for the petitioner Management would further submit that after following the principles of natural justice, Enquiry Officer was appointed. However, after detailed enquiry, the Management decided to pass the dismissal order. Accordingly, they filed Approval Petition before the Court on the

ground that the petitioner has not convincingly satisfied the Authority for his un-authorised absence. Even the medical certificate which was produced by the workman was not produced before enquiry. On that ground Approval Petition was dismissed. Without considering the merits, the first respondent dismissed the Approval Petition.

6.The learned counsel appearing for the second respondent would submit that though the first respondent passed a detailed order, the second respondent workman had initially sent a leave application to the person incharge of Kalpakkam Depot and subsequently, sent a medical certificate by speed post. The application as well as the medical certificate and the postal receipts were produced before the Enquiry Officer.

7.In support of his contentions, the learned counsel appearing for the second respondent relied upon the decision of the Hon'ble Apex Court reported in **2004 (7) SCC 576 (Pritam Singh vs. Union of India JT)** to show that in cases where the punishment awarded is disproportionate to the charge, the Court can set aside the same or modify the punishment based on the facts and circumstances of the case.

8. Heard both sides.

9. Admittedly, in the present case, the petitioner's un-authorised absence is only 9 days. However, the second respondent did not send leave application along with medical certificate. The first respondent arrived at a conclusion that the report of the Enquiry Officer is perverse. However all those things were established before the Enquiry Officer and without properly considering the medical certificate as leave application, the disciplinary authority arrived at a conclusion findings of the Enquiry Officer is perverse and based on the findings the Disciplinary Authority imposed the maximum punishment of dismissal from service is un-warranted.

10. In my considered view, the order of dismissal for the un-authorized absence of nine days is highly disproportionate. Accordingly, the first respondent dismissing the Approval Petition is perfectly valid. However, till date the petitioner was not reinstated in service. In view of the above, though this Court is not inclined to interfere with the order dated 10.11.2004 passed by the first respondent, to meet the ends of justice, thinks it fit that the second respondent is entitled to be reinstated with 50% backwages. The

M.DHANDAPANI,J.
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petitioner Management is directed to settle the retirement benefits to the second respondent workman.

11.The writ petition is accordingly disposed of. No costs. Consequently, the connected miscellaneous petition is also closed.

19.04.2018

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Speaking Order/ Non Speaking Order

Index: Yes/ No
Internet: Yes/ No

To

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