

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2018

CORAM :

THE HONOURABLE MR. JUSTICE P.D.AUDIKESAVALU

W.P.No.14160 of 2003

The Managing Director
M/s.Tamil Nadu State Transport Corporation
(Salem) Limited, Division II
Bharathipuram, Dharmapuri - 5.

... Petitioner

Vs.

1.Mr.Safiullah
S/o.Syed Basheer
715/, Ganesh Colony
Dharmapuri - 1.

2.The Presiding Officer
Labour Court, Salem.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records dated 16.07.2002 and made in I.D.No.490/2001 on the file of the Labour Court, Salem the Second Respondent herein and quash the same.

For Petitioner : Ms.Rajeni Ramadoss
For Respondents : Ms.Vedavallikumar (For R1)
R2-Court

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O R D E R

Heard Ms.Rajeni Ramadoss, learned Counsel appearing for the Petitioner and Ms.Vedavallikumar, learned Counsel appearing for the First Respondent.

2. The First Respondent was employed as Driver by the Petitioner from 03.12.1987. He had absented himself from duty on 25.06.1993 and again from 28.06.1993 to 24.03.1993, for which a charge memo dated 13.07.1993 was issued to him. In response thereto, the First Respondent submitted his explanation dated 09.09.1993 and participated in the domestic enquiry conducted by the Petitioner. On receipt of the enquiry report proving the charges, a show cause notice dated 01.03.1994 was issued to the

First Respondent for which there was no reply. The Petitioner then proceeded to dismiss the First Respondent from service on 18.04.1994. The First Respondent leisurely raised an industrial dispute bearing I.D.No.490 of 2001 under Section 2A(2) of the Industrial Disputes Act, 1947, before the Labour Court, Salem challenging his termination from service by the Petitioner.

3. The Labour Court in its award dated 16.07.2002 in I.D.No.490 of 2001 arrived at the conclusion that the absence of the First Respondent from duty was admitted, and that he had not raised any irregularity in conducting the domestic enquiry in his explanation and the enquiry officer has followed all the formalities in conducting the enquiry and that there was no violation of the principles of natural justice, that the enquiry was conducted in a fair and proper manner and the findings of the enquiry officer was also not perverse. However, while considering whether the punishment imposed by the disciplinary authority was justified, the Labour Court was of the view that though absence from duty is a misconduct and the First Respondent was a habitual absentee, the punishment of dismissal could not be said to be proper and withholding of back wages itself would be an appropriate punishment and accordingly, directed the reinstatement of the First Respondent into service without back wages and continuity of service. The Petitioner has preferred this Writ Petition questioning the aforesaid award of the Labour Court.

4. It is represented that the Petitioner by proceedings No.:R.S.1/8621/Tha.A.Po.Ka./Se.Ko.2/2003 dated 21.06.2003 had permitted the First Respondent to rejoin the duty from 01.07.2003 without prejudice to the rights of the Petitioner and subject to the result of this Writ Petition and he worked in the Transport Corporation of the Petitioner till he attained the age of superannuation on 30.06.2017.

5. The learned Counsel appearing for the Petitioner contended that the Labour Court erred in interfering with the punishment of the dismissal award to the First Respondent without taking note of habitual absenteeism even on earlier occasions as shown below:-

S.No.	Dates	Punishments
I	09.03.1989 23.03.1989	to Treated as leave
II	16.04.1989 12.05.1989	to Fined as Rs.10/-
III	05.12.1989 07.12.1989	to Fined as Rs.10/-
IV	08.12.1989 19.12.1989	to Increment postponed for 6 months

S.No.	Dates	Punishments
V	15.03.1990 27.04.1990	to Increment postponed for 6 months
VI	12.07.1990 24.07.1990	to Increment postponed for 6 months
VII	28.08.1990 05.10.1990	to Increment postponed for 3 months
VIII	21.12.1991 29.01.1992	to Increment postponed for 1 month
IX	05.06.1991 06.07.1991	to Increment postponed for 1 month
X	14.10.1992 25.11.1992	to Increment postponed for one year

It is further brought to the notice of this Court that even during the period from 01.07.2003 to 30.06.2017, after reinstatement pursuant to the impugned award, the Petitioner had absented himself from duty and indulged in certain other misconducts, for which punishments such as, recovery, levy of fine and postponement of increments had been imposed upon him.

6. The learned Counsel appearing for the First Respondent submitted that since the Petitioner has imposed punishment for the reported acts of misconduct during the aforesaid periods, the First Respondent has already suffered monetary losses due to postponement of the increments which has a bearing on his last drawn pay for determining his terminal benefits and in such circumstances, his terminal benefits would be reckoned on the basis of the last drawn pay as on 30.06.2017 when he attained the age of superannuation, and consequently in the question of examining the correctness or otherwise of the impugned award would be unnecessary. It is also urged that the terminal benefits due to the Petitioner, which have been withheld due to the pendency of this Writ Petition may be directed to be released.

7. Having regard to the aforesaid rival submission made, it would be necessary to take note of the decision of the the Hon'ble Apex Court in M/s.Bharat Coking Coal Ltd. Etc.,-vs-Bihar Colliery Kamgar Union through Workmen [(2005) 3 SCC 331] in which, it has been held as follows:-

"It is well established principle in law that in a given circumstance, it is open to the Industrial Tribunal acting under Section 11-A of the Industrial Disputes Act, 1947 has the jurisdiction to interfere with the punishment awarded in the domestic inquiry for good and valid reasons. If the Tribunal decides to

interfere with such punishment it should bear in mind the principle of proportionality between the gravity of the offence and the stringency of the punishment. "

Again, in State of Punjab-vs-DR.P.L.Singla [(2008) 8 SCC 469], the Hon'ble Supreme Court of India has succinctly explained the principles relating to unauthorised absence as follows:-

"10. Where the employee who is unauthorizedly absent does not report back to duty and offer any satisfactory explanation, or where the explanation offered by the employee is not satisfactory, the employer will take recourse to disciplinary action in regard to the unauthorised absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments without cumulative effect. The extent of penalty will depend upon the nature of service, the position held by the employee, the period of absence and the cause/explanation for the absence. Where the punishment is either dismissal or removal, it may not be necessary to pass any consequential orders relating to the period of unauthorized absence (unless the rules require otherwise). Where the punishment awarded for the unauthorized absence, does not result in severance of employment and the employee continues in service, it will be necessary to pass some consequential order as to how the period of absence should be accounted for and dealt with in the service record. If the unauthorized absence remains unaccounted, it will result in break in service, thereby affecting the seniority, pension, pay etc., of the employee. Any consequential order directing how the period of absence should be accounted, is an accounting and administrative procedure, which does not affect or supersede the order imposing punishment."

8. On a reading of the reasons attributed by the Labour Court for granting the relief of reinstatement without backwages and continuity of service to the First Respondent under Section 11-A of the Industrial Disputes Act, 1947, it is noticed that the same is in consonance with the settled legal principles extracted supra. In such circumstances, there does not appear to be any infirmity in the impugned award warranting interference by this Court exercising power of judicial review under Article 226 of the Constitution. Since the First Respondent has worked from 01.07.2003 onwards after the impugned award was passed till the date of his superannuation on 30.06.2017, he shall be entitled to receive his eligible terminal benefits for the period he has actually worked, which shall be reckoned on the basis of his last drawn pay on the said date. The Petitioner

shall disburse the said amount due to the First Respondent and file a report of such compliance before the Registrar (Judicial) of this Court by 30.11.2018.

9. The Writ Petition is disposed on the aforesaid terms. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vjt

To

1.The Managing Director
M/s.Tamil Nadu State Transport Corporation
(Salem) Limited, Division II
Bharathipuram, Dharmapuri - 5.

2.The Presiding Officer
Labour Court, Salem.

Copy to:

The Registrar(Judicial)
High Court, Madras.

+lcc to Ms.Rajeni Ramadoss, Advocate sr.no.54394

W.P.No.14160 of 2003

nr 17/09/2018

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