



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.24069 of 2017

and

W.M.P (MD) No.20215 of 2017

The Management Director,
Tamil Nadu State Transport Corporation,
(Kumbakonam Division II) Limited,
Periyamilaguparai,
Tiruchirapalli.

... Petitioner/Respondent

Vs.

1.The Presiding Officer,
Labour Court,
Tiruchirapalli.

2.R.Elangovan

... Respondents/Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records relating to the award passed by the first respondent herein dated 21.06.2016 in I.D.No.36 of 2008 and quash the same.

For Petitioner : Mr.D.Sivaraman

For Respondents : No appearance for R2
R1 Court

O R D E R

The Management of TNSTC Tiruchirappalli assails the award dated 21.06.2016 made in I.D.No.36 of 2008 filed by the second respondent herein.

2.The second respondent was working as a 'Conductor' in the petitioner Corporation. He was unauthorisedly absent from 16.06.2002 to 26.08.2002. Therefore, a charge memo dated 27.09.2002 was issued and domestic enquiry was conducted. Charges were held to be proved. Therefore, the second respondent herein was removed from service by order dated 29.04.2003. The second respondent raised industrial dispute and the same was taken on file in I.D.No.36 of 2008 on the file of the Labour Court, Trichy. The Labour Court held that the charges were not proved and allowed the I.D. The order of removal from service was set aside and the second respondent was directed to be reinstated into service with all consequential benefits. This award dated 21.06.2016 is questioned in this writ



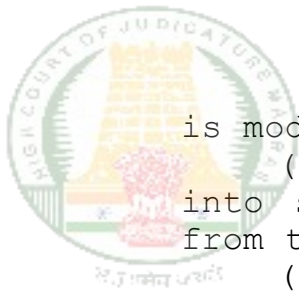
petition.

3. Though the second respondent was served and his name is printed in the cause title, he has not entered appearance through counsel. When the matter was taken up on 28.02.2018, Mr. Arulananthasamy, Advocate, practicing in this Bar made a request that an Advocate by name Mr. Purusothaman has entered appearance and based on the said request, the matter was adjourned today. Even today, there is no representation on the side of the second respondent. Therefore, this Court will have to necessarily proceed with the matter on merits.

4. The learned counsel for the petitioner Corporation pointed out that admittedly the second respondent was absent and no leave was sanctioned by the competent authority. That apart, he has not replied to the charge memo. Therefore, according to the learned counsel, the finding of the Labour Court that there was no commission of misconduct is clearly erroneous.

5. This Court is in agreement with the aforesaid submission. It is true that the employee has marked Ex.W.2 which is a photo copy of the leave letter submitted by the second respondent. Mere submission of a leave application is not sufficient, it must be accepted by the Management and leave formally sanctioned. In this case, admittedly, no such leave was sanctioned. But the second respondent chose to go on leave. It is also seen that in response to the charge memo dated 27.09.2002, no reply was submitted. However, the second respondent took part in the enquiry and it appears that he was suffering from some illness. In other words, the absence of the second respondent from service was due on medical ground. Therefore, though this Court would hold that the charge of unauthorised absence framed against the second respondent were proved and that the Labour Court erred in holding otherwise, this Court is clearly of the view that the punishment of dismissal from service is grossly and shockingly disproportionate. This is for more reasons than one. The second respondent was not a habitual absentee. The only allegation made against him was unauthorised absence for about two months. More than any thing else, the second respondent had established through unimpeachable evidence that he was suffering from some ailments and that medical reasons impelled him to be absent from duty. Therefore, the Management ought to have taken into account the totality of circumstances and taken a sympathetic view. Since this Court is proposing to decline a substantial portion of the back-wages, which was ordered to be paid by the Labour Court, this Court is of the view that the same itself would constitute punishment and that there is no need to impose separate punishment on the second respondent.

6. In such view of the matter, this writ petition is disposed of in the following manner:-



is modified.

(ii) The second respondent herein shall be reinstated into service by the writ petitioner within three weeks from today.

(iii) Since there was delay of more than five years in raising the industrial dispute and this Court has already come to the conclusion that the charges against the second respondent is proved, the second respondent will not be entitled to back-wages from the date of dismissal till date of filing I.D.No.36 of 2008. The second respondent will be entitled to full back-wages from 21.06.2016 till date of reinstatement.

(iv) It is made clear that the second respondent will be entitled to reinstatement with continuity of service and also all other notional benefits that will accrue to him.

(v) The writ petitioner Management shall pay 10% of the back-wages for the period covered in prosecuting I.D.No.36 of 2008 i.e., from the date of filing till 21.06.2016.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To

The Presiding Officer,
Labour Court,
Tiruchirapalli.

+1cc to Mr.G.PURUSHOTHAMAN, Advocate, SR.52710

+1cc to Mr.D.SIVARAMAN, Advocate, SR. 52532

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SKN

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