



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2018

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD) No.7277 of 2017

WEB COPY

D.Kumar

... Petitioner

Vs.

1.The Management,
TamilNadu State Transport Corporation (Madurai) Ltd.,
Byepass Road,
Madurai-16.

2.The Presiding Officer,
Labour Court,
Madurai.

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records connected with the impugned award passed by the second respondent in I.D.No.91 of 2015 dated 09.01.2017 and quash the same and consequently direct the first respondent to re-instate the petitioner into service with continuity of service with all other attendant and monetary benefits.

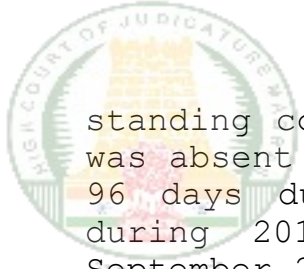
For Petitioner : Mr.S.Govindan
For R1 : Mr.A.P.Muthupandian
Standing Counsel for TNSTC
R2 - Labour Court.

ORDER

The petitioner was employed as a Conductor in the 1st respondent Corporation. By order dated 02.11.2012 he was dismissed from service. He went to Labour Court. The Labour Court by award dated 09.01.2017 dismissed I.D.No.91 of 2015 and the same is questioned in this writ petition.

2.The learned counsel appearing for the petitioner would submit that for having been unauthorisedly absent for 10 days, the petitioner was removed from service. He would point out that the parents of the petitioner were permanently ill and that his wife had deserted him and only on account of domestic circumstances, he was unauthorisedly absent. He would submit that the Labour Court did not take note of these circumstances. Hence, he prayed for setting aside the impugned award. He also submitted that without back wages, he could be reinstated.

3.Even though the appeal made by the learned counsel appearing for the petitioner is extremely persuasive, this Court is unable to agree with the same in toto. As rightly pointed out by the learned



standing counsel appearing for the first respondent, the petitioner was absent for 109 days during 2006-2007, 206 days during 2007-2008, 96 days during 2008-2009, 132 days during 2009-2010, 313 days during 2010-2011, 31 days during 2011-2012 and 61 days upto September 2012. It was also pointed out that the writ petitioner is a habitual absentee and hence, punishment of dismissal was rightly imposed on him. Therefore, the learned standing counsel wants to sustain the order passed by the Labour Court.

4.This Court is of the view that the writ petitioner has not been guilty of any act involving with any moral turpitude. Of course, the absenteeism by the writ petitioner appears to be habitual.

5.The learned counsel appearing for the writ petitioner submitted that the petitioner's father died due to cancer and his mother died due to kidney problem. The petitioner has also enclosed the medical records to that effect. The petitioner's wife had also deserted him and hence, he has to take care of his two children.

6.In view of these mitigative circumstances, this Court is of the view that instead of imposing the punishment of dismissal, in the interest of justice, he can be compulsory retired from service. The learned counsel for the petitioner on instructions submitted that he would accept the said punishment.

7.Therefore, the order of the dismissal imposed on the writ petitioner is modified and the writ petitioner is deemed to have been compulsory retired from service with effect from 02.11.2012.

8.It is for the management to quantify the benefits payable to the writ petitioner, by treating him as having been compulsorily retired on 20.11.2012. The benefits shall disbursed within a period of 12 weeks from the date of receipt of a copy of this order. With these observations, this writ petition is partly allowed. No costs.

Sd/-

Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

To

The Presiding Officer,
Labour Court, Madurai.

+1cc to M/S.S.Govindan, Advocate SR.No. 54877

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