



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.03.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.3831 of 2016

C.Jagadeesh

... Petitioner

-Vs-

1. The Management,
Tamil Nadu State Transport Corporation,
(Kumbakonam) Ltd., Periyamilaguparai,
Tiruchirapalli-1.

2. The Presiding Officer,
Labour Court, Tiruchirapalli.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the second respondent herein in I.D.No.88 of 2009 dated 17.03.2015 quash the same in so far as denying benefits claimed there under and to direct the first respondent management to grant the relief as claimed in I.D.No.88 of 2009 on the file of the second respondent herein.

For Petitioner : Mr.G.Purushothaman
For R2 : Labour Court
For R1 : Mr.D.Sivaraman

ORDER

The petitioner's father Late Chandrasekar was employed as driver in the first respondent corporation. He entered into service on 14.03.1992. He was issued with a charge memo dated 13.10.2003 alleging that he was unauthorisedly absent from 25.08.2003 till 24.09.2003. In this regard the enquiry was conducted and the charges were found to be proved. The said Chandrasekar was ultimately removed from service on 14.01.2004.

2.The petitioner's father, Chandrasekar, passed away in November 2004. The mother of the petitioner herein initiated conciliation proceedings. Even at that stage she also passed away. Thereafter, the petitioner herein as a son of the deceased employee initiated proceedings and the matter was taken up on file in I.D.No.88 of 2009 on the file of the labour Court, Trichy. The Labour Court, Trichy held that the petitioner is having the locus standi to take up the matter, but dismissed the I.D. by award dated

17.03.2015. The same is assailed in this Writ Petition.

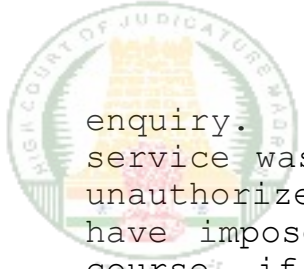
3. The learned counsel appearing on behalf of the management would strongly contend that the petitioner's father was a habitual absentee. He was served with summons for about 50 punishments. He placed reliance of the Judgement of **L & T Komatsu Ltd, Vs. N. Udayakumar** reported in **(2008) 1 SCC, 224**.

4. This Court has gone through the entire materials placed on record. It is seen that the petitioner's father was suspended from service on 01.07.2003. The said order of suspension was revoked on 16.08.2003. The specific defence on the delinquent was that after the suspension was revoked, he went to join duty. But then the superiors made him to run from pillar to post. The case of the delinquent was that he was never unauthorisedly absent, but he was ready and willing to join duty pursuant to the order of revocation dated 16.08.2003. Since he was not given any posting order, the delinquent could not report for duty.

5. The learned counsel for the petitioner further contended that it was the duty of the labour Court to peruse the evidence on record and see if the charges were really proved against the delinquent. The learned counsel appearing for the writ petitioner had filed an additional typed set of papers enclosing the deposition. The delinquent was examined as his own witness and he has specifically stated that on 22.08.2003 he went to meet the traffic clerk and sought posting orders. He was asked to meet the Branch Manager (Legal) and then he was asked to meet the Deputy Manager (Legal). Even though the delinquent had categorically deposed so, there was no cross examination of the delinquent. Only one formal suggestion was to put that the delinquent did not meet the Deputy Manager and to that, the delinquent specifically answered that he met the Deputy Manager (Legal) on 23.08.2003.

6. Therefore, in these circumstances, the labour Court ought to have undertaken a complete re-appreciation of the entire evidentiary material on record. Where the delinquent contests the very basis of the charge, duty is cast on the labour Court to re-appreciate the facts. In this case the labour Court has not done so. In fact the labour Court observed that the writ petitioner, son of the deceased employee, is having *locus standi* to take up the matter. Having so held, the labour Court mechanically accepted the version of the management and sustained the order of dismissal from service.

7. This Court is of the view that in the facts and circumstances of the case no purpose will be served in remitting the matter to the labour Court. It is seen that the petitioner's father died on 11.11.2004 and subsequently the mother of the petitioner also died. Therefore, in these circumstances, quietus has to be given in view of the failure on the part of the management to question the testimony of the delinquent during the domestic



enquiry. This Court holds that the order of termination from service was clearly not warranted. In any event for the charge of unauthorized absence for a period 30 days, the management could not have imposed the capital punishment of removal from service. Of course, if the said charge is proved considering the past habitual absenteeism on the part of the delinquent, the punishment could have been justified. This Court has come to the conclusion that the charge itself was not proved.

8. Now the question is whether the relief sought by the petitioner in this writ petition can be granted.

9. The management will proceed as if there was employer-employee relationship between the management and the delinquent till 11.11.2004. The period from 14.01.2004 to 11.11.2004 will be treated as only for the purpose of computing the retirement benefits. The principle of "no work no pay" will be applied. The question of paying back wages will not arise. The management is directed to compute the terminal benefits payable on his account and disburse the same within a period of eight weeks from the date of receipt of a copy of this order.

10. Accordingly, this Petition is allowed. No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Management,
Tamil Nadu State Transport Corporation,
(Kumbakonam) Ltd., Periyamilaguparai,
Tiruchirapalli-1.

2. The Presiding Officer,
Labour Court, Tiruchirapalli.

+ 1 CC TO Mr.G.PURUSHOTHAMAN, ADVOCATE IN SR No. 54632
+ 1 CC TO Mr.D.SIVARAMAN, ADVOCATE IN SR No. 54704

TA

TE/KKR/SAR-4 : 30/05/2018 : 3P/5C

W.P. (MD) No.3831 of 2016
12.03.2018