

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.10201 of 2013
and WMP.No.21274 of 2016

1. A.Vijayan (Deceased)
 2. V.Shanthi
 3. V.Senguttuvan
 4. V.Dharshini
 5. A.Sundarambal
- (P2 to P5 substituted as legal heirs in the place of the petitioner as per order dated 24.11.2014)

.. Petitioners

- 1.The Presiding Officer,
Labour Court, Salem.
2. The Management,
Tamil Nadu State Express Transport
Corporation (Division 1),
Chennai - 2.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Certiorarified Mandamus, calling for the records connected with the award dated 13.10.2003 passed by the first respondent in I.D.No.112/2002, quash the same, in so far as it relates to the denial of continuity of service and other attendant benefits to the petitioner arising out of his past service of 20 years and

also direct the respondents to grant continuity of service and other attendant benefits and thereby protect the interest of the petitioner for being eligible for pension.

For Petitioner : Mr.Ponvendhan for M/s.S.Girija

For Respondents : Ms.Kulanthaivelu,
for Mr.Antony Arokiaraj for R2,
Labour Court for R1

ORDER

The writ petition is directed against the order dated 13.10.2003, passed by the Labour Court, Salem in Industrial Dispute No.112/2002. The petitioner joined as Conductor in Pallavan Transport Corporation which was renamed as Tiruvalluvar Transport Corporation. The petitioner was served with a show-cause notice seeking explanation from him as to why action should not be taken against him for an unauthorized leave from 02.02.1998 to 24.08.1998. Since reply was not received, a second show-cause notice was sent to him on 24.09.1998, as to why an order of dismissal from service should not be passed against him.

2. In this notice dated 24.09.1998, it was also pointed out that apart from the instant unauthorized leave from 02.02.1998 to 24.08.1998, the petitioner has on several occasions taken leave without permission. The punishments which had been earlier imposed on him as mentioned in the notice are read as under:-

"1. Fine of Rs.20/- was imposed on you for not attending during the period 4.3.1987 to 4.9.1987.

2. A fine of Rs.10/- was imposed on you for not coming to work on 26.05.88.

3. Your increment of salary was postponed for a period of 3 months since you frequently look leaves duty during the period 1.8.88 to July,1989.

4. Your salary increment was postponed for a period of 1 year since you did not attend duty from 1.10.90.

5. Your salary increment was postponed for a period of 6 months since you failed to attend from 8.9.91.

6. A fine of Rs.40/- was imposed on you for not attending the duty on 1.7.95.

7. A fine of Rs.25/- was imposed on you for not attending duty from 1.6.93 to 7.7.93.

8. A fine of Rs.25/- was imposed on you for not attending duty on 1.7.95."

3. The petitioner gave a reply on 30.10.1998. In the reply he stated that, he had informed the control division about the leave from 02.02.1998 to 24.08.1998 and had told them that he would be submitting a medical certificate and fitness certificate, but charges were framed against him and now he has got the notice dated 24.09.1998, seeking explanation as to why punishment of dismissal from service should not be imposed on him.

4. The petitioner further stated that he had family disputes and he was suffering from ulcer. He stated that he could attend duty only intermittently. He

stated that due to his family problem and confusion he could not participate in enquiry. The petitioner therefore, prayed for withdrawal of the proposed order of removal of service. The management by an order dated 28.01.1999 dismissed him from services. The petitioner filed Industrial Dispute No.112/2002 before the Labour Court, Salem, challenging the dismissal.

5. In the petition before the Labour Court, the petitioner stated that while he was working on the bus route, he was affected due to the accident which took place between Melmaruvathur and Tindivanam, near Ulakur. Thereafter, while working in Salem to Rameswaram route, near Dindigul to Kodai Road, his entire collection amount was robbed and he was threatened, which affected him physically and mentally. He has also stated that due to the physical and mental condition, he was in no position to attend duty. The petitioner stated that after recovering from illness, he met the branch manager and explained about his leave and also submitted medical certificate and fitness certificate. He joined duty and working from 24.08.1998.

6. The Labour Court by the impugned order found the petitioner guilty, but modified the punishment that the respondent herein to give the petitioner employment as a new entrant without continuity of service, back-wages and attendant benefits. It is this order which now sought to be challenged in the instant writ petition.

7. The material on record shows that the petitioner has been intermittently taking leave without sanction. The earlier instances referred in the order have not been disputed. The reason given by the petitioner is not acceptable. He has not produced any medical certificate either before the Labour Court or before this Court to substantiate that he was not well. A chronic defaulter is not entitled to any sympathy from the Court.

8. The Hon'ble Supreme Court of India, in the case of Delhi Transport Corporation Vs. Sardar Singh, reported in (2004) 7 SCC 574, has observed as under:-

"9. When an employee absents himself from duty, even without sanctioned leave for a very long period, it prima facie shows lack of interest in work. Para 19(h) of the Standing Orders as quoted above, relates to habitual negligence of duties and lack of interest in the authority's work. When an employee absents himself from duty without sanctioned leave, the authority can, on the basis of the record, come to a conclusion about the employee being habitually negligent in duties and an exhibited lack of interest in the employer's work. Ample material was produced before the Tribunal in each case to show as to how the employees concerned were remaining absent for long periods which affects the work of the employer and the employee concerned was required at least to bring some material on record to show as to how his absence was on the basis of sanctioned leave and as to how there was no negligence. Habitual absence is a factor which establishes lack of interest in work. There cannot be any sweeping generalisation. But at

the same time some telltale features can be noticed and pressed into service to arrive at conclusions in the departmental proceedings.

11. Conclusions regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly, when same is unauthorised. Burden is on the employee who claims that there was no negligence and/or lack of interest to establish it by placing relevant materials. Clause (ii) of para 4 of the Standing Orders shows the seriousness attached to habitual absence. In clause (i) thereof, there is requirement of prior permission. Only exception made is in case of sudden illness. There also conditions are stipulated, non-observance of which renders the absence unauthorised. "

The said judgment applies to the facts of the present case.

9. In view of the above, the writ petition is dismissed. No Costs. Consequently, the connected miscellaneous petition is closed.

सत्यमेव जयते

30.08.2019

Index : Yes
Internet : Yes
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To

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SUBRAMONIUM PRASAD, J.

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