

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.1055 of 2008

N.Muthu Gopalakrishnan

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Cuddalore.

2.The Management,
Tamilnadu State Transport Corporation,
Kumbakonam.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus to call for the records pertaining to the award dated 04.06.2002 passed by the first respondent in I.D.No.50/97 and quash the same and consequently direct the second respondent to reinstate the petitioner, with continuity of service, back wages and all other attendant benefits including annual and other increments and revision of wages, etc.,.

For Petitioner : Mr.V.Ajoy Khose
For R1 : Labour Court
For R2 : Mr.D.Venkatachalam

सत्यमेव जयते
O R D E R

Writ Petition is filed for issuance of a writ of Certiorarified Mandamus to call for the records pertaining to the award dated 04.06.2002 passed by the first respondent in I.D.No.50/97 and quash the same and consequently direct the second respondent to reinstate the petitioner, with continuity of service, back wages and all other attendant benefits including annual and other increments and revision of wages, etc.,.

2.According to the petitioner, he joined as Conductor with the Tamil Nadu State Transport Corporation on 28.8.1989. When he

was working at Thanjavur, Moffussil Depot, while a bus was running between Trichirappalli and Vellankanni, the luggage kept in the luggage stand fell down on his shoulder and he sustained nervous injuries. On account of this, his nervous system got affected. Thus the petitioner was unable to move his right hand and on many occasions, he became dysfunctional.

3.The petitioner took Siddha treatment from the local Vaidhiyar, who advised him to take complete rest for a period of one year. The petitioner could not act as per the advise, because of his family circumstances, as his family solely depends on his employment for livelihood. The petitioner therefore, used to take leave as and when he was dysfunctional on account of his injury.

4.It is submitted that the Duty Clerk granted leave to the petitioner, but the Assistant marked him absent at his back. The petitioner was served with charge memos dated 5.6.1995 and 29.6.1995 for unauthorized absence. The first charge memo was issued for unauthorized absence for 8 days in May 1995. Whereas the second charge memo was for unauthorized absence for 27 days in June 1995.

5.The petitioner reported for work on 2.5.1995, but he was not allowed to join duty, and was asked to get permission from head office. Only after getting permission from the head office the petitioner was allowed to join duty on 5.6.1995. During this period, the petitioner was also transferred from Thanjavur Moffusil Depot to Thanjavur Town vide order, dated 8.6.1995.

6.In the domestic enquiry, the petitioner denied the charges. In order to prove the charges, second respondent examined two witnesses; one from the Thanjavur Moffusil Depot and another from the Thanjavur Town Depot-2. The enquiry was completed in one year.

7.It is the case of the petitioner that both witnesses admitted, before the enquiry officer that the petitioner was granted leave by the Duty Clerk, but the Assistant marked him absent, for want of leave to his credit, as leave could be granted only by the Branch Manager for want of leave to the credit of the workman.

8.The petitioner examined himself in the domestic enquiry and deposed as per his stand, but he was not subjected to cross examination. Therefore, his statement went unrebutted.

9.The case of the petitioner is that the enquiry officer went beyond the charges levelled against the petitioner and also ignored the admission by the management witnesses and unrebutted

evidence of the petitioner, in holding the petitioner guilty of charges.

10.The competent authority agreed with the finding of the enquiry officer and ordered dismissal of the petitioner from service.

11.Aggrieved by the order of dismissal, the petitioner raised industrial dispute before the first respondent. Before the first respondent, the parties did not lead any evidence, but exhibited the documents; i.e. Ex.W1 to W12. The first respondent came to the conclusion that domestic enquiry was fair and proper, and that the charges were proved against the petitioner and dismissed the I.D.No.50 of 1997.

12.Against the said award dated 04.06.2002 made in I.D.No.50 of 1997, the petitioner has filed the present Writ Petition.

13.The learned counsel for the petitioner challenged the award primarily on the ground that the award of learned Labour Court on the face of it is perverse, as the first respondent failed to notice that there was no evidence before the enquiry officer to prove the unauthorized absence of the petitioner. The only evidence by the management was attendance register showing the petitioner absent from duty. Whereas it was admitted by the management witnesses that the petitioner was granted leave by Duty Clerk, but the leave was changed to absence for want of leave to the credit of the petitioner and on the ground that the competent authority in such a case was Depot Manager and not Duty Clerk.

14.It is the contention of the learned counsel for the petitioner that there is no material on record showing any intimation sent to the petitioner about the cancellation of leave or converting leave into absence.

15.Therefore, the contention of the learned counsel is that absence cannot be said to be intentional to attract the punishment of dismissal from service. In support of this contention, the learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Supreme Court in *Krushnakant B.Parmar vs. Union of India and another* (2012)3 SCC 178) wherein the Hon'ble Supreme Court was pleased to lay down as under:

"21. In the present case, the disciplinary authority failed to prove that the absence from duty was wilful, no such finding has been given by the inquiry officer or the appellate authority. Though the appellant had taken

a specific defence that he was prevented from attending duty by Shri P. Venkateswarlu, DCIO, Palanpur who prevented him to sign the attendance register and also brought on record 11 defence exhibits in support of his defence that he was prevented to sign the attendance register, this includes his letter dated 3-10-1995 addressed to Shri K.P. Jain, JD, SIB, Ahmedabad, receipts from STD/PCO office of telephone calls dated 29-9-1995, etc. but such defence and evidence were ignored and on the basis of irrelevant fact and surmises the inquiry officer held the appellant guilty."

16. The learned counsel for the petitioner further contended that the second respondent-Transport Corporation issued two charge memos dated 05.06.1995 and 29.06.1995 for the alleged unauthorized absence during May and June, 1995. The second respondent by the notice dated 14.07.1995, informed the petitioner that domestic enquiry would be conducted on 19.07.1995. After the enquiry, the Enquiry Officer submitted his report. When the Enquiry Officer conducted enquiry and submitted his report dated 24.07.1995, there was no charge against the petitioner that he unauthorizedly absented for 23 days in July, 1995. Without there being any charge memo and without affording any opportunity to the petitioner, the Enquiry Officer gave a finding that in addition to unauthorized absent during May and June, 1995, the petitioner also absented unauthorizedly from 2nd July 1995 to 18th July 1995. The second respondent issued a charge memo only on 01.08.1995 alleging that the petitioner unauthorizedly absented himself in July 1995. Even before such charge memo, the Enquiry Officer has found the petitioner guilty of unauthorized absence during July 1995. No charge was leveled against the petitioner that due to his absence, the respondent-Transport Corporation work got badly affected. The first respondent has not properly appreciated the charge memos and has failed to note that there is no allegation that petitioner is habitual absentee. In view of the same, the first respondent has not properly exercised his power under Section 11 A of the Industrial Disputes Act, and failed to hold that punishment of dismissal is disproportionate to the charges leveled against the petitioner and prayed for setting aside the award of the first respondent.

17. Heard the learned counsel appearing for the petitioner as well as Mr.D.Venkatachalam, learned counsel appearing for the second respondent-Transport Corporation.

18. From the materials available on record, it is seen that the second respondent has issued two charge memos dated 05.06.1995 and 29.06.1995, alleging that the petitioner absented himself unauthorizedly for 8 days in May, 1995 and 27 days in June, 1995. The petitioner has not submitted any explanation to the said charge memos. In the domestic enquiry held against the petitioner, the petitioner has come out with the case that Duty Clerk granted leave to him but the Assistant marked as absent. During cross examination of witnesses examined by the second respondent-Transport Corporation, who are maintaining the attendance register, they have admitted that if the employee has leave, the Duty Clerk has power to grant leave and if the employee has no leave, only the Branch Manager has power to grant leave. This statement was not disputed by the petitioner. The witnesses stated that if employee had no leave even if Duty Clerk grants leave, they will mark the employee as absent. The petitioner has not produced any material to show that he applied for leave and that duty clerk granted leave. Further he has not produced any material to show that he has leave to his credit and Assistant deliberately marked him absent, even though Duty Clerk granted leave. For the above reason, there is no error in the finding of the Enquiry Officer and confirmed by the first respondent in the impugned award that petitioner unauthorizedly absented during May and June, 1995.

19. The contention of the learned counsel for the petitioner that when there is no charge memo that petitioner unauthorizedly absented from 2nd July, 1995 to 18th July, 1995, the Enquiry Officer held that petitioner unauthorizedly absented during this period has considerable force. The petitioner has produced charge memo dated 01.08.1995, issued by the second respondent to the petitioner alleging that the petitioner unauthorizedly absented himself for 27 days in July, 1995. The further contention of the learned counsel for the petitioner that no charge was leveled against the petitioner that he is habitually absenting himself unauthorizedly and that due to the absence of the petitioner, the work of the second respondent-Transport Corporation was affected, is acceptable. The only charge against the petitioner is two charge memo dated 05.06.1995 and 29.06.1995 for 8 days absence during May, 1995 and 27 days absence during June, 1995. For the said unauthorized absence, the order of dismissal is disproportionate when second respondent has not alleged and proved that due to the absence of petitioner, the work of the second respondent-Transport Corporation was affected.

20.The learned counsel appearing for the petitioner made an endorsement that petitioner will forgo backwages for the period of non-employment. Considering the above materials in its entirety, the impugned award of the first respondent is set aside and the second respondent is directed to reinstate the petitioner with continuity of service and attendant benefits without backwages within a period of twelve weeks from the date of receipt of a copy of this order. In the result, this Writ Petition is allowed in part. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

- 1.The Presiding Officer,
Labour Court,
Cuddalore.
- 2.The Management,
Tamilnadu State Transport Corporation,
Kumbakonam.

+1cc to Mr.V.Ajoy Khose, Advocate Sr.45759

+1cc to Mr.D.Venkatachalam, Advocate Sr.45862

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