

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 22.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

WP.No.2509 of 2004

Tamilnadu State Transport
Corporation (Villupuram Dn.I) Ltd.,
Villupuram
Rep. by its Managing Director.

...Petitioner

Vs

1. The Presiding Officer,
Labour Court, Cuddalore.

2. Gunasekaran

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to pass an order of Writ of Certiorari to call for the records of the 1st respondent in I.D.No.77/2001 dated 14.07.2003 and quash the same.

For Petitioner : Mrs.Rajeni Ramadoss, SC

For Respondent : Mr.T.Dhanyakumar
for R2

R1 - Court

O R D E R

Heard, Mrs.Rajeni Ramadoss, learned Standing Counsel for the petitioner and Mr.T.Dhanyakumar for the 2nd respondent.

2. The 2nd respondent herein was initially appointed as temporary Conductor on daily wages on 06.07.1987 and thereafter, absorbed as regular Conductor on 01.07.1989. When the 2nd respondent had remained unauthorisedly absent from duty on various occasions between August 1997 and 19.02.1999, charges were framed against him. Apart from the charge of unauthorized absence, the 2nd respondent was also levelled with six other charges of misconduct.

3. On 02.03.1998, the Management had issued a charge memo stating that the 2nd respondent was absent for 20 days during August 1997; 31 days during September 1997; 15 days during

October 1997; 19 days during November 1997 and 30 days in the month of December and continuous absence from 21.12.1997 to 03.02.1998. The 1st respondent herein has submitted his reply citing certain medical ailments for his absence, through his explanation dated 12.03.1998. Not being satisfied with the reply, an enquiry came to be conducted and the Enquiry Officer submitted his report on 22.04.1998. Thereafter, a second Show Cause Notice came to be issued to the 2nd respondent on 18.05.1998, to which, he has also replied.

4. In view of the findings of the Enquiry Officer and in consideration of the reply given by the 2nd respondent herein, an order dated 19.02.1999 came to be passed by the petitioner, dismissing the 2nd respondent from his services. Thereafter, the 2nd respondent herein, after one and half years, had raised a dispute in I.D.No.77 of 2001 before the Labour Court, Cuddalore on 30.07.2001. The Labour Court, while confirming the findings of the Enquiry Officer held that that the punishment of dismissal from services is disproportionate from the charges levelled and therefore, modified the punishment to one of stoppage of increment for a period of 3 years with cumulative effect, by an award dated 14.07.2003. Aggrieved against the said award, the petitioner has preferred the present writ petition.

5. The learned Standing Counsel for the petitioner submitted that the 2nd respondent herein has been continuously absenting himself on many occasions commencing from the month of August 1997 and had also indulged in various misconducts, which reflected in the charge memo. The enquiry was also conducted, after giving due opportunity to the 2nd respondent and as such, the punishment of removal from services was proportionate to the charges levelled against him. The learned Standing Counsel also brought to the notice of the Court that apart from the present charges, the 2nd respondent herein had indulged in various misconducts commencing from 27.11.1990 to 21.02.2015 on 33 occasions, wherein 33 punishments were also imposed by the petitioner, among these punishments. The punishments suffered by the 2nd respondent till the date of award was also brought to the notice of the Labour Court. The learned counsel further submits that pending the writ petition, the 2nd respondent herein came to be reinstated in lieu of the wages under Section 17(b) of the Industrial Disputes Act and thereafter, he had unauthorisedly absented himself, to which the petitioner was constrained to dismiss him from the services. It is stated that the second dismissal order has also been challenged by the 2nd respondent. In view of the various incidents of unauthorised absence as well as the misconducts, the learned Standing Counsel submitted that the original order of dismissal from services, was correctly made.

6. The learned counsel for the 2nd respondent, on the other hand submitted that pursuant to the charge memo, he had given a proper reply to the petitioner explaining the reasons for his absence, which has not been properly appreciated by the Management and they had chosen to conduct an enquiry. Even to the 2nd Show Cause Notice pursuant to the enquiry, he had given a detailed reply explaining the circumstances under which, he had absented himself. Both these replies were duly considered before the Labour Court. It was also brought to the notice of the Court that the attendance register was not properly maintained, which has also been considered by the Labour Court. In view of his explanation for the absence and the non-maintenance of the attendance records, the punishment of dismissal was held to be disproportionate to the charges levelled and as such, the Labour Court has rightly modified the punishment into one of stoppage of increment for a period of 3 years with cumulative effect. Hence, the learned counsel requested for dismissal of the writ petition.

7. I have given careful consideration for the submissions made by the respective counsels.

8. The unauthorised absence for which the 2nd respondent has been charged with, is not under dispute. The only ground raised by the 2nd respondent herein is that the absence in the charge memo has been duly explained to the Management and therefore, it cannot be termed as an 'unauthorised' absence. The charges reflect that the 2nd respondent has been absent for more than 60% of the working days between August 1997 and 04.02.1998. The reason assigned by the 2nd respondent herein for the delay is that he had suffered from Jaundice and due to the medicine allergy, his limbs got swollen quite often and therefore, he was unable to attend duty. Before the Enquiry Officer, the Management had examined one witness and marked 2 exhibits. The 2nd respondent herein had not chosen to examine any witness, nor had marked any documentary evidence. When one of the main charges pertains to unauthorised absence, it was incumbent on the part of the 2nd respondent to atleast produce some medical records and establish that he was undergoing medical ailment and that he is under treatment, which would be a prime document in cases of absence on medical grounds. The 2nd respondent has failed to produce such medical records either prior to the charges, when he had absented himself or during the course of enquiry. Even before the Labour Court, such medical records were not produced.

9. The Labour Court found that the charges against the petitioner is proved and that the punishment of removal of services alone was disproportionate and thereby, had modified

the same. The 2nd respondent herein had not chosen to challenge the award. As such, it can only be construed that he had accepted the award to this extent of the findings of the Enquiry Officer, which has been confirmed.

10. While that being so, the only ground which requires consideration is, with regard to proportionateness of the punishment vis-a-vis the charges. The Labour Court had relied upon the decision of this Court, wherein a delay of 45 days of unauthorised absence was the subject matter. In the instant case, the petitioner had absented himself not only unauthorisedly, but also inordinately. For instance, in the Month of August 1997, he was absent for 20 days; in September 1997, he was absent for the whole month; in October 1997, he was absent for 15 days; in November 1997, he was absent for 19 days and in December 1997, he was absent for the whole month. This kind of inordinate and unauthorised absence without a proper explanation or authorisation from the Management, cannot be termed as a minor misconduct. As such, the Management had rightly chosen to impose the major penalty of dismissal from services.

11. Though it is submitted by the learned Standing Counsel for the petitioner herein that pursuant to the award, the 2nd respondent herein came to be reinstated and once again had unauthorisedly absented and he was removed from services, which order is also under challenge. Though the second punishment is not a subject matter or cause of action before this Court, when such a conduct is brought to the notice of this Court, the same cannot be brushed aside. Furthermore, the 33 kinds of punishment, which the 2nd respondent herein had suffered during the services under the petitioner herein is also an aspect, which may not be conducive for the 2nd respondent herein to continue his services with the petitioner. As such, in my view, the Management had rightly imposed the punishment of dismissal from services.

12. Since the punishment of dismissal is proportionate to the charges levelled and by taking into account the past services as well as the conduct of the petitioner in unauthorisedly absenting himself inordinately, the punishment awarded by the Labour Court of stoppage of increment for a period of 3 years with cumulative effect, may not be proper.

13. In the result, the writ petition stands allowed. No costs. Consequently, the award of the Labour Court dated 14.07.2003 passed in I.D.No.77/2001, stands quashed and the earlier order of dismissal dated 19.02.1999 passed by the petitioner against the 2nd respondent, shall become operative.

14. At this juncture, the learned Standing Counsel for the petitioner submitted that pursuant to the interim orders of this Court dated 11.02.2004, the entire backwages of the 2nd respondent came to be deposited, out of which, the 2nd respondent has already withdrawn 25% of the amount. Incase, the petitioner is entitled to withdraw the balance of the amount deposited before the Labour Court in I.D.No.77/2001 and also entitled to seek for any recovery from the 2nd respondent, it is open to them to make such an application before the concerned Labour Court and also seek for recovery, if any, from the 2nd respondent herein.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

hvk

To

The Presiding Officer,
Labour Court, Cuddalore.

+1cc to Mr.T.Dhanyakumar, Advocate SR.No.27782

WP.No.2509 of 2004

KJ (CO)
GMY (03/05/2019)

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