

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.27287 of 2004
and WPMP.No.16409 and 16410 of 2006

Tamil Nadu State Transport Corporation
(Kumbakonam Division-I) Limited, Kumbakonam,
No.27, Railway Station New Road,
Kumbakonam.

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Cuddalore.

2.G.Ravikumar

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records and quash the award dated 23.03.2004 in I.D.No.132 of 2000 on the file of the respondent Labour Court, Cuddalore.

For Petitioner : Mr.D.Venkatachalam

For Respondents : R1-Court
Mr.T.Dhanyakumar, for R2

O R D E R

The order under challenge in the present Writ Petition is to the award dated 23.03.2004 made in I.D.No.132 of 2000, whereby the second respondent was directed to reinstate into service along with continuity of service, backwages and other benefits.

2. The second respondent herein had been earlier imposed with a punishment of removal from service by an order dated 04.08.1995, against which, the second respondent had raised a dispute in I.D.No.132 of 2000. The charges for which the second respondent's service came to be terminated was that he had remained unauthorisedly absent for a period of 30 days during the month of May 1995. The additional charge sheet dated 24.07.1995 was also for unauthorised absence in the months of May, June and July 1995. The stand taken by the second respondent before the Labour Court was that he had submitted his

leave applications, which have been marked as Exs.P1 to P11. By relying upon the Exs.P1 to P11, the Labour Court had come to the conclusion that the termination of the second respondent services were unjustified and therefore ordered reinstatement with all benefits.

3. The Hon'ble Supreme Court of India in a decision reported in 2012 2 SLJ 19 in the case of Krushnakant B.Parmar vs. Union of India and another has held that mere unauthorised absence alone would not amount to misconduct unless, such an absence is proved to be willfull. The relevant portion of the said decision is follows:

"16. The question whether 'unauthorised absence from duty' amounts to failure of devotion to duty or behaviour unbecoming of a Government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence can not be held to be wilful.

18. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant.

19. In a Departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in absence of such finding, the absence will not amount to misconduct."

4. From the above observations, it is seen that the Management is required to prove beyond reasonable doubt that in case of unauthorised absence, the delinquent had remained absent willfully and in case, such willfull absence is not proved, the same will not amount to misconduct. In the present case, the Enquiry Officer had not gone into that aspect at all, while holding the charges proved. On the other hand, it is seen that the second respondent has also sought for permission to go on leave through his leave applications, which have been produced before the Labour Court. The Labour Court in turn had appropriately appreciated those aspects and ordered for reinstatement with all benefits. As such, I do not find any infirmity in the award passed by the Labour Court.

5. It is now brought to the notice of this Court that the second respondent had now reached the age of superannuation, hence, the question of reinstatement will not arise.

6. In the light of the foregoing reasons, the award dated 23.03.2004 made in I.D.No.132 of 2000 on the file of the respondent Labour Court, Cuddalore is confirmed. Consequently, the second respondent shall be entitled for the service and monetary benefits as held in the award of the Labour Court, if he had not already received the same.

7. With the above observations, the Writ Petition stands closed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Presiding Officer,
Labour Court, Cuddalore.
2. Tamil Nadu State Transport Corporation
(Kumbakonam Division-I) Limited, Kumbakonam,
No.27, Railway Station New Road,
Kumbakonam.

+1 cc to Mr.D.Venkatachalam, Advocate, S.R.No.38284

+1 cc to Mr.T.Dhanyakumar, Advocate, S.R.No.37955

W.P.No.27287 of 2004

VGI (CO)
SSM(22/05/2019).

WEB COPY