

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.27799 of 2004

and

W.P.M.P.Nos.33811 of 2004 & 3383 of 2005

and

W.V.M.P.No.218 of 2005

Tamilnadu State Transport
Corporation(Salem) Ltd.,
Rep.by its Managing Director,
12, Ramakrishna Road,
Salem

...Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Salem.

2.S.Moorthy

... Respondents

Prayer : Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari,
call for the records of the 1st respondent in I.D.No.111 of
2002 dated 09.09.2003 and quash the same.

For Petitioner : M/s.Rajeni Ramadoss

For Respondents : R1 - Labour Court

R2 - Mr.S.Balasubramaniam
For Mr.P.Ganesan

O R D E R

The Award dated 09.09.2003 passed in I.D.No.111 of 2002
is under challenge in the present writ petition.

2. The writ petitioner is the Tamil Nadu State Transport Corporation, Salem Limited. The 2nd respondent was employed as Conductor in the petitioner Corporation and was continuously absent from duty with effect from 07.07.2001 onwards without any prior intimation or prior permission. In view of the fact that the unauthorized absence is a misconduct under the regulations, a charge memo was issued in proceedings dated 26.07.2001. The authority competent ordered for a domestic enquiry and the 2nd respondent workman had also participated in the domestic enquiry. The Enquiry Officer submitted his

report, holding that the charges against the 2nd respondent workman were proved and based on the enquiry report, further actions were initiated by the disciplinary authority. The 2nd Show Cause Notice was issued on 15.11.2001, inviting explanations from the workman and on receipt of the explanation, the Management had considered the previous history of the workman concerned and imposed the punishment of dismissal from service in order dated 30.11.2001. The 2nd respondent workman raised an industrial dispute and the Labour Court allowed the Industrial dispute by setting aside the punishment of dismissal from service, an order of reinstatement with continuity of service was issued. Challenging the said Award, the present writ petition is filed.

3. The learned counsel for the writ petitioner reiterated that the 2nd respondent workman was a habitual absentee. On several occasions, the Management had given an opportunity to the 2nd respondent to change his attitude. In spite of the opportunity provided, he has not changed and remained unauthorizedly absent with effect from 07.07.2001. Thus, the Management had left with no option, but to institute disciplinary proceedings and based on the proved charges, the punishment of dismissal from service was imposed. The previous history of the 2nd respondent is narrated as under:

Previous History

1	02.03.1982	FNC	Rs.2/-
2	08.07.1985	Excess in the cash bag	IPP for 2 years woce
3	25.07.1986	Absent	Warning
4	26.05.1987	Invoice filled improperly	Fine Rs.5/-
5	09.11.1995-28.11.1995	Absent	IPP for 1 years woce
6	07.11.1995	Less remittance	Suspension treated as specific punishment
7	25.04.2000-30.04.2000	Absent	IPP 1 year woce
8	04.05.2000		
9	07.05.2000-21.05.2000		
10	24.03.2000	Changes not given to passengers	Severely warned

1	02.03.1982	FNC	Rs.2/-
11	27.05.2000- 15.06.2000	Absent	Basic pay reduced 1 stage
12	18.06.2000- 17.08.2000		
13	01.09.2000- 22.10.2000	Absent	IPP 1 year woce
14	28.05.2001- 29.08.2001	Absent	IPP 3 months woce
15	01.06.2001- 03.06.2001		

4. The learned counsel for the petitioner further contended that the Labour Court held all the issues are in favour of the writ petitioner Management. With regard to the fairness of the domestic enquiry, no objection was raised by the workman and therefore, the preliminary issue was not taken up. As far as the charges are concerned, the Labour Court itself found that the charges were proved and the documents filed before the Labour Court also reveals that the 2nd respondent workman remained unauthorizedly absent without any prior intimation or approval. Thus, the Labour Court has committed an error in invoking Section 11A of the ID Act [hereinafter referred to as 'ID Act'] only for the purpose of setting aside the punishment of dismissal from service.

5. The learned counsel appearing on behalf of the 2nd respondent opposed the contentions raised by the petitioner by stating that the 2nd respondent workman was absent on account of his illness and on account of certain circumstances. He has already attained the age of superannuation and in the event of dismissing the writ petition, the 2nd respondent workman will get only the pensionary benefits. The writ petitioner is suffering on account of his illness and therefore, the Labour Court rightly invoked Section 11A of the ID Act for the purpose of setting aside the punishment of dismissal. The Award of the Labour Court is in consonance with the settled principles as the mitigating circumstances as well as the facts established before the Labour Court were considered. This being the factum, the writ petition is to be rejected.

6. Considering the arguments, this Court is of the considered opinion that the power of the Labour Court to invoke Section 11A of the ID Act is now well defined. The power of discretion is to be exercised cautiously. The discretionary powers cannot be exercised excessively, so as to grant the relief, which may not be appropriate with reference to the proved charges as well as the proportionality. The purpose and object of Section 11A is to mitigate the circumstances to avoid any injustice to the workman with

circumstances. Therefore, the Labour Court cannot invoke Section 11A in a routine and mechanical manner, so as to grant the relief to the workman. Any such exercise of discretionary power must be based on some reasoning and all such reasons and logic are to be produced in writing in the Award. In the absence of any such reasoning in invoking Section 11A, the Courts have to come to the conclusion that such exercise of discretionary power is excessive and not in consonance with the purpose and object of the very provision itself.

7. In all circumstances, the punishments are imposed based on the proved charges as well as by considering the proportionality. Thus, the Labour Court has to ascertain whether the proved charges as well as the penalty imposed by the employer are proportional and in commensuration with the gravity of the charges established. Contrarily, the Labour Court cannot agree with the Management in respect of domestic enquiry and the proved charges and finally invoke Section 11A of the ID Act only for the purpose of setting aside the dismissal order without assigning reasons. Unreasoned exercise of discretionary power under Section 11A can never be upheld by the High Court. Any such exercise of power, must be on certain strong facts and legal principles and this being the principles to be followed, the Labour Court has committed an error in exercising the power under Section 11A excessively.

8. As far as the present writ petition is concerned, the 2nd respondent workman undoubtedly, served for a considerable period of time. However, he remained unauthorizedly absent from 07.07.2001 onwards. Charge sheet was issued. Domestic enquiry was conducted. The fairness of the domestic enquiry was admitted by the workman even before the Labour Court. The Labour Court considered the documents filed before the Court and found that the charges against the workman were proved and based on the proved charges, the punishment of dismissal was imposed. When the Labour Court arrived a conclusion that there is no infirmity in respect of the domestic enquiry and the charges are also proved and the previous history established by the Management before the Labour Court also revealed that the 2nd respondent workman was a habitual absentee on several occasions and all these facts and details were also placed before the Labour Court. There is no reason whatsoever to invoke Section 11A of the ID Act for the purpose of setting aside the order of punishment of dismissal from service. Thus, the Labour Court has committed an error in exercising the discretionary power for the purpose of modifying or cancelling the punishment imposed by the employer. No reason was recorded for the purpose of granting the relief. Contrarily, a blanket statement was made for the purpose of setting aside the order of dismissal.

9. Under these circumstances, the Award of the Labour Court is perverse and not in consonance with the established principles of law and the exercise of power under Section 11A

of the ID Act without recording any acceptable reasons cannot be approved by this Court. Consequently, the Award dated 09.09.2003 passed by the 1st respondent in I.D.No.111 of 2002 is quashed and the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Presiding Officer,
Labour Court, Salem.

+1cc to Mr.P.Ganesan, Advocate Sr.49487

W.P.No.27799 of 2004

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