

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.09.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.34920 of 2004

&

W.M.P.Nos.42132 of 2004 & 26576 of 2005

Tamil Nadu State Transport Corporation,
(Salem Division II) Limited,
Bharathipuram, Dharmapuri - 5.

...Petitioner

...Vs...

1.The Presiding Officer,
Labour Court, Salem.

2.Thiru G.Subramaniam

...Respondents

Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the first respondent in I.D.No.345/2002, dated 04.12.2003 and quash the same.

For Petitioner : Mrs.Rajeni Ramadoss

For Respondent : No appearance for R2

सत्यमेव जयते
ORDER

The award dated 04.12.2003 passed in I.D.No.345/2002 is under challenge in the present writ petition.

2.The writ petitioner is the Tamil Nadu State Transport Corporation. The petitioner states that the second respondent was employed as Driver with the petitioner/Corporation in Krishnagiri Branch. The second respondent was a frequent absentee from duty without any prior permission or leave. The second respondent/workman was unauthorizedly absent with effect from 11.01.2000

onwards and consequently charge sheet was issued by the writ petitioner/management in proceedings dated 10.02.2000 for the allegation of unauthorized absence.

3.An enquiry was conducted and the second respondent did not attend the enquiry, inspite of notice issued on 04.04.2000, 15.04.2000 & 02.05.2000. Thus, the second respondent was set exparte in the domestic enquiry and the Enquiry Officer submitted his report on 18.05.2000, holding that the charges against the second respondent were proved. Based on the findings of the Enquiry Officer, the punishment of dismissal from service was imposed by the writ petitioner/Corporation on the second respondent/workman by proceedings dated 13.06.2000.

4.The second respondent raised an Industrial Dispute in I.D.No.345/2002. The first respondent allowed the Industrial Dispute with a direction to reinstate the second respondent along with continuity of service, however, without backwages. Challenging, the said award, present writ petition is filed.

5.The learned Standing Counsel appearing on behalf of the petitioner stated that the second respondent was a habitual absentee and his past records also shows that he remained unauthorizedly absent on several occasions. The previous history of the second respondent/ workman is narrated as under;

Sl.No	Date of misconduct	Nature	Punishment
1.	30.07.1986	Absent	Warned
2.	20.04.1984	Accident	Appointment period extended 6 months
3.	22.11.1984	Tyre damage	Rs.25/- recovery
4.	12.06.1987	Excess diesel consumption	Warned
5.	04.03.1988	Glass damaged	Rs.10/- fine
6.	27.03.1988	Accident	Rs.10/- fine & warned
7.	05.09.1993	Vehicle operated in one way	Warned
8.	21.09.1993	Spring leaf damaged	Fine Rs.5/- & warned

Sl.No	Date of misconduct	Nature	Punishment
9.	09.03.1994	Damage to the bus	Rs.15/- recovery
10.	08.05.1994 to 09.05.1994	Absent	Warned
11.	22.05.1994 to 25.05.1994	Absent	Rs.20/- fine
12.	12.06.1994 to 13.06.1994	Absent	Rs.20/- fine
13.	02.03.1995 to 06.03.1995	Absent	Rs.25/- fine
14.	26.03.1995 to 01.04.1995	Absent	Rs.25/- fine
15.	17.10.1995 to 20.10.1995	Absent	Rs.45/- fine
16.	14.12.1996	Glass damaged	Rs.30/- fine
17.	11.05.1996 to 27.05.1996	Absent	IPP 6 months wce
18.	11.01.1997 to 12.01.1997 & 16.01.1997 to 17.01.1997	Absent	Rs.25/- fine
19.	22.02.1997 to 24.10.1997	242 days absent	IPP 2 years wce
20.	27.10.1997 to 01.01.1999	430 days absent	IPP 2 years wce
21.	17.02.1999	Damage to vehicle	Rs.60/- recovery

Sl.No	Date of misconduct	Nature	Punishment
22.	11.01.2000 till dismissal	152 days absent	Dismissed
23.	09.05.2011	Less remittances	IPP for 3 months w.o.c.e recovery Rs.300/-
24.	01.06.2011	Unauthorized absent	IPP for 2 years w.c.e
25.	22.05.2012	Unauthorized absent	DISMISSED

6.Relying on the previous history of the second respondent/ workman, the learned Standing counsel appearing on behalf of the writ petitioner stated that the Labour Court has committed an error in allowing the Industrial Dispute, though the writ petitioner has complied with the principles of natural justice.

7.In this regard, it is relevant to pursue the findings of the Labour Court in paragraph 10 of its award, it is categorically stated that misconducts committed by the second respondent/workman were proved. In spite of several chances given to the second respondent, he has not chosen to give reply to the second show-cause notice and he has failed to appear before the Enquiry Officer also. Thus, the Labour Court has arrived at a conclusion that the sufficient opportunity was provided to the second respondent and consequently enquiry was conducted in a just and fair manner. Further the Labour Court found that the unauthorized absence from duty is misconduct and observed that the previous misconduct of the second respondent was also taken note of.

8.In support of all these, the Labour Court had arrived at a conclusion that the writ petitioner has to reinstate the second respondent/workman. The Labour Court has exercised the discretionary power granted under Section 11A of the Industrial Disputes Act and passed an award directing the writ petitioner to reinstate the second respondent/workman with continuity of service however, without backwages.

9.This Court is of the considered opinion that once grave misconducts are proved against the workman and the

Labour Court also arrived at a conclusion that the domestic enquiry was conducted in a just and fair manner, the scope of invoking Section 11A of the ID Act is limited. In the event of exercising the discretionary powers under Section 11A of the ID Act, the mitigating circumstances are to be recorded in writing in the award. Contrarily, the Labour Court on one end stated that the enquiry was conducted in compliance with the principles of natural justice and the charges against the workman were also proved and sufficient opportunity was also granted to the workman and on the other hand, the Labour Court stated that the second respondent/workman has to be reinstated with continuity of service. Such a contradiction in findings cannot be accepted, once the procedures are followed and grave charges were proved and an enquiry was conducted in just and fair manner, then the scope of invoking Section 11A of the ID Act is limited. Only on exceptional circumstances and if there are any mitigating circumstances of granting relief, then only the scope of Section 11A can be invoked or otherwise.

10. Though, the Labour Court was arrived at conclusion that the enquiry was conducted in fair manner and grave charges were proved and the length of unauthorized absence was also more than 115 days and the previous conducts of the workman also establishes the earlier punishments, there is no reason whatsoever in interfering with the quantum of the punishment imposed.

11. This apart the workman also reached the age of superannuation, long before during the year 2003. This being the factum of the case, the award of Labour Court is perverse and unsustainable. Consequently, the award dated 04.12.2003 passed in I.D.No.345/2002 was hereby quashed and the writ petition stands allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mrm

To

The Presiding Officer,
Labour Court, Salem.

+1cc to Mrs.Rajeni Ramadoss, Advocate SR.No. 84137

W.P.No.34920 of 2004

A.SK(21/11/2019)