

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.09.2019

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.34957 of 2004

&

W.M.P.No.42179 of 2004

Tamil Nadu State Transport Corporation,
(Salem) Limited,
rep by its Managing Director, Salem.

...Petitioner

...Vs...

1.The Presiding Officer,
Labour Court, Salem.

2.G.Ramakrishnan

...Respondents

Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the first respondent in I.D.No.293/2001, dated 07.01.2004 and quash the same.

For Petitioner : Mrs.Rajeni Ramadoss

For Respondent : No appearance for R.2

ORDER

The award dated 07.01.2004 passed in I.D.No.293/2001 is under challenge in the present writ petition.

2.The writ petitioner is the Management of Tamil Nadu State Transport Corporation (Salem) Ltd. The second respondent/workman was employed as a Driver in the writ petition/Corporation and he remained continuously absent to duty from 30.04.1999 without any prior permission for leave. On account of the unauthorized absence of the second respondent continuously for more than 230 days, a charge memo was issued on 26.05.1999 and an enquiry was conducted. Despite the fact that the second respondent has

received the enquiry notice, he has failed to participate in the enquiry proceedings and consequently, he was held exparte.

3.The Enquiry Officer submitted his findings holding that the charges of unauthorized absence of second respondent was proved. Accordingly, the second show cause notice dated 06.12.1999 was issued on 15.12.1999.

4.The learned counsel appearing on behalf of the petitioner stated that the second respondent was appointed as temporary driver on 27.07.1994 and his services were regularized after one year w.e.f. 01.06.1995. Thereafter, he remained unauthorizedly absent on several occasions and finally he remained unauthorizedly absent for more than 230 days. Thus, the second respondent has not even completed 2 or 3 years of service and he committed the misconduct of unauthorized absence and even before, he was imposed with punishment on three occasions. Under these circumstances, the writ petitioner/management based on findings of the enquiry report, dismissed the second respondent from service.

5.Regarding the award of the Labour Court, it is contended that the fairness of the enquiry has not been seriously disputed by the workman and the Labour Court also found that the domestic enquiry was conducted in accordance with procedures contemplated and the principles of natural justice has been followed. However, the Labour Court in its finding admitted the fact that the charges of misconduct were proved against the workman. The Labour Court further observed that the second respondent was a habitual absentee and committed misconduct of unauthorized absence on three occasions earlier. Despite the fact that the Labour Court made a finding in favour of the writ petitioner/management, in respect of all these aspects, finally passed an award directing the writ petitioner to reinstate the second respondent without backwages. Thus, the directions of the Labour Court for reinstatement is contrary to the findings made regarding the fairness of the enquiry as well as the misconduct proved.

6.The Labour Court cannot exercise the discretionary power under Section 11A of the I.D.Act in a careless manner. The discretionary power to modify the punishment or to cancel the punishment are provided to mitigate certain circumstances arising of injustice caused to the workman. Contrarily the Labour Court cannot exercise discretionary power in a routine manner so as to defeat the departmental disciplinary proceedings initiated against such misconduct of unauthorized absence.

7. In the present case on hand, the second respondent/workman was a habitual absentee and within a short span of time, he remained unauthorizedly absent on four occasions and finally, he remained absent for more than 230 days. This being the factum of the case, this Court is of the opinion that the wrong exercise of the discretionary power under Section 11A of the ID Act cannot be accepted. Whenever, the Labour Court decided to invoke the discretionary power under Section 11A of the Act, sufficient reasons must be recorded in the award. In the absence of any convincing reasons for the exercise of the discretionary power, this Court is of the opinion that such an exercise must be held as irregular and in consonance with established principles of the law.

8. Thus, recording the findings in favour of the management and granting the order of reinstatement is unacceptable. Whenever, the Labour Court arrived at conclusion, the reasons are to be recorded in the award for such reinstatement and mitigating circumstances or certain exceptional reasons are to be recorded. In the absence of any such circumstances, the Labour Court has no power to order for reinstatement in contravention with the findings arrived at.

9. This being the factum of the case, this Court has no hesitation in coming to the conclusion that the award of the Labour Court is perverse and not in consonance with the legal principles.

10. Consequently, the award dated 07.01.2004 passed in I.D.No.293 of 2001 is hereby quashed and the writ petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

mrm

To

The Presiding Officer,
Labour Court, Salem.

+1cc to Mrs.Rajeni Ramadoss, Advocate SR.84135

W.P.No.34957 of 2004

LN (CO)
CB (11/11/2019)



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