

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 03.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.37213 of 2004

Ravi

...Petitioner

Vs

1.The Management,  
Tamil Nadu State Transport  
Corporation,  
Villupuram.

2.The Presiding Officer,  
Labour Court,  
Cuddalore.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records dated 15.05.2002 made in I.D.No.97 of 1999 on the file of the Labour Court, Cuddalore, the 2<sup>nd</sup> respondent herein and quash the same.

For Petitioner : Mr.T.Dhanyakumar

For Respondents: Mr.T.Chandrasekaran  
for R1

R2 - Court

O R D E R

The petitioner herein, who was employed as an Assistant before the respondent Corporation, was served with a charge memo dated 02.11.1998, stating that he was unauthorisedly absent from 24.10.1998 onwards. Thereafter, an enquiry came to be conducted, in which the petitioner had not participated and a punishment of removal from service was imposed on 21.01.1999. Challenging his non-employment, the petitioner herein had filed I.D.No.97 of 1999 on 08.03.1999. The Labour Court, Cuddalore, had passed an award on 15.05.2002, rejecting the I.D. The present writ petition is as against the award of the Labour Court.

2.The learned counsel for the petitioner submitted that the respondents herein were not justified in conducting an ex-parte enquiry without any notice to him. According to the learned counsel for the petitioner, he had not received any notice of the appointment of Enquiry Officer or the conduct of the enquiry proceedings. As such, the ex-parte enquiry itself is not justified. The learned counsel also submitted that the punishment was disproportionate to the charges levelled.

3.The learned Standing Counsel for the respondent on the other hand opposed, stating that the notice was duly sent and the return covers were marked as documents before the Labour Court. The Enquiry Officer had also taken note of this fact. The petitioner herein has not obtained any prior permission for going on leave from 24.10.1998 onwards and as such, unauthorised absence being a major misconduct, he was rightly imposed with a major penalty of removal from service. The learned Standing Counsel also submitted that the Labour Court had properly analysed all these aspects and rejected the petitioner's I.D and as such, no interference is required in the present writ petition.

4. I have given careful consideration to the submissions made by the respective counsels.

5.The short point involved in the present writ petition is as to whether the respondents were justified in conducting an ex-parte enquiry and if so, whether the punishment of removal from service is proportionate to the charges?

6.It is seen that a charge memo in Ex.M.4 was framed against the petitioner for his unauthorized absence for the period 24.10.1998-30.10.1998. The unauthorized absence occurred to the respondents is for 6 days. The charge memo was sent to the petitioner's last known address by registered post and the same came to be returned unserved. Thereafter, the charge memo was served to the petitioner through the department, to which the petitioner had given a representation under Ex.M.6, admitting that he was absent due to his ill-health and that he would produce the medical certificate when he joins duty. Not being satisfied by the representation, the respondent had chosen to conduct an enquiry and a notice of enquiry dated 26.11.1998 under Ex.M.7 was sought to be served on the petitioner through a registered post, which came to be returned with an endorsement that the petitioner was not available. The returned registered letter has been marked as Ex.M.9. Consequently, the Enquiry Officer had chosen to conduct an ex-parte enquiry.

7.The learned Standing Counsel for the Corporation submitted that when the charge memo came to be served on the petitioner, he had chosen to give his representation and therefore, his non-appearance before the Enquiry Officer was wanton and the ex-parte enquiry is justified. I am unable to accept such a contention. Originally, when the the charge memo was attempted to be served on the petitioner through registered post, the same was returned as not served. Subsequently, the charge memo was served on the petitioner through the department. Thereafter, when the enquiry notice was sent to the petitioner, it was also returned with a postal endorsement stating "not-available". Likewise, the second show cause notice enclosing a copy of the enquiry proceedings which was sent to the petitioner by registered post also came to be returned as unserved, which was marked as Ex.M.14. When the petitioner was not available in the address to which the notice was sought to be served, the respondents, in normal course, should have taken one more attempt or alternate methods to serve the notice on him. The endorsement "not available" will amount to service of notice. Consequently, the enquiry conducted by treating the petitioner of having remained ex-parte, may not be proper. The Labour Court had also not appreciated this aspect in its award. By observing that there was no perversity in the report of the Enquiry Officer and since the petitioner has admitted his absence, the punishment of removal from service was confirmed.

8.The second contention putforth by the petitioner before the Labour Court was that the punishment was disproportionate to the charges leveled. To such a contention, the Labour Court had relied upon the Standing Order 20(6) and held that habitual absence from duty is a misconduct in the said standing order and therefore, the punishment was proportionate to the charges. In the counter statement dated 31.03.2000 filed before the Labour Court, the respondent Corporation had referred to certain dates, where the petitioner had absented himself and stated that the petitioner was an habitual absentee. As per the counter statement, the petitioner had absented himself from 24.10.1998 to 20.11.1998; 30 days in the month of December 1998; and 31 days in the month of January 1999. These days have not been discussed in the award of the Labour Court. Nevertheless, when the charges itself is for the petitioner's absence from 24.10.1998 to 30.10.1998, the subsequent days of absence referred to by the respondents in the counter statement, are not the subject matter before the enquiry officer or the charge memo. Only when the petitioner had regularly absented himself on more than one occasion, prior to the charge memo, can he be called as an "habitual absentee". When there is no material on record to show that the petitioner had indulged in unauthorized absence prior to the charge memo, there is no justification on the part of the Labour Court to hold the petitioner as an

habitual absentee and the reliance on standing order 20(6) for that purpose, is unwarranted.

9. As discussed above, the ex-parte enquiry without proper service of notice on the petitions casts a cloud on the procedure adopted by the Enquiry Officer. Further, since the charge memo relates to an unauthorized absence of only 7 days between 24.10.1998 and 30.11.1998 and taking into account the statement made by the petitioner herein in his reply to the charge memo that he was under medical ailment during the relevant period and that he was willing to give a medical certificate on the date of his joining, it can be said that the punishment of removal of service, is disproportionate to the charges leveled.

10. However, since the petitioner has admitted that he had not obtained any prior permission for absentsing himself for the period between 24.10.1998 and 30.10.1998 and there was a duty cast on him to submit a prior leave application, it would not be appropriate to grant him the benefits of backwages, when he is ordered to be reinstated.

11. In the light of the foregoing observations, the order of dismissal passed by the respondent herein dated 21.01.1999, dismissing the petitioner from his service, as well as the award of the Labour Court dated 15.05.2002 passed in I.D.No.97 of 1999 on the file of the Labour Court, Cuddalore, are set aside. Since the petitioner has not worked from the date of his dismissal, he shall not be entitled for the wages during this period on the principle of "no work no pay". Nevertheless, the petitioner shall be entitled for the continuity of service, including the period of his non-employment, for the purpose of determining his pay scale at the time of reinstatement. It is made clear that the petitioner shall not be entitled to seek for the monetary benefits that would have accrued, in view of this continuity of his service. The respondents shall issue a copy of reinstatement as expeditiously as possible, in any event, within a period of eight weeks from the date of receipt of copy of this order.

12. Accordingly, the Writ Petition stands allowed. No costs.

Sd/-  
Assistant Registrar

//True copy//

Sub Assistant Registrar

jas/hvk

To

1.The Management,  
Tamil Nadu State Transport  
Corporation,  
Villupuram.

2.The Presiding Officer,  
Labour Court,  
Cuddalore.

+1cc to Mr.T.Dhanyakumar, Advocate SR.No.32308

+1cc to Mr.T.Chandrasekaran, Advocate SR.No.32511

W.P.No.37213 of 2004

MN (CO)  
GMY (27/05/2019)



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