

THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 12.09.2019
CORAM
THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.15817 of 2005

P.Venkatachalam

..Petitioner

vs

1.The Presiding Officer,
Labour Court, Salem.

2.The Management of
Tamil Nadu State Transport Corporation
Ltd.,
(Salem Division-I),
12, Ramakrishna Salai,
Salem - 636 007

..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the award dated 20.04.2004 in I.D.No.462 of 2002 passed by the 1st Respondent, to quash the same and to consequently direct the 2nd Respondent herein to reinstate the Petitioner with continuity of service, backwages and all other attendant benefits.

For Petitioner : Mr.Elango

For Respondents : R1 - Labour Court
R2 - M/s.Rajeni Ramadoss

O R D E R

The Award dated 20.04.2004 made in I.D.No.462 of 2002 passed by the 1st respondent is sought to be quashed in the present writ petition.

2. The petitioner states that he joined the services of the 2nd respondent Management as a Driver on 16.07.1986. He was working in Johnsonpet No.3 branch respondent Company on 28.07.2000, the petitioner met with an accident and sustained an injury in his spinal cord. He had to undergo medical treatment and was admitted in the Government Hospital, Mettur on 28.07.2000 as an inpatient. He became immobile and subsequently shifted to a private Hospital and had taken treatment. The petitioner states that the disciplinary proceedings were initiated against him by the Management and a charge memo was

issued on 17.08.2000 as he was undergoing treatment, the petitioner could not able to submit his reply. The charge stipulates that the petitioner remained unauthorizedly absent, which would constitute a misconduct as per Section 19(1)(F) of the Standing orders of the 2nd respondent Company. Subsequently, the domestic enquiry was ordered. Witnesses were examined on behalf of the Management and the petitioner gave statements on his behalf. The writ petitioner admitted his absence from 28.07.2000 onwards. He did not obtained any leave or any prior permission from the 2nd respondent. The Management also had marked four documents and based on the findings of the domestic enquiry officer, the 2nd respondent issued a second show cause notice on 30.09.2000, asking the writ petitioner to submit his further explanation as to why he should not be dismissed from service. The petitioner submitted his explanation narrating the circumstances for his absence and further assured that he would not repeat it and accordingly, made a request for reinstatement. However, the explanation of the writ petitioner was not considered and the petitioner was dismissed from service on 05.01.2001.

3. The petitioner raised a dispute under Section 2-A of Industrial Disputes Act before the Labour Officer, Salem and the Conciliation ended in failure. Thereafter, petitioner filed I.D.No.462/2002. The petitioner did not question the fairness of the domestic enquiry before the 1st respondent. Thus, no oral evidence was let in by both sides by the 1st respondent. Exhibits P-1 was marked on the behalf of the writ petitioner and Exhibits R-1 to R-10 were marked on behalf of the Management. The Labour Court adjudicated the issues and passed an Award on 20.04.2004 in I.D.No.462/2002, holding that the charges levelled against the writ petitioner were proved and therefore, the order of dismissal would be converted one as discharge. Challenging the said award, the present writ petition is filed. The writ petitioner mainly contends that the punishment is not in proportionate with the gravity proved charges and further, said that the Labour Court has failed to invoke the jurisdiction under Section 11-A of the Industrial Disputes Act.

4. The respondents disputed the contentions by stating that the writ petitioner was absent unauthorizedly and this apart, he was a habitual absentee and he was awarded certain minor punishments for several misconducts. Even prior to the charge memo, the writ petitioner was imposed with several such minor punishments for his misconducts committed on various occasions. The writ petitioner did not sent any intimation to the Management. The writ petitioner had participated in the domestic enquiry. Thus, he availed the opportunities provided by the authorities as well as the enquiry officer. The writ petitioner was permitted to examine the witnesses on his side. Thus, the

principles of natural justice has been complied with and there is no infirmity in respect of the enquiry proceedings conducted. In respect of the discretionary power under Section 11-A of the Industrial Disputes Act, the Labour Court found that the power cannot be exercised arbitrarily.

5. It is further held that the respondent Corporation is not a Charitable organization. If the writ petitioner continues his bad habit, no employer can retain him in employment. The Labour Court further arrived a conclusion that in such cases of misconduct, the Courts cannot show any leniency or misplaced sympathy and accordingly, relied upon the documents filed by the Management in Exhibit P1-P11 and held that there is no infirmity in respect of the procedures followed by the Management in the matter of conducting the disciplinary proceedings. The Labour Court further found that the petitioner was awarded minor punishments for 35 misconducts on earlier occasions. Even after imposing 35 punishments for 35 misconducts on previous occasions, the petitioner had not taken any steps to reform himself and contrarily, he was repeatedly commit such misconducts again and again.

6. This being the categorical finding of the Labour Court in respect of the conduct of the workman and the several misconducts committed on previous occasions and imposition of punishments even during earlier occasions, this Court is of the considered opinion that there is no infirmity or perversity in respect of the award passed by the Labour Court in Industrial disputes. There is no additional material to consider the case of the writ petitioner and the findings of the Labour Court in the matter of testing the validity of the domestic enquiry as well as the proportionality regarding the punishment are in consonance with the settled legal principles.

7. Thus, the writ petition is devoid of merits and accordingly, the Award dated 20.04.2004 passed in I.D.No.462 of 2002 is confirmed and the writ petition stands dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

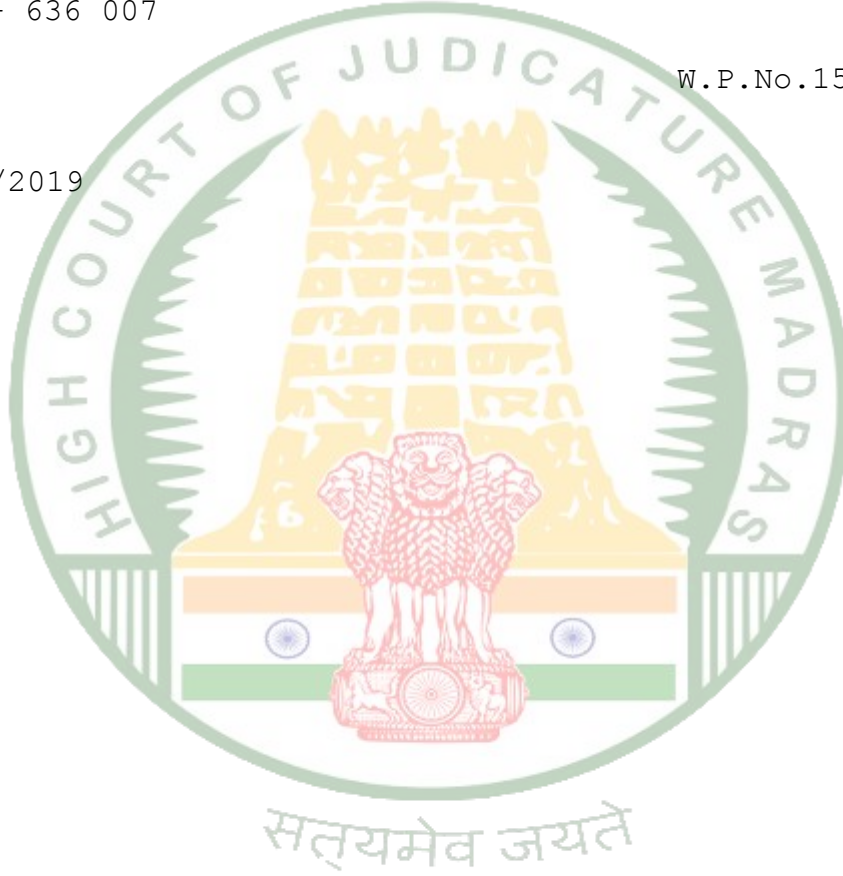
To

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