

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.9188 of 2004

The General Manager,  
Tamilnadu State Transport  
Corporation (Kumbakonam Dn.I) Ltd.,  
Kumbakonam.

.. Petitioner

Vs.

1.The Presiding Officer,  
Labour Court, Cuddalore.

2.Seethalakshmi

3.Manimekalai

4.Selvi.Tamizharasi

5.Selvan.Karikalan

.. Respondents

(Respondents 2 to 5 are LRs of deceased Ekambaram, petitioner in I.D.)

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari to call for the records of the 1<sup>st</sup> respondent in I.D.No.70/1997 dated 08.10.2003 and quash the same.

For Petitioner : Mr.D.Venkatachalam

For RR2 to 5 : Mr.V.Ajaykhose

For R1- Court

ORDER

The present Writ Petition is filed for issuance of writ of Certiorari to call for the records of the 1<sup>st</sup> respondent in I.D.No.70/1997 dated 08.10.2003 and quash the same.

2.Mr.D.Venkatachalam, learned counsel appearing for the petitioner contended that the first respondent, Labour Court

erred in holding that the Enquiry Officer failed to consider Ex.M5, the explanation submitted by the workman Ekambaram. The first respondent erroneously relied on Exs.M5 and W5 to W8. The first respondent failed to consider the past record of the workman, who has suffered 25 punishments from 1974 to 1992. The first respondent ought to have taken note of the fact that after completion of enquiry, the workman unauthorizedly absented himself for 146 days. The workman himself has admitted his unauthorized absence in the claim petition. The first respondent is not correct in holding that the petitioner failed to prove that workman was unauthorizedly absented himself from 21.05.1993 onwards and that due to his unauthorized absence, the work of the petitioner suffered and prayed for setting aside the award of the Labour Court.

3.Per contra, Mr.V.Ajaykhose, learned counsel appearing for the respondents 2 to 5, legal heirs of the workman contended that the workman did not absented himself unauthorizedly. He sent leave letters and medical certificates through his relatives for his absence from 21.05.1993. He has submitted his leave letter along with medical certificates on 27.07.1993. The petitioner accepted the same and permitted the workman to join duty on 01.08.1993. Having permitted the workman to join duty from 01.08.1993, it is not open to the petitioner to hold a domestic enquiry for the charge memo dated 10.06.1993. The finding of the Enquiry Officer is perverse and without there being any charge memo for the absence from August 1993 onwards, the Enquiry Officer has held that workman has unauthorizedly absented himself and petitioner accepted the said finding and dismissed the workman from service. The first respondent considering all the above materials, held that the punishment imposed by the petitioner is not valid and set aside the order of the petitioner. There is no error in the award passed by the first respondent and prayed for dismissal of the Writ Petition.

4.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents 2 to 5 and perused the entire materials on record.

5.From the materials available on record, it is seen that the petitioner has issued charge memo dated 10.06.1993 to the workman, for his unauthorized absence from 21.05.1993. The workman has submitted his leave letter along with medical certificates on 27.07.1993 to the petitioner and the petitioner permitted the workman to join duty on 01.08.1993. Before the Enquiry Officer, the witness examined by the petitioner has not denied the leave letter and medical

certificates submitted by the workman. The Enquiry Officer without considering this fact, has held that the workman has not submitted any medical certificate, which is contrary to the materials on record. In addition to that, the Enquiry Officer has submitted a report that workman was unauthorizedly absented from 30.08.1993 to 29.03.1994. It is not the case of the petitioner that charge memo was issued to the workman for the unauthorized absence from 30.08.1993 to 29.03.1994 and workman was given an opportunity to put forth his case in the enquiry. The first respondent considering the materials placed before the Enquiry Officer held that without any basis, the Enquiry Officer has held that workman has absented himself unauthorizedly for the days mentioned in the report. It is seen from the materials that no charge memo was issued to the workman for the alleged unauthorized absence for the subsequent period and no enquiry was conducted for the said period. The first respondent also held that based on Exs.M5, W5 to W8, the findings of the Enquiry Officer that first charge leveled against the workman is proved is not correct. From the award of the first respondent, it is seen that the first respondent has appreciated all the materials on record and held that the punishment of dismissal of workman is not valid and set aside the same. Considering the fact that the workman has died pending Industrial Dispute, the first respondent has ordered continuity of service from the date of dismissal till the date of death of the workman and awarded backwages and other attendant benefits to the legal heirs of the workman. There is no error in the award passed by the first respondent warranting interference by this Court.

6.In the result, this Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar(insp cell)

//True Copy//

Sub Assistant Registrar

krk

To

The Presiding Officer,  
Labour Court,  
Cuddalore.

+1cc to Mr.Ajay Khose , Advocate SR.No. 59584

+1cc to Mr.D.Venkatachalam , Advocate SR.No. 58749

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A.SK(22/08/2019)