

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01-11-2019

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.20302 of 2015

And

M.P.No.1 of 2015 and W.M.P.No.22999 of 2017

The Management,
Tamil Nadu State Transport Corporation (Salem) Ltd.,
Bharathipuram,
Salem Main Road,
Dharmapuri-636 705
Represented by its General Manager. ... Petitioner

vs.

1.The Presiding Officer,
The Labour Court,
Salem.

2.V.Kumaresan ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records passed by the first respondent made in I.D.No.11 of 2010 dated 20.05.2014 and to quash the same and against the provisions of the Industrial Disputes Act, 1947.

For Petitioner : Ms.S.Rajeni Ramadoss

For Respondent-1 : Labour Court

For Respondent-2 : Mr.G.Anand Kumar

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O R D E R

The Award of the Labour Court dated 20.05.2014 passed in I.D.No.11 of 2010, is under challenge in the present writ petition.

2. The writ petitioner-Management is Tamil Nadu State Transport Corporation (Salem) Limited.

3. The learned counsel appearing on behalf of the writ petitioner-Management states that the second respondent was employed as a Junior Tradesman at Harur Branch in the writ petitioner-Transport Corporation. The second respondent-employee did not report for duty with effect from 25.03.2006 to 27.03.2006 and continuously from 02.04.2006 onwards without any prior permission or prior intimation.

4. As per Clause 16 (E) of the Certified Standing Orders of the writ petitioner-Transport Corporation, unauthorised absence for longtime is a grave misconduct and consequently, a charge memorandum was issued in proceedings dated 07.06.2014 to the second respondent-employee based on the report received from the Branch Manager. The second respondent-employee submitted his explanation and having not satisfied with the explanation, a domestic enquiry was ordered by the Enquiry Officer. The Enquiry Officer conducted the enquiry and submitted his report with a finding that the charges against the second respondent-employee are held proved.

5. The learned counsel for the writ petitioner-Transport Corporation states that sufficient opportunities were provided to the second respondent-employee to defend his case. However, the second respondent-employee had not appeared before the Enquiry officer, despite the fact that he received notices sent by the Enquiry Officer.

6. Based on the documents, the Enquiry Officer submitted his report and thereafter, the writ petitioner-Management passed an order, imposing the punishment of dismissal from service, based on the findings of the Enquiry Officer. The second respondent-employee raised an industrial dispute in I.D.No.11 of 2010 and the Labour Court passed an Award on 20.05.2014, ordering for reinstatement without back wages. Thus, the writ petitioner-Transport Corporation is constrained to move the present writ petition.

7. The learned counsel for the writ petitioner-Transport Corporation reiterated that the Labour Court arrived a conclusion that the domestic enquiry was conducted in a proper manner. The Labour Court has further arrived a finding that the charges against the second respondent-employee are proved and there is no infirmity, as such, in respect of the procedures followed by the writ petitioner-Management in conducting the enquiry. However, the Labour Court finally held that though the unauthorised absence exceeded six months, cannot be a ground to impose the punishment of dismissal from service. The Labour Court, relying on the Calcutta High Court's judgment in the case of Personnel Manager, North Eastern Coal Fields vs. Mukul Kumar Chaudhari and Others [(2009) 2 LLJ 436] held that the mere

unauthorised absence cannot be a ground to impose the punishment of dismissal from service.

8. The learned counsel for the second respondent-employee disputed the contentions of the learned counsel for the writ petitioner-Management, by stating that the second respondent-employee had submitted proper application for leave and he had not committed any irregularity. However, the Labour Court made a finding that the charges of unauthorised absence of the second respondent-employee are proved. Further, the Labour Court found that the second respondent-employee was in unauthorised absence without any prior intimation or leave to be sanctioned by the writ petitioner-Management.

9. Based on the documents, the Labour Court came to a conclusion that the second respondent-employee had not produced any documents to show that he was suffering from the disease of Jaundice and no such certificate was produced. In spite of these findings, the Award was passed by the Labour Court, granting reinstatement without back wages.

10. This Court is of the considered opinion that the second respondent-employee was employed in the writ petitioner-Transport Corporation as a Junior Tradesman. The unauthorised absence of the second respondent-employee for a period of one or two days may be viewed leniently. However, continuous unauthorised absence of the second respondent-employee, cannot be viewed leniently or an order of reinstatement can be passed on certain misplaced sympathy.

11. As per the Certified Standing Orders of the writ petitioner-Transport Corporation, the remaining unauthorised absence for a continuous period is a grave misconduct and therefore, there is no infirmity, as such, in respect of initiation of the disciplinary proceedings with reference to the allegations of misconduct against the second respondent-employee.

12. The previous conduct history of the second respondent-employee is also narrated by the learned counsel for the writ petitioner-Transport Corporation and the same is extracted hereunder:-

S.No.	Date of Misconduct	Nature of Misconduct	Punishment awarded
1.	12.08.1998	Improper Maintenance	Warned
2.	25.12.1999	Unauthorised Absent 10 days	Warned
3.	06.03.2000	Improper Maintenance	Fined Rs.50/-

S.No.	Date of Misconduct	Nature of Misconduct	Punishment awarded
4.	13.05.2003	Unauthorised Absent 12 days	Increment Postponed 6 months without cumulative effect
5.	14.12.2001	Improper Maintenance	Increment Postponed 3 months without cumulative effect
6.	15.05.2003	Squad Report	3 Days Suspension Treated as specific punishment
7.	15.07.2005	Unauthorised Absent 44 days	Increment Postponed for 1 month, absent days no work no pay
8.	25.03.2006	25.06.2006 to 27.03.2006 and from 02.04.2006 to till	Dismissed
14.	I.D.No.		11/2010
15.	I.D. Award date		20.05.2014
16.	I.D. Award		Reinstate the petitioner without back wages but with continuity of service
17.	Is there any stay		No

13. Even on earlier occasions, the second respondent-employee remained unauthorised absence on several occasions and several punishments were also imposed, as detailed above.

14. This Court is of the considered opinion that Section 11-A of the Industrial Disputes Act, 1947 can be invoked by the Labour Court only on certain circumstances, where the reasons are recorded. The Labour Court cannot exercise the power of discretion without recording the reasons for modifying or cancellation of punishment. Any unreasoned exercise of discretionary powers, cannot be approved by the High Court. Undoubtedly, Section 11-A of the Industrial Disputes Act, provides discretion to the Labour Court to arrive or to cancel the punishment.

15. In the present case on hand, the Labour Court arrived a conclusion that the enquiry was conducted in a fair manner. Further, the Labour Court held that the charges against the second respondent-employee are proved. This apart, the

documents were also examined and the Labour Court arrived a conclusion that the second respondent-employee remained unauthorisedly absent for more than six months. However, without recording any valid reason, the Labour Court passed an order of reinstatement without back wages.

16. The judgment of the Calcutta High Court (cited supra) has no relevance with reference to the facts and circumstances of the present case, as the allegations of unauthorised absence were not only proved beyond doubt and the Labour Court also made a finding that the charges against the second respondent-employee are proved.

17. This being the factum, the exercise of discretionary powers and the grant of reinstatement without recording any convincing reasons by the Labour Court, cannot be approved by the High Court and under these circumstances, the Award of the Labour Court dated 20.05.2014 passed in I.D.No.11 of 2010 is quashed and consequently, the writ petition stands allowed. However, there shall be no order as to costs. The connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Presiding Officer,
Labour Court,
Salem.

2.The General Manager.
Tamil Nadu State Transport Corporation (Salem) Ltd.,
Bharathipuram,
Salem Main Road,
Dharmapuri-636 705.

+1cc to Mr.G.Ananda Kumar, Advocate, S.R.No. 90641
+1cc to Mr.S.Rajeni Ramadoss, Advocate, S.R.No. 91085

WP 20302 of 2015

VG II(CO)
GN(29/11/2019)