

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.06.2019

Pronounced on: 24.06.2019

CORAM

THE HONOURABLE DR. JUSTICE VINEET KOTHARI
AND

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.A.Nos.1682 of 2019 & 1683 of 2019

P.Marimuthu ... Appellant/2nd Respondent
in both writ appeals

Vs

1.The Management,
Tamilnadu State Transport Corporation (Salem) Ltd.,
12, Ramakrishna Road,
Salem - 636 007.
rep. By its General Manager

2. The Special Deputy Commissioner of Labour,
DMS Compound,
Anna Salai,
Chennai. ... Respondents
in W.A.No.1682 of 2019

1. The Managing Director,
Tamilnadu State Transport Corporation,
12, Ramakrishna Road,
Salem - 7

2. The General Manager, सतयमेव जयते
Tamilnadu State Transport Corporation,
12, Ramakrishna Road,
Salem - 7 ... Respondents
in W.A.No.1683 of 2019

These Writ Appeals filed under Clause 15 of the Letters Patent, against the order dated 12.10.2018 passed by the learned Single Judge in W.P.No.10782 of 2016 and W.P.No.12089 of 2012 on the file of this Court.

Prayer in W.P.No.10782 of 2016:

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the order passed by the 1st respondent in A.P. No. 59 of 2012 dated 20.5.2015 and to quash the same as illegal and against the provisions of the Industrial Disputes Act 1947.

Prayer in W.P.No.12089 of 2012:

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records connected with the order of dismissal dated 13.2.12 passed by the 2nd respondent in proceedings Pa.Mu.No.661-8432-D3-STC-2011-12 quash the same and also direct the respondent to reinstate the petitioner with continuity of service and other attendant benefits in a suitable post after identify his fitness by referring him to the Medical Board as requested by him in his explanation dated 23.4.11 submitted to 2nd Show Cause Notice as well as in the appeal dated 10.3.2012 pending with the 1st respondent.

For Appellant : Ms.S.Girija, in both writ appeals

For Respondents : Ms.Rajeni Ramadoss
in both writ appeals

COMMON JUDGMENT

C.V.KARTHIKEYAN, J.

Both the Writ Appeals have been filed by the workman P.Marimuthu, questioning the common order passed in W.P.Nos.10782 of 2016 and 12089 of 2012 dated 12.10.2018 by the learned Single Judge of this Court whereby, the writ petition (W.P.No.12089 of 2012) filed by the workman P.Marimuthu was dismissed and writ petition (W.P.No.10782 of 2016) filed by the Management, Tamilnadu State Transport Corporation (Salem) Limited was allowed.

2. The writ petitioner P.Marimuthu was a driver in the respondent State Transport Corporation. He was dismissed by order dated 13.02.2012. The order of dismissal was passed taking into account the following factors:

"1.The workman was unauthorizedly
absenting himself from 29.03.2011. In

respect of the same, a show cause notice has been issued on 21.04.2011. The workman has replied stating the the parents of him died and therefore, he was not able to report for duty.

2.The Management gave the workman an opportunity to join duty with a direction to meet the General Manager, through the letter dated 26.04.2011.

3.The Management has conducted a domestic enquiry and the Enquiry Officer has given a finding that the charges against the workman has been proved; according to the death certificate, the father of the workman died on 24.01.2011 and his mother died on 02.03.2011; the workman has been granted leave from 02.03.2011 to 28.03.2011; the workman did not file any medical document to show that he was not well even after 28.03.2011.

4.The past conduct would reveal that he had been on unauthorized absent for 35 days, 83 days, 5 days, 22 days, 5 days, 8 days, 10 days, 12 days, 93 days, 291 days, 40 days, 37 days, 42 days, 53 days and 400 days respectively."

3. The specific charge against the workman was that he did not report for duty continuously from 21.03.2011 and this was construed as misconduct, as per clause 19 (1) (f) of the Certified Standing Orders of the Transport Corporation. A Charge memo was issued and since reply was found not satisfactory, an enquiry was conducted. The Enquiry Officer returned a finding that the charges have been proved. A second show cause notice was issued calling upon the workman to show cause why a punishment of dismissal from service should not be imposed. In the interregnum period, the workman then submitted a letter dated 10.11.2011 seeking permission to join duty. Very strangely he was also permitted to join duty pending the disposal of the disciplinary proceedings.

4. According to the Management, the workman again absented himself without prior intimation, and an order of dismissal was passed on 13.02.2012. Since a wage dispute was pending on the file of the Deputy Commissioner of Labour, Chennai, the Management filed an Approval Petition in A.P.No.59 of 2012

seeking approval of the order of dismissal. That petition was dismissed and consequently, the Management had filed W.P.No.10782 of 2016. Challenging the order of dismissal dated 13.02.2012, the workman, instead of raising an Industrial Dispute filed W.P.No.12089 of 2012.

5. Both the writ petitions came to be considered by a learned Single Judge of this Court. Though documents relating to medical records and prescriptions given by a Doctor were filed by the workman, the learned Single Judge refused to take them on record. The learned Single Judge finally held as follows:

"13.The conduct of the workman clearly goes to show that he is guilty of unauthorized absence and he is a habitual absentee also. Under the circumstances, the non-approval accorded by the authority concerned for the dismissal of the workman is hereby sustained.

14.The writ petition (W.P.No.12089 of 2012) filed by the workman challenging the order of dismissal is dismissed. The appropriate remedy for the workman is to have raised an industrial dispute before the Labour Court and W.P.No.12089 of 2012 ought not to have been filed by the workman. In fact, this writ petition is not even fit for admission.

15.Under such circumstances, the writ petition(W.P.No.12089 of 2012 filed by the workman is dismissed and the writ petition (W.P.No.10782 of 2016) filed by the Management is allowed. No costs. Consequently, the connected MPs are closed."

6. Challenging the orders passed in both writ petitions the workman had filed the present writ appeals.

7. Heard arguments advanced by Ms.S.Girija learned counsel for the appellant and Ms.Rajeni Ramadoss learned counsel for the respondents in both the writ appeals.

8. During the course of hearing, learned counsel for the appellant drew the attention of this Court to the findings of the Special Deputy Commissioner of Labour, in the petition filed under Section 33 (2)(b) of the Industrial Dispute Act in

A.P.No.59 of 2012 seeking approval of the order of dismissal of the workman.

9. A specific finding had been given that the workman was a Chronic Asthmatic patient and could not perform the job of the driver and had requested an alternate job. It had also been observed that the Management ought to have considered that representation and should have sent the workman to the Medical Board for examination and after getting a report ought to have decided about the nature of work which should have been allotted to him. On the basis of such finding, the Special Deputy Commissioner of Labour denied approval in the application filed under Section 33 (2) (b) of the Industrial Dispute Act 1947.

10. The learned counsel for the appellant submitted that the records relating to the medical condition of the appellant/workman were submitted before the Authority concerned and assailed the observation of the learned Single Judge that such documents were not actually produced. It was also pointed out that the father of the petitioner died on 24.01.2011 and his mother also died immediately thereafter on 02.03.2011. It was also stated that he had to perform the last rites of both the parents.

11. The learned counsel for the appellant also claimed that the workman was a Chronic Asthmatic patient from the year 2001 and the medical condition aggravated consequent to the death of his parents and he could not drive a Transport Corporation bus and had therefore sought an alternate posting. Learned counsel stated that the punishment of dismissal was too harsh and a pragmatic view should be taken by this Court.

12. On the other hand, the learned counsel for the respondent/Management vehemently supported the order of the learned Single Judge. The learned counsel pointed out that the petitioner had a compulsive habit of absenting himself and the respondent/Management had been forced to impose punishment on 26 separate occasions for absence without prior intimation or permission. The learned counsel stated that the order of the learned Single Judge did not warrant any interference.

13. We have carefully considered the submission made by the counsels of both sides.

14. It is the fact that the workman was in employment as driver in a Transport Corporation. It is common knowledge that a Chronic Asthmatic patient would be a risk not only to himself but also to the passengers who travel in the bus. The medical records reveal that the petitioner had been suffering from

Chronic Asthma right from the year 2001. During the relevant period where he was charged with absentism both his parents had also died. Even though that could not be a reason for remaining absent, these are factors to be taken into consideration. There is no explanation given as to why an alternate posting was not given to the workman in another department by the respondent Corporation.

15. Section 47 of the Persons with Disabilities Act, 1995 reads as follows:

47. Non-discrimination in Government employment:- (1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section."

16. The workman who claims to be a Chronic Asthmatic patient is also protected under Section 47 of the Persons with Disabilities Act, 1995 as extracted above. The respondent Corporation being a Government Corporation is bound by the said provision. It has also transpired during the course of arguments that the appellant has just one year of service left before he would attain the age of superannuation. Though learned counsel for the respondent/Management forcibly argued that the

petitioner/workman does not deserve any consideration from this Court, we feel that an exception can be made in the peculiar circumstances of the case and interest of justice would be served if the appellant is granted reinstatement with notional continuity of service, only for the purpose of calculating his pension but without any back wages. While calculating the pension, the respondent/Management may take into consideration the relevant rules as applicable to the appellant. Continuity of service is granted only on notional basis for calculation of the pensionary benefits. Back wages is not specifically granted. While granting reinstatement, the respondent/Management may also call upon the appellant to subject himself to medical examination by the Medical Board to determine whether he is fit to work as a driver and post him suitably in accordance with such report. Both the writ appeals are disposed of with the above observations. No order as to costs. The efforts taken by Ms.Rajeni Ramadoss in vehemently protecting the interest of the Corporation is recorded with appreciation by us.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

- 1.The Management,
Tamilnadu State Transport Corporation (Salem) Ltd.,
12, Ramakrishna Road,
Salem - 636 007.
rep. By its General Manager
 2. The Special Deputy Commissioner of Labour,
DMS Compound,
Anna Salai, Chennai.
 3. The Managing Director,
Tamilnadu State Transport Corporation,
12, Ramakrishna Road, Salem - 7.
- +2cc to Ms.S.Girija, Advocate Sr.48885, 51896
+2cc to M/s.S.Rajeni Ramadoss, Advocate Sr.49083 and 49084

W.A.Nos.1682 & 1683 of 2019

gj[col]
srg 24/07/2019