

IN THE HIGH COURT OF JUDICATURE AT MADRAS

03.04.2019

Coram

The Hon'ble Mr.Justice V.PARTHIBAN

W.P.Nos.4737 and 21658 of 2011

The Management of Tamil Nadu
State Transport Corporation Ltd.,
Villupuram,
rep.by its Managing Director

... Petitioner in
W.P.No.4737 of 2011
... 2nd respondent in
W.P.No.21658 of 2011

vs.

1. The Presiding Officer,
Labour Court,
Cuddalore.

... 1st respondent
in both the W.Ps.

2.Shri V.Saminathan

... Petitioner in
W.P.No.21658 of 2011
2nd respondent in
W.P.No.4737 of 2011

Prayer in W.P.No.4737 of 2010:Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari calling for the records relating to I.D.No.04 of 2007, dated 08.02.2010, on the file of the first respondent and quash the same.

सत्यमेव जयते

Prayer in W.P.No.21658 of 2010:Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the records of the first respondent relating to the award in I.D.No.4 of 2007 dated 08.02.2010, quash that portion of the award in so far as depriving the petitioner backwages and other attendant benefits and consequently direct the 2nd respondent to pay backwages and other attendant benefits to the petitioner from the date of dismissal to the date of award and also to provide him suitable alternative employment with pay protection and other service benefits.

In W.P.No.4737 of 2011

For Petitioner .. Mr.K.Kulandaivelu for
Mr.A.Antony Arokiaraj

For Respondents .. Mr.V.Ajoy Khore for
M/s.R/Krishnaswamy for R2

In W.P.No.21658/2011

For Petitioner .. Mr.V.Ajoy Kishore

For Respondents .. Mr.K.Kulandaivelu for
for Mr.A.Antony Arokiaraj for R2

COMMON ORDER

W.P.No.4737 of 2010 has been filed by the Management seeking for writ of Certiorari calling for the records relating to I.D.No.04 of 2007, dated 08.02.2010, on the file of the first respondent and to quash the same.

W.P.No.21658 of 2010 has been filed by the workman seeking for writ of Certiorarified Mandamus calling for the records of the first respondent relating to the award in I.D.No.4 of 2007, dated 08.02.2010, and to quash the portion of the award in so far as depriving the workman backwages and other attendant benefits and consequently direct the Management to pay backwages and other attendant benefits to the workman from the date of dismissal to the date of award and also to provide him suitable alternative employment with pay protection and other service benefits.

2.The parties are referred to as 'Management' and 'Workman', for the sake of convenience.

3.The Workman was working as a Driver in the Management. He was originally appointed on 18.09.1996 and was made permanent on 01.11.1997. According to the workman, he suffered from severe stomach pain and submitted leave application with medical certificate on 08.02.2003 and was taking treatment for his ailment. However, the Management refuted the contention of the workman that he has submitted any medical certificate and his absence was treated as 'unauthorised' and an enquiry was initiated. Notice of enquiry received by the workman was also not responded to and ultimately, enquiry was concluded and the charge of 'unauthorised absence' was held proved. Thereafter, the Management has dismissed the workman by order dated 14.01.2004.

4.As against the order of dismissal an industrial dispute was raised, which was referred for adjudication before the Labour Court, Cuddalore in I.D.No.4 of 2007. The Labour Court, after advertng to various materials and evidence that were placed before it for consideration, partly allowed the Industrial Dispute by directing the Management to reinstate the workman with continuity of service, but without backwages.

5.The Labour Court has particularly appreciated the document filed on behalf of the workman, viz., Ex.W1, which is a Medical Certificate showing that the workman had been suffering from abdomen T.B. and had been taking treatment for mild depression. Therefore, his continuous absence for the period, which was found to be unauthorised, was due to ill health suffered by the workman. According to the workman he could not participate in the enquiry in view of his continuous ill health. Ultimately, the Labour Court felt that the charge of unauthorised absence cannot be equated to misappropriation or negligent driving, which were far more grave in nature than mere unauthorised absence. According to the Labour Court, the unauthorised absence was explained by the workman and the same was also accepted. In fact, the Labour Court, in the award observed that proper psychiatric treatment to be given to the workman for his behavioral change, since he was also suffering from mild depression due to severe pain in his abdomen.

6.The learned counsel appearing for the Management would vehemently oppose the relief granted to the workman by the Labour Court stating that the workman remained absent even during the period of domestic enquiry and the so called medical certificate produced by him before the Labour Court has not been produced by him before the Enquiry Officer or before the Management. Therefore, it is not open to the Labour Court to rely on the document which was first produced by the workman, after a period of few years. In any event, it is the contention of the Management that the workman has remained absent without informing the Management, which was a serious act of misconduct, which cannot be condoned. In view of his absence unauthorisedly, the Management had to suffer hardship and his absence for a long period of time was also against the public interest, since the Corporation was fulfilling the transport needs of the general public.

7.On the other hand the learned counsel for the workman would submit that though the Labour Court has held that the absence of the workman was explained and the same having been

accepted by the Labour Court, it ought to have ordered backwages and denial of backwages is without any justification. In fact, the Labour Court, according to the learned counsel for the workman, had not given any reasons for not allowing backwages for the period of his non-employment.

8.The learned counsel for the Management would also submit that in similar circumstances, the Hon'ble Supreme Court of India in the case in Chennai Metropolitan Water Supply and Sewerage Board and Others(2014(4) SCC 108) has held that the interference by the High Court with the punishment imposed for 'unauthorised absence' was unwarranted and unsustainable. He would also reply on another decision of the Hon'ble Supreme Court of India in the case in Delhi Transport Corporation vs. Sardar Singh [(2004)7 SCC 574], wherein the Hon'ble Supreme Court has come down heavily on the Tribunal which has refused to accord approval to the order of dismissal or removal from service passed by the employer.

9.This Court does not think that the law laid down in the above decisions of the Hon'ble Supreme Court can be applied to the factual matrix of the present case. The Labour Court is vested with peculiar and beneficial provision under Section 11A of the Industrial Disputes Act, which can go into the proportionality of the punishment imposed on the workman.

10.In this case, the Labour Court has applied its mind to the gravity of misconduct alleged against the workman and also taking into consideration the reason for the absence of the workman, had come to the conclusion that the workman was entitled to be reinstated, ofcourse, without backwages.

11.In fact, in paragraph No.15 of the award, the Labour Court had validly held that the absence, as compared to misappropriation or negligence, is not as grave as those actual misconduct and therefore, held that the workman was entitled to be reinstated. The Labour Court has also rightly held that the workman was not entitled to backwages since he had approached the Labour Court belatedly by raising a dispute. Moreover, the Labour Court has also taken into consideration the other circumstances for denying the backwages.

12.On the whole, this Court is of the view that the approach by the Labour Court was a balanced one, which does not call for interference by this Court. The Labour Court had

correctly denied the backwages to the workman in the circumstances of the case and also rightly ordered reinstatement of the workman after accepting the explanation offered by the workman and also on the basis of the charge against the workman. In view of the same, this Court does not find any infirmity in the impugned award passed by the Labour Court.

For the above said reasons, this Court is of the view that there is no merit in the writ petitions and the same are dismissed. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

msk

To

1. The Presiding Officer,
Labour Court,
Cuddalore.

+1 cc to Mr.V.Ajoy Khose, Advocate, S.R.No.32309

+2 ccs to Mr.A.Antony Arokiaraj, Advocate, S.R.No.32844

W.P.Nos.4737 and 21658
of 2011

VG-II(CO)
SSM(08/05/2019).

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