

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03-10-2019

Coram

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.27135 of 2013

Tamil Nadu State Transport Corporation
(Salem) Limited,
Dharmapuri Division, Represented by
the General Manager,
Dharmapuri.

..

Petitioner

vs.

1.The Presiding Officer,
Labour Court,
Salem.

2.P.Selvam

... 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 in proceeding pursuant to the order passed in I.D.No.158 of 2008 dated 24.09.2012 on the file of the first respondent and quash the same.

For Petitioner : Mr.R.K.Gandhi

For Respondent-1 : Labour Court

For Respondent-2 : No Appearance

O R D E R

The Award of the Labour Court dated 24.09.2012 passed in I.D.No.158 of 2008 is under challenge in the present writ petition.

2. The writ petitioner is the Tamil Nadu State Transport Corporation (Salem) Limited. The second respondent-workman was employed as a Conductor in the writ

petitioner-Corporation since from 25.11.1987. The second respondent-workman was working in the Dharmapuri Branch, but without any prior information or intimation, the second respondent-workman remained unauthorisedly absented himself and not attended duty from 27.01.2000 to 16.02.2000 and from 05.03.2000 onwards. In terms of Section 16(E) of the Certified Standing Orders of the respondent-Transport Corporation, the unauthorised absence of the second respondent-workman was a grave misconduct, which reads as under:-

"Absenting for duty without prior permission habitually or continuously and alternately absenting for duty without prior permission for more than 300 days"

Further, under Clause 8(1) of the Certified Standing Orders of the Corporation,

"The employee is expected to apply leave well in advance"

Hence, the management issued the following different charge memos dated 02.05.2000, 05.06.2000, 15.06.2000 to the second respondent.

(i) Absence from duty without prior information and permission;

(ii) Acting in an irresponsible manner;

(iii) Causing disturbance to the normal functioning of the establishment; and

(iv) Those acts are grave in nature as per the Certified Standing Orders of the Corporation."

3. The writ petitioner-Transport Corporation issued a charge memo and the second respondent-workman had received the same. However, he did not submit any explanations to the charges. A domestic enquiry was conducted and the Enquiry Officer conducted the enquiry in a proper and fair manner. In compliance with the principles of natural justice, the second respondent-workman had not come forward to defend his case. Consequently, the Enquiry Officer proceeded with the enquiry and submitted his report holding that the charges were proved against the second respondent-workman.

4. Based on the proved charges, the punishment of dismissal was imposed by the writ petitioner-management in proceedings dated 24.07.2000. The workman raised a dispute in I.D.No.158 of 2008.

5. The learned counsel for the writ petitioner-Transport Corporation states that the second respondent-workman was unauthorisedly absented himself for duty for more than six months in several occasions, for which he was issued with charge memos and the said charges were proved before the domestic enquiry. The past conduct of the second respondent-workman was also not satisfactory and he was a frequent absentee on many occasions and the details of his previous history are enumerated hereunder:-

"Previous History

Sl.No.	Date of Misconduct	Nature	Punishment
1.	20.07.1992 to 09.10.1992	Absent	IPP for 3 months w.o.e.c.
2.	21.06.1993 to 07.07.1993	Absent	IPP for 3 months w.o.e.c.
3.	03.08.1994, 07.08.1994, 08.08.1994, 12.08.1994 to 14.08.1994, 20.08.1994, 21.08.1994	Absent	Fined Rs.25/-
4.	15.09.1994 to 21.09.1994	Absent	Warned
5.	28.05.1995 to 03.10.1995	Absent	IPP for 2 years w.c.e.
6.	11.03.1996 to 28.04.1996	Absent	IPP for 2 years w.c.e.
7.	23.05.1996 to 04.06.1996	Absent	Fined Rs.40/-
8.	25.06.1996 to 31.07.1996	Absent	IPP for 1 year w.c.e.
9.	10.08.1996 to 19.12.1996	Absent	IPP for 2 years w.c.e.
10.	29.03.1997 to 01.04.1997	Absent	Fined Rs.10/-
11.	24.04.1997 to 29.07.1997	Absent	Fined Rs.10/-
12.	08.11.1997 to 16.11.1997	Absent	IPP for 6 months w.o.c.e.

Sl.No.	Date of Misconduct	Nature	Punishment
13.	17.05.1998 to 19.05.1998	Absent	Fined Rs.40/-
14.	25.08.1998 to 29.08.1998	Absent	Fined Rs.50/-
15.	26.09.1998 to 28.09.1998, 20.10.1998 to 28.10.1998	Absent	IPP 1 year w.o.c.e.
16.	25.11.1998 to 05.12.1998	Absent	IPP 6 months w.o.c.e
17.	10.01.1999 to 19.01.1999	Absent	IPP for 3 months w.c.e.
18.	28.02.1999 to 03.03.1999	Absent	IPP for 6 months w.o.c.e.
19.	02.04.1999 to 11.04.1999	Absent	IPP for 6 months w.c.e.
20.	19.04.1999 to 23.04.1999	Absent	Fined Rs.75/-
21.	03.05.1999 to 07.05.1999, 12.05.1999 to 21.05.1999	Absent	IPP 1 year w.o.c.e.
22.	27.05.1999 to 28.05.1999, 07.06.1999 to 08.06.1999 & 18.06.1999 to 30.07.1999	Absent	IPP 1 year w.c.e.
23.	06.08.1999 to 13.08.1999 & 16.08.1999 to 18.08.1999	Absent	IPP 1 year w.o.c.e.

Sl.No.	Date of Misconduct	Nature	Punishment
24.	26.10.1999 to 27.10.1999, 02.11.1999, 07.11.1999 to 09.11.1999, 14.11.1999 to 16.11.1999 & 23.11.1999 to 26.11.1999	Absent	IPP 1 year w.o.c.e.
25.	16.12.1999 to 21.12.1999	Absent	IPP 6 months w.o.c.e.

6. The learned counsel for the writ petitioner-Transport Corporation further contended that the Labour Court also found that the enquiry was conducted in a just and proper manner and the punishment of termination was imposed based on the proved charges. The findings of the Labour Court reveals that the second respondent-workman was in unauthorised absence on several occasions and therefore, based on the past conduct of the second respondent-workman, the writ petitioner-management issued the order of termination. The order of termination was issued on 25.07.2000. An industrial dispute was raised during the year 2008. After a lapse of about 8 years from the order of dismissal issued by the writ petitioner-management, there was an enormous delay of about 8 years even in raising an industrial dispute under the Industrial Disputes Act, 1947. For all these reasons, the Award of the Labour Court is perverse.

7. Though the Labour Court found that the enquiry was conducted in compliance with the principles of natural justice, invoked the discretionary powers under Section 11-A of the Industrial Disputes Act, 1947 and set aside the punishment of dismissal and ordered for reinstatement without back wages. Accordingly, the industrial dispute was partly allowed.

8. This Court is of the considered opinion that the discretionary powers conferred under Section 11-A of the Industrial Disputes Act, 1947 cannot be used for the purpose of diluting the gravity of the proved misconducts established before the enquiry proceedings. The purport of Section 11-A of the Act is to mitigate the circumstances and to

grant certain reliefs to the workmen only in the event of establishing that the punishment is disproportionate to the gravity of the proved charges. In certain grave misconducts, the Labour Court cannot show any leniency or misplaced sympathy.

9. When the Labour Court arrived a conclusion that an enquiry was conducted in a just and fair manner and the unauthorised absence were also proved in the enquiry and the past history of the second respondent-workman reveals that he was a frequent absentee on earlier occasions several times. There is no reason whatsoever to extend the powers of discretion so as to pass an order of reinstatement. Such an exercise cannot be proper. Discretionary powers are granted in order to weigh the facts and circumstances and arrive a conclusion in judicious manner.

10. While exercising the powers of discretion, the Courts are duty bound to record the reasons. The reasons must be candid and convincing. It is not as if the Labour Court can invoke Section 11-A of the Act and granted relief without recording adequate reasons. The principles for exercise of discretionary powers are that the reasons for such an exercise must be recorded in writing with proper reasonings and on analysis. Mere sympathetic grounds, if any, raised cannot be a complaint for exercising the powers of discretion. In other words, leniency or misplaced sympathy in respect of proved misconduct is not preferable.

11. This being the principles to be followed, this Court is of the considered opinion that the Labour Court had committed an error in exercising discretionary powers for the purpose of setting aside the order of dismissal issued by the writ petitioner-Transport Corporation.

12. In this view of the matter, the Award of the Labour Court dated 24.09.2012 passed in I.D.No.158 of 2008 is quashed and consequently, the writ petition stands allowed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

Svn

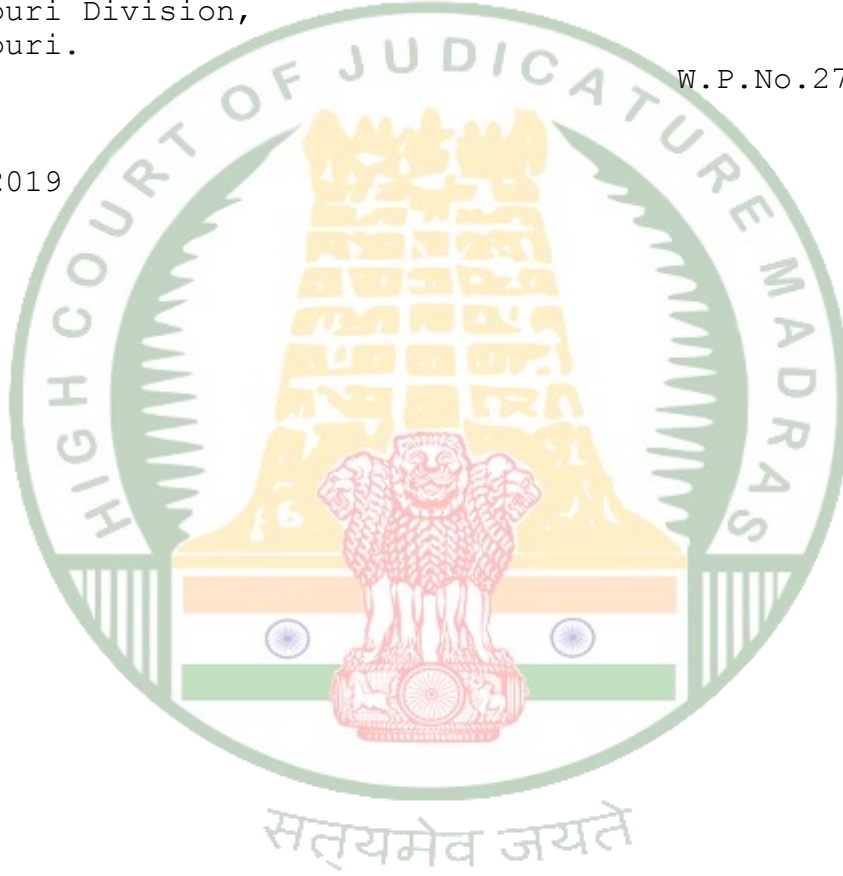
To

1.The Presiding Officer,
Labour Court,
Salem.

2.The General Manager,
Tamil Nadu State Transport Corporation
(Salem) Limited,
Dharmapuri Division,
Dharmapuri.

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