

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2019

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THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.9886 of 2011
and
M.P.No.1 of 2011

Tamil Nadu State Transport
Corporation (Salem) Ltd.,
Rep., by its Managing Director,
No.12, Ramakrishna Road,
Salem-636 007. .. Petitioner

-vs-

1.The Presiding Officer,
Labour Court, Salem.

2.L.Shanmugam .. Respondents

Petition under Article 226 of the Constitution of India
praying for issuance of Writ of Certiorari to call for the
records of the 1st respondent in I.D.No.235 of 2006, dated
28.04.2009, and quash the same.

For Petitioner : Ms.Rajeni Ramadoss

For Respondents: R1 - Labour Court

: R2 - Mr.N.E.A.Dinesh

ORDER

The award dated 28.04.2009, passed by the 1st respondent in
I.D.No.235 of 2006 is under challenge in the present writ
petition.

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

3.The 2nd respondent was employed as a driver in the writ
petitioner Corporation on 28.08.1993. A charge sheet was issued
for unauthorized absence of the 2nd respondent from 21.11.2002 to
23.04.2003 and from 26.04.2003 onwards. The 2nd respondent on

receipt of the charge memorandum, had not submitted his explanations. Therefore, a domestic enquiry was ordered. The date of enquiry was fixed on 07.05.2003 and the enquiry was adjourned thereafter on 23.05.2003, 17.06.2003, 03.07.2003 and 25.07.2003. On the last date, the 2nd respondent appeared in person and he was fully participated in the enquiry and defended by cross examining the Management witnesses. Thus, opportunity to defend the case was given to the 2nd respondent and he participated in the enquiry proceedings. The Enquiry Officer submitted his report on 26.07.2003 holding that the charges levelled against the 2nd respondent are fully proved. Thereafter, a second show cause notice was issued on 30.08.2003 and the writ petitioner Management passed an order of dismissal on 20.10.2003. Subsequently, an approval petition in A.P.No.457 of 2003 was filed under Section 33(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). The 2nd respondent has been paid Rs.6,630/- being one month as notice salary by cheque bearing no. 640951, dated 15.10.2003, payable at Indian Bank, Dharmapuri, as per Section 33(2)(b) of the Act and also enclosed the dismissal order. The approval petition filed by the Management was allowed by the Joint Commissioner of Labour confirming the dismissal order and challenging the same, the 2nd respondent workman raised an industrial dispute in I.D.No.235 of 2006. The Labour Court allowed the industrial dispute mainly on the ground that the punishment of dismissal from service is disproportionate and by invoking Section 11A of the Act.

4.The learned counsel for the writ petitioner Management made a submission that the 2nd respondent workman was unauthorizedly absent from 21.11.2002 to 23.04.2003 and again from 26.04.2003 to till date of dismissal and therefore, the period of unauthorized absence was calculated as 324 days.

5.The previous history regarding the misconducts is also narrated as extracted hereunder:-

Previous History

1	---	Misbehaviour	IPP for 2 years w.c.e.
2	16.11.1994	Not proper drive the vehicle	Fined Rs.10/-
3	16.11.1994	Improper operate the bus	Fined Rs.10/-
4	25.10.1996	Damaged tyre	Rec. Rs.100/-
5	25.10.1996	Damaged tyre	Rec. Rs.100/-

1	---	Misbehaviour	IPP for 2 years w.c.e.
6	28.02.1997	Fatal Accident	IPP for 2 years w.c.e.
7	05.02.1998	Absent 05.02.1998 to 24.02.1998	Fined Rs.25/-
8	05.03.1998	Absent 12.03.1998 to 25.03.1998	IPP for 6 months w.o.c.e
9	19.01.1999	Damage tyre	Rec. Rs.270/-
10	20.06.2000	Missed Jacky	Rec. Rs.429/-
11	27.06.2000	Damaged	Fine Rs.15/-
12	10.04.2001	Accident	Rec. Rs.100/-
13	10.04.2001	---	---
14	16.03.2002	Get amount from Private Bus	IPP for 2 years w.c.e.
15	21.11.2002	Continuous absent to till dismissal	Dismissed

6.Citing the number of days of unauthorized absence and the previous history of the 2nd respondent workman, the learned counsel for the writ petitioner Management reiterated that the Labour Court has erroneously exercised the discretionary power under Section 11A of the Act so as to grant the relief of reinstatement with continuity of service and 50% backwages. Such a long period of unauthorized absence is a grave misconduct and further, the previous history and the punishment imposed on earlier occasion were not considered by the Labour Court. Thus, the order of the Labour Court is perverse and liable to be scrapped.

7.The learned counsel appearing for the 2nd respondent workman opposed the contentions by stating that the 2nd respondent left his duty by informing his superior. He submitted medical certificate before the Labour Court. Further, his wife informed the superior officers regarding the leave taken by the 2nd respondent. This apart, the 2nd respondent is of an opinion that the disproportionality theory adopted by the Labour Court is correct, as the misconduct of unauthorized absence is not so grave. Thus, the writ petition is liable to be rejected.

8. Considering the arguments as well as the findings of the Labour Court, this Court is of an opinion that the Labour Court made a finding that "perusal of the enquiry proceedings Ex.R8 and Ex.R9 reveals that the petitioner has not filed medical certificate or explained before the enquiry officer the reason which forms the basis for remaining absent without intimation. The petitioner during the domestic enquiry admitted that he has not given prior intimation for the absence from 21.11.2002 to 23.04.2003. However, the final order includes the period from 26.04.2003 onwards. While arriving such a finding, the Labour Court has further stated that the petitioner was deprived of his right to defend himself in the domestic enquiry for the clubbed period from 26.04.2003 onwards. The said observation need not be made in view of the fact that a charge sheet was issued for unauthorized absence from 21.11.2002 to 23.04.2003 and for the period from 26.04.2003 onwards". In view of the fact that even at the time of issuance of charge sheet, conduct of domestic enquiry and till the date of dismissal, the 2nd respondent workman had not reported for duty. The Labour Court need not go into those aspects, as the same cannot be relevant for the purpose of deciding the issues raised. This apart, the Labour Court in its finding has stated that the 2nd respondent employee has not filed any medical certificate or explained before the Enquiry Officer the reasons which form the basis for remaining absent without intimation. The previous history of the 2nd respondent also reveals that small punishments were issued on several occasions.

9. Long unauthorized absence, undoubtedly, is a grave misconduct. Habitual absenteeism would undoubtedly affect the public services more specifically, the writ petitioner company, being a Transport Corporation, is an organisation for public utility service and therefore, unauthorized absence for a long period is a grave misconduct and this apart, the Labour Court also arrived a finding that the 2nd respondent had not even filed a medical certificate, nor explained the reasons for unauthorized absence. While recording findings in this way, there is no reason whatsoever for the Labour Court to set aside the order of dismissal on the ground of disproportionality. Long absence, being a grave misconduct, the punishment of dismissal cannot be construed as disproportionate. If at all the unauthorized absence is for a meagre period, that is, two days or a week, then a leniency can be shown. However, such a long unauthorized absence may not be a ground to grant the relief of reinstatement on the ground that the punishment is disproportionate.

10. The Labour Court has granted the relief merely on the ground that the act of the 2nd respondent workman amounts to

dereliction of duty, caused unnecessary hardship to the petitioner Transport Corporation. Such a finding is perverse, as the unauthorized absence of an employee would not only caused inconvenience and can be termed as dereliction of duty, but the same is a grave misconduct under the standing orders as applicable to the Transport Corporation. The long unauthorized absence being a grave misconduct, the Labour Court erroneously arrived a conclusion that the unauthorized absence is a dereliction of duty and caused inconvenience to the Transport Corporation. Such an approach cannot be accepted by this Court, as the unauthorized absence is nothing but a misconduct as per the standing orders. These being the facts and circumstances of this case, the Labour Court has committed an error in applying the theory of disproportionate, as the proved charges against the 2nd respondent are grave and the length of unauthorized absence is also to be considered, which was not considered by the Labour Court. Thus, the award of the Labour Court is perverse and not in consonance with the legal principles.

11. Accordingly, the award dated 28.04.2009, passed in I.D.No.235 of 2006 is quashed and the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Presiding Officer,
Labour Court, Salem.

+1cc to M/s.S.Rajeni Ramadoss, Advocate Sr.100133
+1cc to M/s.V.Nicholas, Advocate Sr.100050

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