

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.28986 of 2013

The Management,
rep. by its General Manager,
Tamil Nadu State Transport Corporation
(Salem Division),
12, Ramakrishna Road,
Salem - 636 007.

... Petitioner

vs.

1.The Presiding Officer,
Labour Court, Salem.

2.Thangamani

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorari, to call for the records of the 1st Respondent in Industrial Dispute No.102 of 2007 dated 18.10.2012 as illegal and against the provisions of the Industrial Disputes Act, 1947.

For Petitioner : Ms.Rajeni Ramadoss

For 2nd Respondent : Mr.M.Selvam

O R D E R

Challenging the Award dated 18.10.2012 passed by the Labour Court in I.D.No.102 of 2007, ordering reinstatement of the 2nd Respondent/employee into service with 50% backwages from 27.07.2007 and continuity of service with consequential benefits, the Transport Corporation has come up with the present Writ Petition on the ground that the 2nd Respondent/employee has absented himself from duty for nearly five months, thereby, he has caused inconvenience to the Management.

2. The Labour Court has taken note of the past records of service of the 2nd Respondent/employee and having found that he

had absented himself from duty on four occasions, held that the present misconduct cannot be considered to be grave in nature and granted the relief of reinstatement into service with 50% backwages from the date of initiating the industrial dispute till the date of superannuation, together with continuity of service and other retirement benefits.

3. Ample powers have been given to the Labour Court to interfere with the punishment imposed on an employee, as held by the Apex Court in the case of B.C.Chaturvedi vs. Union of India reported in 1996 (5) SCC 749. But, in the present case on hand, the 2nd Respondent/employee has gone into the witness box before the Enquiry Officer and stated that he has absented himself from duty, but, no Medical Certificate has been produced by him to that effect.

4. The purpose of Section 11-A of the Industrial Disputes Act, 1947 would be redundant in the Statute, if the power for modifying the punishment is not given. At this juncture, it is worth referring to a Gujarat High Court decision rendered in the case of R.M. Parmar vs Gujarat Electricity Board reported in 1983 (I) LLJ 261, relevant portion of which, is extracted hereunder:

"6. Whilst we are on the subject, we may as well advert to certain relevant factors which require to be borne in mind in exercising powers u/s. 11A. Be it realised that S. 11A was brought on th Statute Book by S. 3 of the Industrial Dispute (Amendment) Act, 1971. It was brought on Statute Book on account of the felt needs of the time as is evident from cls. 2 and 3 of the Statement of Object and Reasons (see Gazette of India - Extraordinary. Part II S. 2 page 564) reading as under :

"...The matter regarding imposition of penalty on employees (it was so realized by International Labour Organisation, an international body) could not be left solely to the discretion of the management even if the employee concerned is found to be guilty of the charge levelled against him, presumably because of the conditioned approach of the disciplinary authority with this inbuilt and inherent pro-employer-anti-employee bias. That is why in obeisance to the felt needs of the time it was considered necessary to entrust this most vital function to a neutral body. With the end in view that he employees were not treated more

harshly than they deserved in the context of facts and circumstances of the case, and that the employee could get the protection of the Labour Court which could be trusted to make a just and fair approach, the provision was introduced by way of an amendment. It is a benevolent power conferred on the Labour Court and has to be exercised in the spirit in which the provision has been enacted in order to further the intendment and purpose of the legislation, Keeping aglow before the mental eye some very important dimensions of the matter, viz.:

(1) There is widespread unemployment in our country and it is difficult to secure a job to earn enough to keep body and soul together unlike in developed countries.

(2) The State does not provide social benefits like unemployment allowance to enable a discharged employee to sustain himself and his family to some extent, as is being done in the developed countries.

(3) In imposing punishment on an erring employee an enlightened approach informed with the demands of the situation and the philosophy and spirit of the times requires to be made. It cannot be a matter of the ipse dixit of the disciplinary authority depending on his whim or caprice.

(4) Be it administration of criminal law or the exercise of disciplinary jurisdiction in departmental proceedings, punishment is not and cannot be the 'end' in itself. Punishment for the sake of punishment cannot be the motto. Whilst deliberating upon the jurisprudential dimension the following factors must be considered -

(1) In a disciplinary proceeding for an alleged fault of an employee punishment is imposed not in order to seek retribution or to give vent to feeling of wrath.

(2) The main purpose of a punishment is to correct the fault of the employee concerned by making him more alert in the future and to hold out a warning to the other employees to be careful in the discharge of their duties so that they do not expose themselves to similar punishment. And the approach to be made is the approach parents make towards an erring or misguided child.

(3) It is not expedient in the interest of the administration to visit every employee against whom a fault is established with the penalty of dismissal and to get rid of them. It would be counter productive to do so for it would be futile to expect to recruit employees who are so perfect that they would never commit any fault.

(4) In order not to attract the charge of arbitrariness it has to be ensured that the penalty imposed is commensurate with the magnitude of the fault. Surely one cannot rationally or justly impose the same penalty for giving a slap as one would impose for homicide.

(5) When different categories of penalties can be imposed in respect of the alleged fault one of which is dismissal from service, the disciplinary authority perforce is required to consult himself for selecting the most appropriate penalty from out of the range of penalties available that can be imposed, having regard to the nature, content and gravity of the default. Unless the disciplinary authority reaches the conclusion that having regard to the nature, content and magnitude of the fault committed by the employee concerned it would be absolutely unsafe to retain him in service the maximum penalty of dismissal cannot be imposed. If a lesser penalty can be imposed without seriously jeopardising the interest of the employer the disciplinary authority cannot impose the maximum penalty of dismissal from service. He is bound to ask his inner voice and rational

faculty why a lesser penalty cannot be imposed.

(6) It cannot be overlooked that by and large it is because the maximum penalty is imposed and total ruination stares one in the eyes that the employee concerned is obliged to approach the Court and avail of the costly and time-consuming machinery to challenge in desperation the order passed by the disciplinary authority. If a lesser penalty was imposed, he might not have been obliged to take recourse to costly legal proceedings which result in loss of public time and also result in considerable hardship and misery to the employee concerned.

(7) When the disciplinary proceedings end in favour of the employee the employer has often to pay back wages say for about 5 years without being able to take work from the employee concerned. On the other hand, the employee concerned would have had to suffer economic misery and mental torture for all these years. Even the misery of being obliged to remain idle without work would constitute an unbearable burden. And when the curtain drops everyone is left with a bitter taste in the mouth. All because extreme penalty of dismissal or removal is imposed instead of a lighter one.

(8) Every harsh order of removal from service creates bitterness and arouses a felling of antagonism in the collective mind of the workers and gives rise to a feeling of class conflict. It does more harm than good to the employer as also to the society.

(9) Taking of a petty article by a worker in a moment of weakness when he yields to a temptation does not call for an extreme penalty of dismissal from service. More particularly when he does not hold a sensitive post of trust (pilferage by a cashier or by a store-keeper from the stores in his charge, for instance, may be viewed with seriousness. A worker brought up and living in an

atmosphere of poverty and want when faced with temptation, ought not to, but may, yield to it in a moment of weakness. It cannot be approved, but it can certainly be understood particularly in an age when even the rich commit economic offences to get richer and do so by and large with impunity. (And even tax evasion or possession of black money is not considered to be dishonourable by and large). A penalty of removal from service is therefore not called for when a poor worker yields to a momentary temptation and commits an offence which often passes under the honourable name of Kleptomania when committed by the rich.

The Labour Court in exercising its power to reduce the penalty has to inform itself of these considerations and play the role assigned to it by its creator loyally and faithfully and in harmony with the enlightened spirit which permeates the legislation.

5. Though the Labour Court is right in interfering with the punishment imposed on the 2nd Respondent/employee, as the latter has absented himself on four occasions, this Court is of the view that the Labour Court should have deprived backwages to the employee, though continuity of service and other retirement benefits till the date of his superannuation were granted.

6. In view of the above, this Court holds that the 2nd Respondent/employee is deemed to have been reinstated in service from the date of dismissal from service with continuity of service till the date of superannuation and other consequential benefits, however, without backwages. It is made clear that continuity of service is ordered only for the purpose of granting terminal benefits.

This Writ Petition is disposed of with the above direction and observation. No costs. Consequently, connected M.P.No.1 of 2013 is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

(aeb)

To:
The Presiding Officer,
Labour Court, Salem.

+1cc to Mr.Rajeni Ramadoss Advocate, S.R.No. 65975
+1cc to Mr.M.Selvam Advocate, S.R.No. 65973

SJ(CO)
CB(04/09/2019)

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