

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.4801 of 2008
and
M.P.Nos.1 & 2 of 2012

The Management,
Tamilnadu State Transport Corporation,
No.37, Mettupalayam Road,
Coimbatore - 600 043. ... Petitioner

Vs.

- 1.The General Secretary,
Cheran Pokkuvaradhu Kazhaga
Dravidar Thozhilalar Sangam,
Regn No.704/Kovai,
No.9, Subramaniapillai Street,
Singanallur Post, Coimbatore - 641 005.
Rep. by its Authorised Representative A.Mani
- 2.The Presiding Officer,
Labour Court, Coimbatore. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari calling for the records relating to the award of the Second Respondent passed in I.D.No.229 of 1999 dated 20.10.2005 and quash the same.

For Petitioner : Mr.P.Kannan Kumar
For R1 : No appearance

O R D E R

The present Writ Petition is filed for issuance of writ of Certiorari, calling for the records relating to the award of the Second Respondent passed in I.D.No.229 of 1999 dated 20.10.2005 and quash the same.

2.According to the petitioner, the first respondent was working in the petitioner's Transport Corporation in Ukkadam

Branch office as an Assistant. The lunch break is between 1.00 P.M. to 1.30 P.M. On 04.11.1993, there was some commotion in Ukkadam bus stand and crowd was preventing the movement of the bus. The Branch Manager went to the bus stand and saw the first respondent in the crowd at 12.40 P.M., when he was supposed to be working at Branch Office. On coming to the Branch Office, the Branch Manager found that the first respondent has left the Branch Office without obtaining any permission from higher authorities. When the first respondent came to the Branch Office, the Branch Manager questioned the first respondent about the same. The first respondent did not give proper answer and commented whether any "wild darbar" was going on in the Branch. The Branch Manager issued a memo on the same day to the first respondent. The explanation submitted by the first respondent was not satisfactory. The Branch Manager sent a report to the higher authority, based on which a show cause notice dated 25.11.1993 was issued to the first respondent and since his explanation was not satisfactory, a domestic enquiry was conducted. The first respondent was placed under suspension from 30.11.1993. The first respondent participated in the enquiry and the Enquiry Officer gave a finding that charges made against the first respondent was proved. The order of suspension was revoked on 08.01.1994 at the request of the first respondent.

2(a) After receipt of enquiry report, a second show cause notice was issued to the first respondent. The explanation submitted by the first respondent was not satisfactory and hence the petitioner Corporation, accepting the finding of the enquiry officer that the charges of the first respondent are proved, by order dated 11.07.1995 informed the first respondent that out of 44 days of suspension, 30 days of suspension would be treated as specific punishment and the remaining 14 days of suspension would be treated as duty period. The first respondent preferred an appeal to the Managing Director of the petitioner Corporation and the Managing Director of the petitioner considered the case of the first respondent sympathetically and by the order dated 01.09.1995, reduced the punishment of 30 days suspension period to 15 days and the remaining 15 days was considered as leave subject to eligibility.

3. Against the said order, the first respondent raised Industrial Dispute in I.D.No.229 of 1999 on the file of the second respondent to set aside the punishment of suspension. Before the second respondent, the petitioner did not let in any oral evidence. The petitioner marked nineteen documents as Ex.M1 to Ex.M19. The first respondent did not let in any

oral and documentary evidence. The second respondent, considering the pleadings and documents filed by the petitioner, held that in the charge memo issued to the first respondent, certain additional charges were included which were not found in the show cause notice issued by the Branch Manager and the Enquiry Officer has not given any definite finding with regard to charges mentioned in the show cause notice issued by the Branch Manager and the Enquiry Officer traveled beyond the show cause notice and the findings recorded by him is in violation of principles of natural justice. Based on the above finding, the second respondent has held that the petitioner failed to prove the misconduct alleged against the first respondent and set aside the punishment of 15 days suspension and held that the misconduct alleged against the first respondent was not proved by the petitioner and preponderance of probabilities are in favour of the first respondent to hold that he never committed any misconduct as alleged by the petitioner and also held that the first respondent is entitled for the relief as claimed by him. Against the said award dated 20.10.2005 made in I.D.No.229 of 1999 passed by the second respondent, the petitioner has come out with the present Writ Petition.

4.The learned counsel appearing for the petitioner submitted that no prejudice was caused to the first respondent, even though the charge memo/Ex.M2 traverse beyond the charges stated in Ex.M4/show cause notice. The second respondent ought to have given an opportunity to the petitioner for proving the charges leveled against the first respondent. The second respondent ought to have seen that the charges stated in the notice attracts clause 14 (k) of the standing order. The second respondent ought to have seen that the charges framed against the first respondent was proved beyond reasonable doubt and without proper appreciation of evidence and without application of mind, passed the impugned award and prayed for setting aside the award of the Tribunal.

5.Though notice has been served on the first respondent and his name is printed in the cause list, there is no representation for him either in person or through counsel.

6.Heard the learned counsel appearing for the petitioner and perused the entire materials on record.

7.From the materials available on record it is seen that according to the petitioner, the first respondent has left the Branch Office on 04.11.1993, without obtaining any

permission from the higher authorities and he was found in Ukkadam bus stand in the crowd, during the commotion. When his Branch Manager questioned about his leaving the Branch Office without permission, the first respondent did not give proper answer and commented whether any "wild darbar" is going on in the Branch Office. For the said reason, the show cause notice was issued by the Branch Manager to the first respondent. The Branch Manager has sent a report to the higher authorities, as the explanation submitted by the first respondent was not satisfactory. A charge memo/Ex.M2 was issued to the petitioner. In the said charge memo, in addition to the charges in Ex.M4/show cause notice, certain other charges were also included. A domestic enquiry was conducted against the first respondent. The Enquiry Officer gave a finding that all the charges leveled against the first respondent were proved. The second respondent in the Industrial Disputes raised by the first respondent, considering Exs.M2, M4, report of the Enquiry Officer and the documents filed, came to the conclusion that the petitioner failed to prove the charges leveled against the first respondent and the report of the Enquiry Officer is invalid. From the award it is seen that the second respondent has considered all the materials on record and had given valid reason for allowing the claim of the first respondent. There is no perversity in the award passed by the second respondent warranting interference by this Court.

8. In the result, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

krk/rgr

To

The Presiding Officer,
Labour Court,
Coimbatore.

pa (CO)
A.SK(21/08/2019)

W.P.No.4801 of 2008 and
M.P.Nos.1 & 2 of 2012

01.07.2019



WEB COPY