

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.11.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.30063 of 2014

and

MP.Nos.2 of 2014 and 3 and 4 of 2015

Tamilnadu State Transport Corporation (Villupuram) Ltd.,
Cuddalore Region,
Cuddalore,
Represented by its General Manager.

..Petitioner

vs

1. V. Ravichandran
2. The Presiding Officer,
Labour Court,
Cuddalore.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari or any writ, order or direction to call for the records of the 2nd respondent made in I.D.No.32/2013 dated 24.06.2014 and to quash the same as illegal.

For Petitioner : Mr. K. Kulandaivelu
for Mr. A. Antony Arokiaraja

For Respondents: R1-No appearance
R2- Labour Court.

O R D E R

The award dated 24.06.214 passed in ID No. 32 of 2013 dated 24.06.2014 is under challenge in the present Writ Petition.

2. The management is Tamil Nadu State Trasport Corporation (Villupuram) Limited.

3. The learned counsel for the petitioner states that the first respondent employee was employed as a driver in the writ petitioner corporation. The first respondent employee was unauthorizedly absent from duty from 13.06.2018 onwards.

4. The learned counsel for the writ petitioner corporation states that the period of unauthorized absence was from 13.06.2008 to 12.04.2010 nearly about 2 years he was unauthorizedly absent from reporting for duty. Thus the writ petitioner management instituted a disciplinary proceedings and on receipt of explanation which was not satisfactory, domestic enquiry was conducted. The enquiry officer conducted an enquiry by affording an opportunity to the delinquent employee. The enquiry report states that the charges against the first respondent were held proved. The second show cause was issued on 08.05.2009. Thereafter on receipt of further explanation from the delinquent employee, the writ petitioner management issued an order of dismissal on 12.04.2010 against the first respondent employee. The first respondent raised an industrial dispute in ID No.32 of 2013 challenging the dismissal. The Labour Court categorically made a finding that the first respondent employee had not produced any proof or had obtained any permission to go on leave for such a long period from 2008 to 2010. Under those circumstances, the Labour Court made a finding that the writ petitioner management had proved the fact that the employee was absent from duty for about 5 or 6 months without any approval or permission. The Labour Court held that such an unauthorized absence is an act of misconduct.

5. A perusal of the award further reveals that the first respondent was afforded with an opportunity to defend his case before the enquiry officer and the enquiry was conducted in a just and fair manner. As far as the misconduct is concerned, the Labour Court categorically made a finding that the 'petitioner deserves to be punished'. In paragraph 11 of the award, it is stated that the petitioner is to be punished however the Labour Court had gone further and considered to show leniency on the first respondent and invoked Section 47 of the Persons with Disabilities [Equal Opportunities] Protection of Rights and full Participation Act, though invoking the provisions of the Disability Act would not arise in this case. In view of the fact that the provisions that provide a light duty or an alternative employment procedure is to be followed and the persons who have claimed the alternative employment must be examined by the competent medical board by following the procedures. In the absence of following any such procedure, the Labour Court suo motu arrived at a conclusion that the case of the first respondent is to be considered with reference to Section 47 of the Disability act. Such an observation is made merely based on certain misplaced sympathy. With reference to the pleadings made regarding misplaced sympathy or leniency cannot be a ground to invoke section 11 A of the Industrial Disputes Act. In the event of any such misplaced sympathy the very purpose of the disciplinary proceedings would be defeated.

The Labour Court while accepting the fairness of the enquiry had found that the misconduct against the first respondent was established and the unauthorized absence was for about three years and made a finding that the first respondent employee deserves to be punished then there is no reason whatsoever to invoke the provision under Section 47 of the Disability Act, so as to grant the relief of reinstatement with back wages and continuity of service. In the matter of disciplinary proceedings when the grave misconduct is proved against the employee then the Courts must be refrained from showing any leniency or misplaced sympathy. The honourable Supreme Court of India in the case of "Life Insurance Corporation of India Vs. R.Dhandapani [reported in 2006 13 SCC 613]" held as follows:

"7. It is not necessary to go into in detail regarding the power exercisable under Section 11-A of the Act. The power under said Section 11- A has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words 'disproportionate' or 'grossly disproportionate' by itself will not be sufficient.

8. In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings.

Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability".

6. This Court is of the considered opinion that the power of discretion is to be exercised cautiously if any mitigating circumstances had arisen on account of certain injustice. In all other circumstances by exercising the discretionary power the proved misconduct against the employee can never be considered otherwise by the Court. The very purpose of institution of disciplinary proceedings are to maintain discipline and in the event of showing any such misplaced sympathy or leniency, the very morale and efficiency in administration would undoubtedly be collapsed. This being the principles to be followed, while exercising the power under section 11 A, this Court is of the opinion that there is no reason in to invoke Section 47 of the Disability Act so as to consider the illness. Even in case of illness the first respondent ought to have submitted medical certificate or the medical leave letter to the competent authority. Contrarily he remained unauthorizedly absent for several months. Due procedure was followed by the management by conducting the enquiry and under these circumstances the award of the Labour Court is perverse and not in consonance with the established principles of law. Consequently, the award dated 24.06.2014 passed in ID.No.32 of 2013 is quashed and the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

mrn

To

1. The Presiding Officer,
Labour Court,
Cuddalore.

WEB COPY

2. Tamilnadu State Transport Corporation (Villupuram) Ltd.,
Cuddalore Region,
Cuddalore.

+1 CC to Mr.A. Antony Arokiaraja, Advocate sr 93593.

W.P.No.30063 of 2014
and

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PVS (CO)
SP (27/12/2019)



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