

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.8274 of 2017

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

...Petitioner

vs.

1. The Special Deputy Commissioner of Labour,
DMS Compound, Anna Salai,
Chennai.

2.V.Vasudevan.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records passed by the 1st respondent made in Approval petition No.176 of 2012 dated 13.11.2015 and to quash the same and against the provisions of the Industrial Disputes Act, 1947.

For Petitioners : M/s.Rajeni Ramadoss
For Respondents : Mr.J.Ramesh
Additional Government Pleader
for R1.
M/s.S.Girija for R2

O R D E R

The order passed by the first respondent in Approval Petition No.176 of 2012 dated 13.11.2015 is under challenge in the present writ petition.

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

3. The learned counsel for the writ petitioner states that the second respondent Mr.V.Vasudevan, was employed as driver at

Namakkal (M) Branch in the petitioner's Corporation. The second respondent did not report for duty continuously from 23.10.2011 onwards, without any prior permission and intimation. The unauthorized absence is a misconduct, as per clause 19(1)(F) of the modal standing order of the petitioner corporation. Consequently, a charge memo was issued in proceedings dated 18.11.2011, based on the basic report received from the Branch Manager of Namakkal (M) Branch. The second respondent did not come forward to submit his explanation and consequently, an enquiry officer was appointed for conducting the domestic enquiry. Sufficient opportunity was provided to the workman to defend his case. The second respondent had participated in the enquiry on 01.03.2012 and he was permitted to examine/cross-examine the Management witnesses and also to peruse the documents and records to defend his case. Therefore, the enquiry was conducted in compliance with the principles of natural justice. The enquiry officer submitted his report on 16.02.2012, wherein the charges leveled against the 2nd respondent were held proved. Based on the findings of the enquiry officer, the second show cause notice was issued on 15.03.2012. Subsequently, the punishment of dismissal was imposed on the second respondent. The order of dismissal was issued on 05.05.2012, along with one month salary to the second respondent. Since there was a wage dispute pending on the file of the 1st respondent in ref.No.C1/37589/2007, the petitioner Management sought the approval of the 1st respondent with regard to the dismissal as under Section 33(2)(b) of the Industrial Disputes Act, 1947. The unauthorized absence was calculated as 223 days and the second respondent/workman never approached the Management either in person or through the leave letter. Therefore, the Management was constrained to impose the penalty of dismissal from service.

4. The learned counsel appearing on behalf of the writ petitioner/Management states that the second respondent/workman was a habitual absentee and on earlier occasion, he remained on unauthorized absence. It is brought to the notice of this Court that even during the pendency of the writ petition, the Management has taken a decision to reinstate the second respondent in service. Accordingly, he was reinstated and joined duty on 05.01.2019. Subsequently, he remained absent from service on 25.03.2019 onwards. Therefore, the second respondent is not entitled for any relief. The previous history of the second respondent is narrated as under:

Previous History

1.	13.08.1994	N0135 Damaged Glass	Rec.Rs.200/-
2.	01.08.1994	N0075Damage	Rec.Rs.45/-
3.	07.03.1995	N0028 Caused an accident	Put-off duty 7 days

4.	02.06.1995	TML7486 Caused an accident	Rec.Rs.1000/-
5.	25.10.1995	Unauthorized absent days-2	Recovered Rs.50/-
6.	17.03.1996	Damaged Glass	Warned
8.	29.10.1996	Unauthorized absent days-48	Increment postponed for 1 year without cumulative effect
9.	03.09.1997	N0487 Damaged tyre	Recovered Rs.60/-
10.	27.11.1997	Unauthorized absent	Fined Rs.30/-
11.	25.04.1998	N0719 Damaged Glass	Recovered Rs.25/-
12	28.02.1998	N0502 Damaged tyre	Recovered Rs.165/-
13.	01.01.1999	N1146 Damaged Glass	Recovered Rs.25/-
14.	16.02.1999	Failed into pick-up Passengers	Fined Rs.100/-
17.	17.06.1998	Unauthorized absent	Dismissed.
18.	20.04.2000	N0591 Damaged Tyre	Recovered Rs.40/-
19	20.04.2000	N0591 Damaged Glass	Recovered Rs.45/-
20	02.07.2000	Damaged Spring Leafs	Increment postponed for three months without cumulative effect
21	06.12.2000	Unauthorized absent days-1 DA	Increment postponed for 1 year without cumulative effect
22	02.02.2001	Unauthorized absent days-23	Increment postponed for 6 months without cumulative effect
23	15.12.2001	Failed to attend allotted duty	Severely warned
24	05.02.2002	Unauthorized absent days-34	Reduced Basic pay by 2 stage
25	18.07.2002	N1275 Damaged Tyre	Penalty Rs.50/-
26	04.04.2002	N1027 Damaged Tyre	Increment postponed for 9 months without cumulative effect
27	10.11.2002	N1437 Minor Accident	Increment postponed for 6 months without cumulative effect
28	05.10.2002	N1437 Damaged the show light	Recovered Rs.50/-
29	26.08.2003	N1307 Damaged Tyre	Recovered Rs.60/-

30	10.09.2004	Unauthorized absent days -39	Increment postponed for 2 year without cumulative effect
31	28.01.2005	Unauthorized absent days -23	Increment postponed for 1 year without cumulative effect
32	28.03.2005	Unauthorized absent days -29	Increment postponed for 2 year without cumulative effect
33	27.05.2005	Unauthorized absent days -31	Increment postponed for 1 year without cumulative effect
34	22.10.2005	Unauthorized absent days -213	Increment postponed for 1 year without cumulative effect
35	20.02.2007	Unauthorized absent days -14	Censured
36	29.01.2007	Unauthorized absent days -14	Censured
37	06.04.2007	Damaged Bumper	Recovered Rs.50/-
38	13.08.2007	Unauthorized absent days -17	Increment postponed for 3 year without cumulative effect
39	04.01.2008	Unauthorized absent days -51	Increment postponed for 2 year without cumulative effect
40	19.07.2008	N0688 Fatal Accident	Increment postponed for 2 year with cumulative effect
41	03.06.2010	Unauthorized absent days -9	Increment postponed for 2 year with cumulative effect
42	21.06.2010	Unauthorized absent days	Increment postponed for 5 year with cumulative effect
43	20.10.2009	Unauthorized absent days -15	Increment postponed for 3 year with cumulative effect
44	27.12.2009	Unauthorized absent days -111	Increment postponed for 3 year with cumulative effect

45	06.11.2009	Unauthorized absent days -14	Increment postponed for 3 year with cumulative effect
46	02.02.2011	Unauthorized absent days-1	Increment postponed for 3 months without cumulative effect
47	30.05.2011	Unauthorized absent days -81	Increment postponed for 2 year with cumulative effect
48	23.10.2011	Unauthorized absent days	Dismissed
49.	25.03.2019	Unauthorized absent days	Pending

5. It is contended that the labour Court considered all the points in favour of the Management, however, found that one month salary was not paid to the workman and therefore, the approval petition was rejected. The Labour Court in its findings held that the dearness Allowance for a sum of Rs.641/- was not paid to the workman along with notice and therefore, the approval petition cannot be granted. In this regard, the learned counsel for the writ petitioner states that in the year 2012, the Dearness Allowance was not paid to any of the employees working in the writ petitioner/Transport Corporation, as the same was not approved by the Government during the relevant point of time. The Dearness Allowance was not calculated and paid to all the employees in the writ petitioner/Transport corporation. Therefore, the Dearness allowance was not calculated along with one month salary, which was paid to the second respondent in this writ petition. The salary was calculated on par with other employees, and the said aspect was not disputed by the second respondent. The Dearness Allowance was not sanctioned by the Government and it was not paid to any of the employees of the Transport Corporation. This being the factum, the non-payment of the Dearness Allowance of Rs.641/- to the second respondent/workman, would not affect the provisions of the Act and would not construe as a violation of the provisions of the Act. In this regard, the order of the Labour Court is perverse.

6. The learned counsel for the second respondent states that the second respondent had participated in the enquiry and established his grievances. It is contended that the second respondent was going for medical treatment and had undergone an eye surgery. Therefore, he was not in a position to report for duty.

7. Even in such cases, the second respondent ought to have approached the competent authority for redressal of his

grievances. Contrarily, the second respondent cannot remain on unauthorized absence for an unspecified period. Unauthorized absence is a misconduct and in the present case, the employee concerned must approach the competent authority along with medical reports and the leave application. However, no such application or prior permission was taken by the second respondent and therefore, this Court is not inclined to consider the grounds raised in this regard.

8. In this regard, the learned counsel for the writ petitioner cited the judgment of the Hon'ble Supreme Court of India in the case of Lalla Ram vs. D.C.M. Chemical Works Ltd and Another [(1978) 3 SCC 1]. The guidelines formulated by the Supreme Court with reference to the issues to be considered by the competent authority under the approval petition filed under Section 33(2)(b) of the Industrial Disputes Act, 1947. In paragraph-12 of the Supreme Court judgment (cited supra), the following guidelines are issued and the said guidelines are extracted hereunder:-

"12. The position that emerges from the above quoted decisions of this Court may be stated thus: In proceedings under Section 33(2)(b) of the Act, the jurisdiction of the Industrial Tribunal is confined to the enquiry as to (i) whether a proper domestic enquiry in accordance with the relevant rules/Standing Orders and principles of natural justice has been held; (ii) whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out; (iii) whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimise the employee regard being had to the position settled by the decisions of this Court in Bengal Bhatdee Coal Co. v. Ram Prabesh Singh [AIR 1964 SC 486 : (1964) 1 SCR 709 : (1963) 1 LLJ 291 : 24 FJR 406], Titaghur Paper Mills Co. Ltd. v. Ram Naresh Kumar [(1961) 1 LLJ 511 : (1960-61) 19 FJR 15], Hind Construction & Engineering Co. Ltd. v. Their Workmen [AIR 1965 SC 917 : (1965) 2 SCR 85 : (1965) 1 LLJ 462 : 27 FJR 232], Workmen of Messrs Firestone Tyre & Rubber Company of India (P) Ltd. v. Management [(1973) 1 SCC 813 : 1973 SCC (L&S) 341 : AIR 1973 SC 1227 : (1973) 3 SCR 587] and Eastern Electric & Trading Co. v. Baldev Lal [(1975) 4 SCC 684 : 1975 SCC (L&S) 382 : 1975 Lab IC 1435] that though generally speaking the award of punishment for misconduct under the Standing Orders is a matter for the management to decide and the Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe yet

an inference of mala fides may in certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or shockingly disproportionate punishment; (iv) whether the employer has paid or offered to pay wages for one month to the employee and (v) whether the employer has simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him. If these conditions are satisfied, the Industrial Tribunal would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If however, the domestic enquiry suffers from any defect or infirmity, the labour authority will have to find out on its own assessment of the evidence adduced before it whether there was justification for dismissal and if it so finds it will grant approval of the order of dismissal which would also relate back to the date when the order was passed provided the employer had paid or offered to pay wages for one month to the employee and the employer had within the time indicated above applied to the authority before which the main industrial dispute is pending for approval of the action taken by him."

9. The five points to be considered by the Authorities Competent, while considering the application filed under Section 33(2)(b) of the Industrial Disputes Act, 1947, are narrated by the Supreme Court in the paragraph cited supra.

10. With reference to the principles laid down by the Supreme Court in the Judgment cited supra, the labour Court held four points in favour of the writ petitioner/Management and as far as the payment of one month salary is concerned, the Labour Court arrived at a conclusion that the Dearness Allowance amounting to Rs.641/- has not been paid to the second respondent/employee. As far as the Dearness Allowance is concerned, it is clarified that the Government has not sanctioned the Dearness allowance and therefore, the said benefit was not granted to any employee of the Transport Corporation. This being the factum, this Court is of the opinion that there is no reason whatsoever to reject the approval petition filed by the writ petitioner.

11. Taking note of the fact that the second respondent/workman was given warning on several occasions regarding the misconduct of unauthorized absence, this Court is of the opinion that there is no reason whatsoever to reject the approval petition filed by the writ petitioner. Further, the punishment cannot be construed as harsh, as the second

respondent was a habitual absentee and even during the pendency of the writ petition, on reinstatement, he remained as an unauthorized absentee with effect from 25.03.2019. This being the factum, the order of the Labour Court dated 13.11.2015 passed in Approval petition No.176 of 2012 is quashed.

12. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

To

The Special Deputy Commissioner of Labour,
DMS Compound, Anna Salai,
Chennai.

+1 CC to Mr.S. Rajeni Ramadoss, Advocate sr 87456
+1 CC to Govt. Pleader sr 87326.

W.P.No.8274 of 2017

SP(21/11/2019)

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