

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18-11-2019

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.8275 OF 2017

AND

W.M.P.NO.9066 OF 2017

The Management,
Tamil Nadu State Transport Corporation (Salem) Ltd.,
12, Ramakrishna Road, Salem-7
Represented by its General Manager. .. Petitioner

-vs-

1. The Presiding Officer,
The Labour Court,
Salem.
2. R.S.Jesudoss ... Respondents

Petition under Article 226 of the Constitution of India
praying for issuance of a Writ of Certiorari, calling for the
records of the first respondent made in I.D.No.30 of 2013, dated
16.02.2016 and to quash the same as illegal and against the
provisions of the Industrial Disputes Act, 1947.

For Petitioner : M/s.Rajeni Ramadoss

For Respondent-1 : Labour Court

For Respondent-2 : Mr.P.M.Subramanian for
Ms.S.Girija.

ORDER

The Award dated 16.02.2016 passed by the first
respondent-Labour Court in I.D.No.30 of 2013, 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 was employed as a Conductor and he did not report for duty from 25.05.2011 onwards without any prior permission and prior intimation. The unauthorised absence by the employees of the Transport Corporation is a misconduct as per Clause 19(1)F of the Certified Standing Orders of the writ petitioner-Transport Corporation. The writ petitioner-Management issued a charge memo dated 14.06.2011 to the second respondent based on the report received from the Branch Manager. The second respondent-employee submitted his explanation on 24.06.2011 and the writ petitioner-Management is ordered for the domestic enquiry as the explanation submitted by the second respondent-employee was not found satisfactory.

4. A domestic enquiry was conducted and the Enquiry Officer submitted his report, holding that the charges levelled against the second respondent-employee are proved. Accordingly, second show cause notice was issued and the second respondent-employee was dismissed from service, along with one month salary, on 23.04.2012. The second respondent-employee was permitted to cross-examine the management witnesses and he was permitted to peruse all the records in the enquiry proceedings.

5. The learned counsel for the writ petitioner-Management made a submission that the second respondent-employee had committed various offences on 13 separate occasions, including the misconduct of unauthorised absence in two separate occasions previously. The learned counsel for the writ petitioner-Management states that the second respondent-employee raised an industrial dispute in I.D.No.30 of 2013 and the Labour Court allowed the same. Thus, the present writ petition has been filed by the writ petitioner-Management.

6. It is contended that the second respondent-employee remained unauthorisedly absent for duty from 25.05.2011 onwards and the total days of unauthorised absence was 328 days. The labour Court, without considering the gravity of the proved charges and the previous history of the second respondent-employee, passed an Award, reinstating the second respondent-employee with continuity of service and without back wages.

7. The previous history of the second respondent-employee is narrated as under:-

S.No.	Date of Misconduct	Nature of Misconduct	Punishment Awarded
1.	11-08-1996	Less remittance	IPP for 6 months w.o.c.e.
2.	04.12.1997	F.N.C.	Fined Rs.25/-
3.	04.03.1998	Stopped at unauthorised place	Warned
4.	10.10.1998	F.N.C.	Warned
5.	01.12.1998	Shortage	Warned
6.	01.12.1998	Shortage	Warned
7.	24.02.1999	F.N.C.	Fined Rs.30/-
8.	07.10.1999	Less fare luggage F.N.C.	Fined Rs.30/-
9.	06.03.2000	Unauthorised absent days-20	IPP for 3 months w.o.c.e.
10.	25.01.2000	Unauthorised absent days-3	Fined Rs.20/-
11.	17.03.2001	Stopped at unauthorised place	Warned
12.		Less Collection	Warned
13.	10.06.2005	F.N.C.	Fined Rs.25/-
14.	13.03.2008	Luggage F.N.C.	Censured
15.	25.05.2011	Unauthorised absent	Dismissed

8. The learned counsel for the writ petitioner-Management relied on the judgment of the Hon'ble Supreme Court of India in the case of Chennai Metropolitan Water Supply & Sewerage Board vs. T.T. Murali Babu [(2014) 4 SCC 108], wherein in paragraphs-30, 31 and 32, the Supreme Court held as under:-

"30. In Coal India Ltd. v. Mukul Kumar Choudhuri [Coal India Ltd. v. Mukul Kumar Choudhuri, (2009) 15 SCC 620 : (2010) 2 SCC (L&S) 499] , the Court, after analysing the doctrine of proportionality at length, ruled thus: (SCC p. 634, paras 19-21)

"19. The doctrine of proportionality is, thus, well-recognised concept of judicial

review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision-maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.

20. One of the tests to be applied while dealing with the question of quantum of punishment would be: Would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment.

21. In a case like the present one where the misconduct of the delinquent was unauthorised absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have intention nor desired to disobey the order of higher authority or violate any of the Company's rules and regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgment, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh

but grossly in excess to the allegations."

After so stating the two-Judge Bench proceeded to say that one of the tests to be applied while dealing with the question of quantum of punishment is whether any reasonable employer would have imposed such punishment in like circumstances taking into consideration the major, magnitude and degree of misconduct and all other relevant circumstances after excluding irrelevant matters before imposing punishment.

31. It is apt to note here that in the said Mukul Kumar Choudhuri case [Coal India Ltd. v. Mukul Kumar Choudhuri, (2009) 15 SCC 620 : (2010) 2 SCC (L&S) 499] the respondent had remained unauthorisedly absent from duty for six months and admitted his guilt and explained the reasons for his absence by stating that he neither had any intention nor desire to disobey the order of superior authority or violate any of the rules or regulations but the reason was purely personal and beyond his control. Regard being had to the obtaining factual matrix, the Court interfered with the punishment on the ground of proportionality. The facts in the present case are quite different. As has been seen from the analysis made by the High Court, it has given emphasis on past misconduct of absence and first time desertion and thereafter proceeded to apply the doctrine of proportionality. The aforesaid approach is obviously incorrect. It is tell-tale that the respondent had remained absent for a considerable length of time. He had exhibited adamant attitude in not responding to the communications from the employer while he was unauthorisedly absent. As it appears, he has chosen his way, possibly nurturing the idea that he can remain absent for any length of time, apply for grant of leave at any time and also knock at the doors of the Court at his own will.

32. The learned counsel for the respondent has endeavoured hard to impress

upon us that the respondent had not been a habitual absentee. We really fail to fathom the said submission when the respondent had remained absent for almost one year and seven months. The plea of absence of "habitual absenteeism" is absolutely unacceptable and, under the obtaining circumstances, does not commend acceptance. We are disposed to think that the respondent by remaining unauthorisedly absent for such a long period with inadequate reason had not only shown indiscipline but also made an attempt to get away with it. Such a conduct is not permissible and we are inclined to think that the High Court has erroneously placed reliance on the authorities where this Court had interfered with the punishment. We have no shadow of doubt that the doctrine of proportionality does not get remotely attracted to such a case. The punishment is definitely not shockingly disproportionate."

9. In the judgment, cited *supra*, the Hon'ble Supreme Court specifically made an observation that it is a tell-tale that the respondent had remained absent for a considerable length of time. Therefore, the interference of the Courts by applying the 'Theory of Proportionality' is perverse.

10. The learned counsel appearing on behalf of the second respondent-employee disputed the contentions raised by the learned counsel for the writ petitioner-Management by stating that undoubtedly the second respondent-employee remained unauthorisedly absent on two occasions previously. However, that is for about 3 days and 20 days respectively. In similar cases, where there was unauthorised absence of six months, the Courts have considered the cases and ordered for reinstatement. Thus, a similar approach is to be made in respect of the present case also.

11. The learned counsel for the second respondent-employee reiterated that the Labour Court rightly exercised the discretionary powers conferred under Section 11-A of the Industrial Disputes Act, 1947. The Labour Court applied the 'Theory of Proportionality' and arrived a conclusion that the punishment of dismissal from service is harsh and excessive.

12. The learned counsel for the second respondent-employee reiterated that the second respondent served in the writ petitioner-Transport Corporation for a considerable length of time and on earlier occasions, the second respondent-employee

had performed his duties diligently. When an employee had served for long years and the disciplinary proceedings were taken for the allegations of unauthorised absence, then the imposition of major penalty of dismissal is excessive and not in commensuration with the gravity of the allegations. Thus, there is no error in exercising the discretionary powers under Section 11-A of the Industrial Disputes Act, 1947 by the Labour Court. The second respondent-employee had not reported for duty due to the ailment of 'Acide Peptic Disease' and hence, he was unable to attend the duty and thus, there is every reason for the Labour Court to interfere with the quantum of punishment.

13. The learned counsel for the second respondent-employee contended that while submitting explanations to the second show cause notice, the second respondent-employee expressed his readiness to report for duty, however, the punishment of dismissal from service was imposed. When an employee expressed his willingness to report for duty, then the writ petitioner-Management ought to have permitted the second respondent-employee to join duty. Contrarily, they have imposed the punishment of dismissal from service, which is not in commensuration with the gravity of the allegations.

14. The learned counsel for the writ petitioner-Management disputed the said contention of the learned counsel for the second respondent-employee, by stating that the second respondent-employee, on initiation of disciplinary proceedings, was not placed under suspension. The second respondent-employee submitted his explanations to the charge memo and participated in the domestic enquiry proceedings. Thereafter, he cross-examined the witnesses and availed the opportunities. But during all these occasions, the second respondent-employee never expressed his willingness to report for duty.

15. Contrarily, when second show cause notice was issued by the writ petitioner-Management, with a proposal to impose the punishment of dismissal from service, then the second respondent-employee, in his explanations, has stated that he is willing to join duty. Thus, the stand taken by the second respondent-employee was an afterthought one and he never made any such statements with a bona fide intention to report for duty. Even at that point of time, for about 11 months lapse, the second respondent-employee was remained unauthorisedly absent for about 328 days. Under these circumstances, no leniency can be shown, as the unauthorised absence continued for about 11 months. Thus, the principles laid down by the Hon'ble Supreme Court in the judgment, cited supra, would apply and accordingly the exercise of power by the Labour Court is improper and not in consonance with the gravity of the proved charges.

16. The Award of the Labour Court reveals that the enquiry proceedings were conducted in a just and proper manner. The second respondent-employee admitted the fact that he had not report for duty from 25.05.2011 onwards, however, the second respondent-employee had subsequently, made a statement that he was not well. Therefore, the Labour Court arrived a conclusion that the second respondent-employee remained in unauthorised absent without any permission or intimation to the writ petitioner-Management.

17. As far as the domestic enquiry proceedings are concerned, the same was conducted in a just and proper manner. In respect of the willingness of the second respondent-employee to report for duty, the Labour Court made a finding that the said statement was made by the second respondent-employee for the first time, while submitting explanations to the second show cause notice. However, there is no record or witness to establish that the second respondent-employee expressed his willingness to report for duty all along. Therefore, the Labour Court has cancelled the punishment of dismissal from service by exercising the powers under Section 11-A of the Industrial Disputes Act, 1947.

18. The power of discretion has to be exercised sparingly. In the case of LIC of India vs. R. Dhandapani [(2006) 13 SCC 613], wherein the Hon'ble Supreme Court of India, in paragraphs-7 and 8, held as under:-

"7. It is not necessary to go into detail regarding the power exercisable under Section 11-A of the Act. The power under the 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 the 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. (See Kerala Solvent Extractions Ltd. v. A. Unnikrishnan [(2006) 13 SCC 619 : (1994) 1 Scale 631:(1994) 2 LLJ 888 (SC)] .)"

19. This Court is of the considered opinion that the power of discretion cannot be exercised excessively. The power of discretion is provided only to mitigate certain circumstances arising on account of injustice. Thus, the Courts must be cautious while exercising the power of discretion and at no circumstances, such powers can be exercised for the purpose of extending any lenience or misplaced sympathy. The Courts cannot adopt an emotional approach in moulding the relief by exercising the powers conferred under Section 11-A of the Industrial Disputes Act, 1947.

20. The power is granted only to neutralise the injustice if any caused to the working class and not for extending any leniency or misplaced sympathy. Once the grave charges/misconducts are proved beyond any doubt and the procedures contemplated are also followed scrupulously, then there is no reason to interfere with the quantum of punishment. The 'Theory of Proportionality' can be considered only if the punishment is excessive and not otherwise.

21. The concept of excessiveness may differ from one person to another person. However, while exercising such powers, the Courts must ensure that the reasons recorded for arriving such a conclusion or modification of punishment or cancellation of punishment, based on certain sound legal principles and the reasons are candid and convincing.

22. This being the principles to be followed, mere exercise of the discretionary power under Section 11-A of the Industrial Disputes Act, 1947 is not sufficient and what is required is reasons reduced to be in writing, which must be candid. Thus, this Court has no hesitation in concluding that the discretionary powers are to be exercised with reasonings and based on sound legal principles.

23. Accordingly, the Award dated 16.02.2016 passed by the first respondent-Labour Court in I.D.No.30 of 2013 stands quashed and consequently, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Svn

To

1. The Presiding Officer,
The Labour Court,
Salem.

+1cc to M/s.Rajeni Ramadoss, Advocate, S.R.No.96193
+1cc to Ms.S.Girija., Advocate, S.R.No.95458

W.P.No.8275 of 2017

MP(CO)
CS/19/12/2019

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