

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.02.2019

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

W.A No.2740 of 2018 and
CMP No.22577 of 2018

1.The Managing Director
Tamil Nadu State Transport Corporation Ltd.,
(Salem District), Salem -7.
2.The General Manager,
Tamil Nadu State Transport Corporation Ltd.,
Salem District, Salem -7.Appellants
Vs
S.AnbalaganRespondent

Prayer:- Writ Appeal filed under clause 15 of Letters Patent, against the order dated 04.09.2018 made in W.P.No.23900 of 2004 praying to issue a Writ of Certiorari calling for the records relating to the order of the second respondent in his proceedings Pa.Mu.No.103/10557/T2A/TSTC/2003 dated 22.09.2003 and the order of the first respondent in his proceedings Ku.No.A6/1523/T1/TSTC/2003 dated 3.3.2004 and quash the same.

For Appellants : Mrs.Rajeni Ramadoss

For Respondent : Mr.K.Sathish Kumar

J U D G M E N T

(Delivered by K.K.SASIDHARAN,J.)

The learned single judge notwithstanding the fact that the respondent remained absent from 10 May 2003 set aside the order passed by the disciplinary authority and directed the appellants to reinstate him with backwages quantified at 50%. Feeling aggrieved by the order passed by the learned single Judge, the Tamil Nadu State Transport Corporation is before this Court.

2. The respondent was appointed as a Junior Engineer at Anna Transport Corporation, Attur on 1 July 1995. The respondent was a habitual absentee. The respondent requested for medical leave from 19.01.2003 to 18.03.2003. He was directed to appear before

the Medical Board on 20.02.2003. The Medical Board certified that he is fit to resume duty on 21.02.2003. The respondent joined service on 21.02.2003 and worked upto 23.02.2003. Thereafter, he remained absent. The respondent later joined service and once again left without even submitting an application. The disciplinary authority therefore initiated disciplinary action. The Enquiry Officer conducted enquiry and thereafter, on the basis of the findings, the disciplinary authority imposed the punishment of removal from service.

3. Before the learned single Judge, the respondent took up a contention that he submitted leave application and there was no order passed by the disciplinary authority. There is absolutely no evidence either before the Enquiry Officer or before this Court to substantiate the said contention.

4. The learned single Judge was of the view that the charge was very vague. We are not in agreement with the said view. The charge relates to unauthorised absence. It was not the case of the respondent that at any point of time, he was not in a position to understand the nature of the charge. The respondent was put to notice at all point of time. The respondent never took up the contention of prejudice or vagueness of the charge memo issued to him. The learned Judge was therefore not correct in giving a positive finding in favour of the respondent.

5. The learned Judge in Paragraph 9 of the order observed that the reason for framing the charge against the respondent was his absence on 11.06.2003 without taking leave. According to the learned Judge, the question as to whether it was unauthorised leave was yet to be decided by the Management. Again there is no basis for the said finding.

6. The respondent miserably failed to prove that a leave application was submitted to the Management. In the absence of any such positive material suggesting submission of leave letter, the learned Judge was not correct in observing that leave was not granted at the material time by the Management.

7. There was no challenge to the procedure adopted by the Enquiry Officer. The procedural irregularity or illegality was not an issue in the writ petition. The respondent challenged the punishment before the Writ Court as if the Court exercises appellate jurisdiction over the decision taken by the Management.

8. The jurisdiction of the court in a matter of this nature is very limited. It would not be within the province of this Court to analyse the evidence collected by the Enquiry Officer

and to arrive at a different finding. It is essentially the function of the disciplinary authority. Even if two views are possible, the views taken by the disciplinary authority should be given prominence.

9. The respondent was working as a Junior Engineer. The respondent took leave and started business of his own. The material records prove the said fact. The Tamil Nadu State Transport Corporation is a sinking company. The employees like the respondent were responsible for the sorry state of affairs.

10. The learned Judge set aside the punishment imposed by the Management without any justifiable ground. We are therefore of the view that the impugned order deserves to be set aside.

11. The order dated 4 September 2018 is set aside. The writ petition in W.P.No.23900 of 2004 is dismissed.

12. The writ appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

TO:

1.The Managing Director
Tamil Nadu State Transport Corporation Ltd.,
(Salem District), Salem -7.

2.The General Manager,
Tamil Nadu State Transport Corporation Ltd.,
Salem District, Salem -7.

+1cc to Mrs.Rajeni Ramadoss, Advocate sr.no.18313
+1cc to Mr.K.Sathish Kumar, Advocate sr.no.17488

W.A No.2740 of 2018

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