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IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 24.08.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.8419 of 2011

and

M.P.No.1 of 2011

Tamil Nadu State Transport
Corporation (Salem) Ltd.,
Rep. By its Managing Director,
No.12, Ramakrishna Road,
Salem - 636 007.

...Petitioner

Vs

1.The Presiding Officer
Labour Court, Salem.

2.Murugan

...Respondents

PRAYER:- Writ Petition filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorari calling for the records of the 1st Respondent in I.D.No.72/2007, dated 26.08.2009 and quash the same.

For Petitioner : Mr.D.Raghu
Standing Counsel

For R1 : Labour Court
For R2 : Mr.T.Dhanasekaran

ORDER

By consent of both the parties, this writ petition is taken up for final disposal.

2. The second respondent herein, while serving under the petitioner- Corporation as a Conductor, was dismissed from his services on 27.02.1996, for the charges of unauthorised absence. According to the management, the second respondent herein was on unauthorised absence from 27.03.1995 onwards. The Labour Court, Salem, had passed the impugned award dated 26.08.2009, by setting aside the dismissal order dated 27.02.1996 and directed the petitioner-management to reinstate the petitioner back into service without back wages but with continuity of service.



3. The main ground raised in this writ petition by the management is that the second respondent is a habitual unauthorised absentee, which aspect has not been taken into account by the Labour Court.

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4. The learned counsel for the petitioner submitted that earlier, the second respondent herein was dismissed from his services on 19.08.1993 for unauthorised absence. Subsequently, a settlement was arrived under Section 18(1) of the Industrial Disputes Act, whereby, the second respondent was re-appointed as a fresh entrant on 20.02.1995 as a daily wage Conductor. His last drawn daily wage was fixed at Rs.91/- per day. He would further submit that after working for about one month from his re-appointment, the second respondent had again remained absent unauthorisedly from 27.03.1995, owing to which the present impugned dismissal order dated 27.02.1996 came to be passed.

5. On the other hand, the learned counsel for the second respondent would submit that the earlier unauthorised absence was not proved before the Labour Court and therefore, no interference is required with the impugned award.

6. A perusal of the award would reveal that the Labour Court had indeed gone into this aspect with regard to the claim of the management that the second respondent was unauthorisedly absent at an earlier point of time. While considering this ground raised by the management, the Labour Court had found that the management had not produced any documents to substantiate with regard to the second respondent's alleged unauthorised claim for the earlier period commencing from 19.08.1993. It is on this ground the Labour Court had found that the punishment imposed in the present impugned order was disproportionate to the charges.

7. It is needless to point out that when the management comes out with a specific ground that the second respondent was a habitual absentee, there is a duty cast on them to produce the required documents before the Labour Court to substantiate such a ground. Having failed to do so before the Labour Court, it is not now open to the management to come before this Court and attempt to substantiate this ground of habitual absence.

8. The High Court, exercising its power under Article 226 of the Constitution of India, cannot appreciate such a ground, when the management failed to substantiate their case beyond reasonable doubt before the Labour Court. On this ground, no interference is required with regard to the petitioner's claim on the earlier precedent of the second respondent's services.

9. In this background, when the award of the Labour Court was perused, this Court is in agreement with the finding that



the punishment imposed by the management could be termed as disproportionate to the charges. This Court is also in agreement with the finding rendered by the Labour Court that while reinstating the petitioner, the back wages of the second respondent was withheld. Apparently, the Labour Court had taken note of the fact that the unauthorised absence does not require full lenience and accordingly withheld the back wages and had directed reinstatement together with the benefit of continuity of service. As such, I do not find any merits in the grounds raised in the present writ petition.

10. The writ petition stands dismissed, accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

hvk

To

The Presiding Officer
Labour Court, Salem.

+1cc to Mr.D.Raghu, Advocate Sr No.42347

W.P.No.8419 of 2011

BR (CO)
PR (22/09/2021)