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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.11985 of 2018

The Management,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Represented by its General Manager,
Trichy Region,
Trichirapalli - 620 001.

... Petitioner

vs.

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

2. P.Sridhar

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, to call for the records pertaining to the order dated 12.09.2017 passed by the 1st Respondent in Approval Petition No.44 of 2013 and quash the same and consequently direct the 1st Respondent to approve the order of the Petitioner, dated 05.03.2013, dismissing the 2nd Respondent from service.

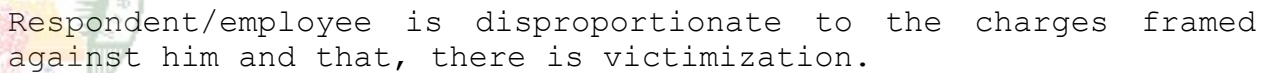
For Petitioner : Mr.D.Venkatachalam

For 2nd Respondent : Mr.V.Manisekaran

O R D E R

Petitioner/Transport Corporation has come up with this Writ Petition challenging the order dated 12.09.2017 passed by the 1st Respondent in Approval Petition No.44 of 2013 and for a consequential direction to the 1st Respondent to approve the order dated 05.03.2013 passed by them, dismissing the 2nd Respondent from service.

2. It is seen that, the 1st Respondent/Authority has rejected the Approval Petition filed by the Petitioner/Transport Corporation on the ground that, the punishment imposed on the 2nd



4. Learned counsel appearing for the 2nd Respondent/employee contended that, the act of the Petitioner/Transport Corporation is one of victimization and the Authority while dealing with an Approval Petition, can come to a conclusion that, the punishment imposed is disproportionate to the charges framed against the employee.

6. Once the domestic enquiry is held to be fair and proper, the Authority, while dealing with the Approval Petition, cannot hold that, the punishment imposed on the employee is harsh and disproportionate to the charges. As regards the issue of victimization, it is worth referring to the decision rendered by the Apex Court in the case of Bharat Iron Works vs. Bhagubhai Balubhai Patel, reported in (1976) 1 SCC 518, relevant paragraph of which, reads thus:

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scapegoat and the plea of victimization as a defence will fall flat. This is why once, in the opinion of the Tribunal a gross misconduct is established, as required, on legal evidence, either in a fairly conducted domestic enquiry or before the Tribunal on merits, the plea of victimization will not carry the case of the employee any further. A proved misconduct is antithesis of victimization as understood in industrial relations. This is not to say that, the Tribunal has no jurisdiction to interfere with an order of dismissal on proof of victimization."

7. In the case on hand, the charge of 'unauthorized absence' against the 2nd Respondent/employee is established and the Authority has clearly held that, the domestic enquiry has been conducted in a fair and proper manner. In such case, the Authority cannot go beyond his scope and hold that, the punishment imposed on the employee is disproportionate to the charges framed against him.

8. In view of the above, the order dated 12.09.2017 passed by the 1st Respondent/Authority in Approval Petition No.44 of 2013 is set aside. If the 2nd Respondent/employee is aggrieved, he is permitted to raise an industrial dispute under Section 2-A of the Industrial Disputes Act, 1947.

9. Once the Authority confirms the order passed by the Management, the order of dismissal of the employee will get merged with the order of the Authority in the Approval Petition, and the period of limitation begins from the date of grant of approval and not prior to that date, even though the dismissal order is retrospective. Hence, the period of limitation will run only from the date of the order in the Approval Petition, when the dismissal order is confirmed by the Tribunal/Authority/Board. Similarly, the period during which the Writ Petition is pending shall also be excluded for the purpose of limitation.

In fine, the Writ Petition is allowed on the above terms. No costs. Consequently, connected W.M.P.No.13968 of 2010 is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar



(aeb)

To:

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

+1cc to M/s.D.Venkatachalam, Advocate Sr No.37120

+1cc to M/s.V.Manisekaran, Advocate Sr No.37170

W.P.No.11985 of 2018

CP (CO)

PR (23/09/2021)