



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2021

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Writ Petition No.23904 of 2018

The Management,
Tamil Nadu State Transport
Corporation (Kumbakonam) Limited,
No.27, Railway Station New Road,
Kumbakonam 612 001.

... Petitioner

vs.

1. V.Ganesan
2. The Special Deputy Commissioner of Labour,
Chennai - 6.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, call for the records pertaining to the order dated 14.09.2017 passed by the 2nd Respondent in Approval Petition No.375 of 2012 and quash the same, consequently direct the 2nd Respondent to approve the order of the Petitioner dated 05.11.2012, dismissing the 1st Respondent from service.

For Petitioner : Mr.D.Venkatachalam
For 1st Respondent : V.Ajay Khose

O R D E R

Petitioner/Transport Corporation has come up with this Writ Petition challenging the order dated 14.09.2017 passed by the 2nd Respondent in Approval Petition No.375 of 2012 and for a consequential direction to the 2nd Respondent to approve the order dated 05.11.2012 passed by them, dismissing the 1st Respondent from service.

2. Though the 2nd Respondent/Authority has observed that, the domestic enquiry has been fairly conducted, one month wages have been paid in full and that, the Approval Petition has been filed within the time stipulated, he has proceeded to hold that, the punishment imposed on the employee is disproportionate to the charges and that, it amounts to victimization.

3. Learned counsel for the Petitioner/Transport Corporation contended that, when the domestic enquiry is held to be fair and proper and that, the charge of 'unauthorized



absence' against the employee is established, the question of victimization does not arise, as victimization is anti-thesis.

4. Heard the learned counsel on either side and perused the material documents available on record.

5. Once the domestic enquiry is held to be fair and proper, the Authority 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:

"12. Again victimization must be directly connected with the activities of the concerned employee inevitably leading to the penal action without the necessary proof of a valid charge against him. The question to be asked is: Is the reason for the punishment attributable to a gross misconduct about which there is no doubt or to his particular trade union activity which is frowned upon by the employer? To take an example, suppose there is a tense atmosphere prevailing in a Company because of a strike consequent upon raising of certain demands by the Union, each party calling the other highly unreasonable or even provocative, the Tribunal will not readily accept a plea of victimization as answer to a gross misconduct even when an employee, be he an active office-bearer of the Union, commits assault, let us say, upon the Manager, and there is reliable legal evidence to that effect. In such a case the employee, found guilty, cannot be equated with a victim or a 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."



6. Merely because, Approval Petition filed by the Petitioner/Transport Corporation has been rejected, it does not mean that, the 1st Respondent/employee is not barred from raising an Industrial Dispute. However, as the Transport Corporation is a 'State' within the meaning of Article 12 of the Constitution of India, in order to give a quietus to the issue and shorten the life of litigation, the Petitioner/Transport Corporation is directed to reinstate the 1st Respondent/employee in service as a fresh entrant and provide him employment to enable him to report for work from 01.10.2021.

7. In fine, the order dated 14.09.2017 passed by the 2nd Respondent/Authority in Approval Petition No.375 of 2012 is ***modified** In fine, the Writ Petition is ***Ordered accordingly**. No costs. Consequently, connected W.M.P.No.27848 of 2018 is closed.

Sd/-
Assistant Registrar(CO)
Dated 13/09/2021

*** Corrected as per order of
this Court dated 20/09/2021
made in W.P.No.23904/2018**

Sd/-
Assistant Registrar(CO)
Dated 22/09/2021

//True Copy//

Sub Assistant Registrar

aeb

To:
The Special Deputy Commissioner of Labour,
Chennai - 6.

**Substituted to the
Order already
despatched on 14/09/2021**

Copy to:-
The Management,
Tamil Nadu State Transport
Corporation (Kumbakonam) Limited,
No.27, Railway Station New Road,
Kumbakonam 612 001.

+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.*47984
+1cc to Mr.V.Ajay Khose , Advocate, S.R.No.36767
+1cc to the Government Pleader, S.R.No.37394

W.P.No.23904 of 2018

MG(CO)
CT(13/09/2021)
CT(23/09/2021)