



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2021

CORAM

THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

W.A.NO.2334 OF 2021
AND
C.M.P.NO.14783 OF 2021

The Management,
Tamil Nadu State Transport Corporation,
Kumbakonam.

... Appellant

vs

1. N.Muthu Gopalakrishnan

2. The Presiding Officer,
Labour Court,
Cuddalore.

... Respondents

Prayer:

Writ Appeal filed under clause 15 of the Letters Patent, to allow the Writ Appeal and set aside the order dated 07.06.2019, passed by the Hon'ble Single Judge in W.P.No.1055 of 2008.

W.P.No.1055 of 2008:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of certiorarified mandamus to call for the records pertaining to the award dated 04.06.2002 passed by the first respondent in I.D.NO.50/97 and quash the same and consequently direct the second respondent to reinstate the petitioner, with continuity of service, back wages and all other attendant benefits including annual and other increments and revision of wages etc., award costs and render justice.

For Appellant	:	D.Venkatachalam
For Respondents	:	Mr.V.Ajoy khose (for R1)
	:	Labour Court (for R2)



JUDGMENT
(Delivered by Krishnan Ramasamy, J.,)

This Writ Appeal has been directed against the order passed by a learned Single Judge of this Court in W.P.No.1055 of 2008, dated 07.06.2019.

2. The brief facts which lead to the filing of the present Writ Appeal can be stated as under:-

The 1st respondent herein is the Writ Petitioner. He was employed in the Appellant Corporation as a Conductor. While he was working as such, he was issued with two Charge Memos dated 05.06.1995 and 29.06.1995 respectively for his unauthorized absence for a period of 8 days in May 1995 and 27 days in June 1995. Consequently, a domestic enquiry was conducted and the Enquiry Officer vide his report, gave findings that the charges were proved against the Writ Petitioner. Based on the said report, the Writ Petitioner was dismissed from service on 15.03.1996. Aggrieved by the same, the Writ Petitioner raised an Industrial Dispute in I.D.No.50 of 1997 before the 2nd respondent/Labour Court Cuddalore. By award dated 04.06.2002, the Labour Court dismissed the I.D. confirming the order of dismissal inflicted against the writ petitioner. Challenging the said award of the Labour Court, the Writ Petitioner has filed the above said Writ Petition before the Writ Court.

3. The learned single Judge having considered the facts and circumstances as well as submissions made by the respective learned counsels for the parties, by order dated 07.06.2019 allowed the Writ Petition and directed the Appellant/Management to reinstate Writ Petitioner with continuity of Service and attendant benefits without any back wages. Challenging the order of the learned Single Judge, the Appellant/ Management has come forward with the present Writ Appeal.

4. The learned standing Counsel appearing for the appellant/Management would contend that the order of the learned single Judge cannot be sustained since the learned single Judge has not taken into consideration the categorical findings of the Enquiry Officer that the Writ Petitioner had absented and the same was confirmed by the Labour Court. He would also contend that the Writ Petitioner was a habitual absentee and on earlier occasions, he was imposed with minor punishments for his unauthorized absence. He would point out that again the Writ Petitioner had absented from duty without any prior permission from the Appellant/Management and during the domestic enquiry, it was clearly proved that the writ petitioner had absented unauthorizedly and hence considering the attitude of absentism of the Writ Petitioner, the Appellant/ Management has rightly



dismissed him from service. Therefore, the learned counsel would pray this Court to set aside the order of the learned single Judge.

5. On the other hand, the learned counsel appearing for the Writ Petitioner/1st respondent would submit that while he was in duty, he sustained nerve injuries, by which, his nervous system got affected and his right hand became dysfunctional and his health reasons, he used to take leave often. On two occasions also for which Charge Memos were issued, the writ petitioner has informed to the Duty Clerk and he also granted the leave to the respondent. Therefore, the respondent was under the impression that leave was granted to him and if there was no leave to the credit of the writ petitioner, the Duty Clerk ought to have informed him and in which case, he would have approached the Depot Manager, who is competent authority to sanction leave if there is no leave to the credit of the employee. Therefore, there is no fault on the part of the writ petitioner and failure to make application to the Depot Manager to grant leave, is not deliberate, but for the reason that he was under the impression that he was granted leave by the Duty Clerk. The learned counsel would further submit that even if there was any lapse in granting the leave, the Duty Clerk might have forwarded the said application to the Depot Manager. Therefore, there is no fault on the part of the writ petitioner and his absence from duty is not willful and cannot be termed as unauthorized and even if there is any such absence, for which, dismissal from service is unwarranted. Considering all these aspects, the learned single Judge has rightly set aside the order of dismissal inflicted against the writ petitioner. Hence, the learned counsel sought for dismissal of the Writ Appeal.

6. Heard the learned counsel appearing for the parties and perused the entire materials available on record.

7. It appears that for the alleged unauthorized absence on two spells for 35 days, the respondent was issued two charge memos and ultimately, he was inflicted with the order of dismissal from service. According to the writ petitioner, he has applied for leave and the Duty Clerk had also granted the leave. The reason for applying the leave by the writ petitioner was due to his ill-health since he sustained nerve injury while he was discharging his duty as a Conductor in a bus which was plying between Trichirappalli and Vellankanni when a luggage bag fell down on his shoulder and due to which, his nervous system got severely affected and his right hand became dysfunctional, and he was unable to move his right hand. Therefore, now we can understand the reason why the writ petitioner used to take leave on various occasions and only in the said constrained circumstances due to his injury which he sustained during his



employment, the writ petitioner used to go on leave. When such being the case, it is for the appellant/Management to take care of its employee and taking note of the fact that he sustained grievous injury during his employment, the appellant/Management ought to have shown some indulgence, but very unfortunately, has gone to the extent of dismissing him from service.

8. According to the writ petitioner, he applied leave to the Duty Clerk, who in turn, had also granted leave to him, but later, he came with a novel ground that the writ petitioner did not have sufficient leave to his credit in which case, he should have informed the same to the writ petitioner so that he would have applied the leave to the Depot Manager. Once the Duty Clerk granted the leave, the writ petitioner was under the impression that he was granted leave. Even assuming if the Duty Clerk had granted leave wrongly, then he would have conveyed either to the writ petitioner or to the Depot Manager for approval of the leave applied by the writ petitioner, which was not done by the Duty Clerk. These are all internal matters between the Duty Clerk and Depot Manager, which cannot be put against the writ petitioner. If the writ petitioner was conveyed by the Duty Clerk about non-availability of leave to his credit, he would have certainly acted upon to apply to the Depot Clerk citing his health reasons. Therefore, without giving an opportunity to the writ petitioner by intimating him about non-availability of leave to his credit, the Appellant/Management had taken initiative directly by issuing two charge memos to the writ petitioner. Further a perusal of the enquiry report, the way in which the enquiry was conducted and report was prepared, appears to be a pre-conceived and this is nothing but a foregone conclusion.

9. Unauthorized absence (or overstaying leave), is an act of indiscipline. Whenever there is an unauthorised absence by an employee, two courses are open to the employer. The first one is to condone the unauthorized absence by accepting the explanation and sanctioning leave for the period of the unauthorized absence in which event the misconduct stood condoned. The second one is to treat the unauthorized absence as a misconduct, hold an enquiry and impose a punishment for the misconduct. In this case, for the misconduct of unauthorised absence, the appellant/Management has dismissed writ petitioner from service, which in our view, is disproportionate to the charge of misconduct and it shocks the conscience of this Court while considering the fact that the writ petitioner had put in long years of service since 1989 onwards and the absence was only for 35 days, that too he applied to Duty Clerk who also granted the same, but not to the Depot Manager since he was not aware of the fact that he was not having sufficient leave to his credit. The concept of unauthorized absence is entirely different from



making leave application to an incompetent person. The Appellant/Management ought to have taken the constrained circumstances under which the writ petitioner was absent from duty as he suffered grievous injury while in employment and also the fact that he rendered service more than 25 years and ought to have condoned the absence. Therefore, in our view, the punishment of dismissal inflicted by the Appellant/Management, cannot be sustained for the reasons stated supra. Accordingly, we do not find any merits in the Writ Appeal to entertain the same.

10. In the result, the Writ Appeal fails and it is dismissed. No costs. Consequently, connected C.M.P. Is closed.

11. It is reported by the learned counsel for the writ petitioner that the writ petitioner had retired from service and consequential to the setting aside the punishment of dismissal from service, the writ petitioner is entitled to all his monetary and attendant benefits and the same may be directed to be settled by the Appellant/Management. In view of the same, while confirming the order of Writ Court, the Appellant/Management is directed to settle all the monetary and attendant benefits to the writ petitioner, to which he is entitled to consequent to the setting aside the punishment of dismissal by this Court and also his pensionary benefits, within a period of 12 weeks from the date of receipt of copy of this order.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

suk

To

1. The Management,
Tamil Nadu State Transport Corporation, Kumbakonam.
2. The Presiding Officer,
Labour Court, Cuddalore.

+1cc to D.Venkatachalam, Advocate, S.R.No.46806
+1cc to Mr.V.Ajoy khose, Advocate, S.R.No.46744

W.A.No.2334 of 2021

PM(CO)
CS/22/11/2021