



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.08.2021

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.NO.18047 OF 2014

The Management,
Tamilnadu State Transport Corporation Limited,
Villupuram,
Rep. by its General Manager.

... Petitioner

-vs-

1. The Presiding Officer,
Labour Court,
Cuddalore.

2. M.Kasirajan

... Respondents

Prayer:

Petition filed under Article 226 of Constitution of India to issue a Writ of Certiorari calling for the records of the order passed by the 1st respondent in Industrial Dispute in I.D.No.75 of 2010 dated 02.09.2013 and to quash the same as illegal.

For Petitioner : Mr.K.J.Sivakumar

For Respondent-2 : Mr.K.Arunagiri

O R D E R

The present writ petition has been filed, challenging the award of the Labour Court in I.D.No.75 of 2010 dated 02.09.2013 setting aside the dismissal order and granting reinstatement to the employee with continuity of service with 25% of the backwages from the date of application to the Conciliation Officer, with further direction to impose the punishment of stoppage of two increments with cumulative effect.

2. According to the petitioner, the second respondent/employee has absented himself from duty for 90 days and the same has not been authorised by the Management. The Labour Court has held that the punishment of dismissing the employee only on the ground of unauthorized absence is grossly dis-proportionate to the charges. Further, the Labour Court has



held that dismissal from service may be justified in cases like corruption, embezzlement of funds, fraudulent deeds, forgery of records, etc., but not to a case of absence from duty. The Labour Court has held that mental depression / stress may also be a reason for the drivers running away from the job. The Management must treat them as human beings and not as Robots, which act may drive them to crazy, leading to fatal accidents. The Labour Court went on to hold that the lives of all the passengers are in the hands of these drivers. With the aforesaid observations, the Labour Court has granted the relief to the employee as stated supra. Aggrieved by the said award, the petitioner/Transport Corporation has filed this writ petition.

3. During pendency of the writ petition filed by the Management, the employee was paid wages under Section 17B of the Industrial Disputes Act, 1947 from August, 2014 to 29.09.2019 on which date the employee was reinstated. Learned counsel for the Petitioner stated that due to the defect in the eye sight, the employee was also given light duty in terms of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The grievance of the employee is that on reinstatement, he was not paid wages on par with the counterparts.

4. In the midst of argument, it is represented by the petitioner-Management that in case the employee is willing to give up backwages from the date of dismissal till the date of reinstatement to an extent of 25% awarded by the Labour Court, the Management is prepared to consider the case of the employee.

5. The learned counsel appearing for the second respondent / employee, on instructions, submitted that the employee has consented to give up the backwages from the date of dismissal till the date of reinstatement. However, the wages paid under Section 17B of the Act that was extended during the pendency of the writ petition, shall not be deducted.

6. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the second respondent.

7. It is not in dispute that the 2nd Respondent was employed as Driver by the Petitioner and absented from duty. The Labour Court, taking note of the misconduct of absence from duty for 90 days, had not only deprived 75% of backwages, but also awarded stoppage of two increments with cumulative effect. I find that there is no perversity in the award passed by the Labour Court, as the Labour Court while exercising the powers under Section 11-A of the Act has granted the relief by imposing another punishment in the place of dismissal from service for the period of absence of 90 days. Hence, taking note of the submissions



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