



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:11.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P. (MD)No.4853 of 2011

and

M.P. (MD) .No.1 of 2011

WEB COPY

The Management,
Tamilnadu State Transport Corporation,
(Madurai) Limited,
Bye-Pass Road,
Madurai.

... Petitioner

Vs.

1. The Presiding Officer,
Labour Court,
Madurai District.

2.S.Kalimuthu

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records on the file of the first respondent pertaining to its proceedings order passed in I.D.No.19 of 2003, dated 20.07.2010 and quash the same.

For Petitioner : Mr.S.C.Herold Singh

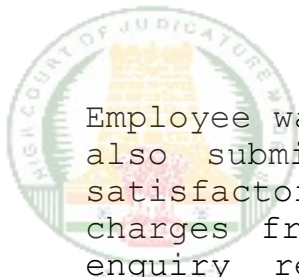
Respondent No.1 : Labour Court

For Respondent No.2 : Mr.S.Arunachalam

O R D E R

This writ petition has been filed challenging the award passed by the Labour Court , Madurai, in I.D.No.19 of 2003, dated 20.07.2010.

2. The case of the second respondent/Employee is that he was working in the petitioner Corporation/Employer as a conductor. He was absent from duty on various dates from 23.04.1997 to 27.10.1997 for which seven charge memos were issued to the Employee. Since the explanation offered by the Employee was unsatisfactory, domestic enquiry was ordered and in the domestic enquiry it was found the charges levelled against the Employee were proved. Subsequently, the



Employee was issued with a show cause notice, for which the Employee also submitted his explanation and as the explanation was not satisfactory the same was rejected and it was concluded that the charges framed against the Employee were proved and based on the enquiry report, the Employee was dismissed from service from 10.06.1998 by order dated 09.06.1998. Hence, the Employee raised an industrial dispute before the Ramnad Labour Officer and since no settlement arrived at between the parties, the Labour Officer filed a failure report on 09.10.2000.

3. As against the order of dismissal from service, the Employee raised an Industrial Dispute in I.D.No.19 of 2003 before the Labour Court, Madurai. On behalf of the Employer, Ex.M1 to Ex.M.26 were marked, however, no witness were examined. On the side of the Employee, no witnesses were examined and no documents were marked.

4. After analyzing the documentary evidence, the Labour Court held that the charges levelled against the Employee were not proved and therefore, the Labour Court passed an award of reinstatement with continuity of service with 25% of back wages. As against the reinstatement ordered by the Labour Court, the State Transport Corporation Employer has filed the present writ petition.

5. The learned Counsel appearing for the Employer would contend that during the pendency of the writ petition, the Employee has got reinstatement with continuity of service. In the present case, the Management marked documents in Ex.M1 to Ex.M26 and not examined any witnesses. However, the Employee neither marked any documents nor examined any witnesses to disprove the allegations levelled against him. Further, the unauthorized absence of the Employee was proved clearly before the Labour Court by way of documents and the Enquiry Officer has arrived a categorical findings that without getting proper permission, the Employee was on leave from duty based on which the Disciplinary Authority passed the order of dismissal, which cannot be interfered with. Hence, the order of the Labour Court awarding the reinstatement with continuity of service with 25% of back wages is perverse in nature and therefore, he prayed for allowing this writ petition.

6. Per contra, the learned counsel appearing for the second respondent/Employee would submit that after analyzing the documentary evidence, the Labour Court passed the award of reinstatement with continuity of service with 25% of the back wages, which is a very meagre amount that cannot be interfered with by this Court. Hence, he prays for dismissal of this writ petition.

7. Heard the learned Counsel on either side and carefully perused the materials placed on record.

8. In the present case, the Employee has submitted that he has submitted a medical certificate, but the Employer stated that



the petitioner did not submit any leave application. But, the Labour Court granted 25% of back wages with continuity of service and other attendant benefits. The facts of the present case is not disputed. Admittedly, the Employee was issued with 7 charge memos for his unauthorized absence without submitting any leave application and the Labour Court arrived a conclusion that the Employee's absent was justified and recorded the findings that the Employee went on Medical Leave. Considering the punishment imposed against the Employee is disproportionate, the award was passed by the Labour Court. Subsequently, during the pendency of the writ petition, the Employee has got reinstatement with continuity of services. At the same time, this Court is of the view that the award of 25% of back wages is unsustainable one. Hence, by following the principle, 'no work, no pay', this Court is inclined to modify the award by setting aside the grant of 25% of back wages alone.

9. In the result, this Writ Petition is partly allowed by modifying the award of the Labour Court, dated 20.07.2010, made in I.D.No.19 of 2003, that the order of reinstatement with continuity of service is confirmed, however, the award of 25% of back wages alone is set aside. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Presiding Officer,
Labour Court,
Tirunelveli.

W.P. (MD)No.4853 of 2011

11.01.2021

(SJ)

KV(11.02.2021) 3P 2C