



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P (MD)No.15256 of 2012

and

M.P (MD)No.1 of 2012

WEB COPY

The Management,
Tamil Nadu State Transport Corporation,
(Madurai Division-II) Limited,
19, Trivandram Road,
Vannarpet,
Tirunelveli-627 003.

... Petitioner

Vs.

1.The Joint Commissioner of Labour
(Conciliation),
Chennai-6.

2.Poosaipandi

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari to call for the records on the files of the first respondent pertaining to its proceedings order passed in Approval Petition No.75 of 2004, dated 23.12.2010 and quash the same.

For Petitioner : Mr.S.C.Herold Singh

For Respondents : No Appearance for R.2

ORDER

The writ petition has been filed seeking for issuance of a writ of Certiorari to call for the records on the files of the first respondent pertaining to its proceedings order passed in Approval Petition No.75 of 2004, dated 23.12.2010 and quash the same.

2. The case of the petitioner is that the second respondent was appointed as a Conductor in the year 1992. He was absent from duty from 19.11.2003 without any prior permission or intimation. On 19.12.2003, a charge memo was issued to the second



respondent by stating that the said unauthorised absence is an offence under Section 16(14) of the Standing Orders. Thereby the second respondent submitted his explanation on 27.12.2003, however, the said explanation was not found satisfactory. Thereafter, on 30.12.2003, the second respondent was permitted to join duty without prejudice to the enquiry proceedings. Thereafter, a domestic enquiry was conducted on 13.01.2004. In the domestic enquiry, full opportunity was provided to the second respondent. After considering the previous records, the Enquiry Officer has drawn a proven minute against the second respondent and a second cause notice was issued to him on 29.01.2004. Since the explanation offered by the second respondent was not found satisfactory, the petitioner Management dismissed the second respondent from service by an order dated 22.03.2004 and by complying the requirements stated under Section 33(2)(b) of the Industrial Disputes Act, an approval petition was filed before the Labour Court. However, the said approval petition was rejected. Challenging the same, the present Writ Petition has been filed.

3. Learned Counsel appearing for the petitioner would submit that for the proven charges against the second respondent, enquiry was conducted and based on the enquiry report, he was dismissed from service. However, the Labour Court, without proper appreciation of facts, dismissed the approval petition, which is unsustainable one and hence, the learned Counsel would pray for appropriate orders.

4. There is no representation on behalf of the second respondent.

5. Heard the learned Counsel appearing for the petitioner and perused the materials placed on record.

6. Before this Court ventures into the merits of the contention raised on either side, it would be first necessary to bear in mind the scope and jurisdiction of this Court under Article 226 of the Constitution of India, while examining the correctness of the award of the Labour Court. The Hon'ble Supreme Court in a catena of decisions has held that normally a writ court should not interfere with the award of the Labour Court, unless the award is perverse. It has been further held that if the award is not irrational or perverse, the High Court should not interfere with the reasons in the award. Further, it has been held that this Court should not re-appreciate the evidence placed before the Labour Court and substitute its own conclusions, merely because this Court is of the opinion that a different conclusion could have been arrived at on the available evidence. Bearing this legal principle in mind, this Court proceeds to examine the correctness of the impugned award. First, it has to be seen, whether the



Employer Management was able to exactly establish as to guilt committed by Employee and whether there was evidence to show that the Employee concerned is solely responsible for the guilt and the same is affected the reputation of the Employer Management.

7. The facts in the present case are not in dispute. The second respondent was appointed as a Conductor in the year 1992 and he was absent from duty from 19.11.2003 without any prior permission or intimation and for that, on 19.12.2003, a charge memo was issued by stating that the said unauthorised absence is an offence under Section 16(14) of the Standing Orders. Subsequently, after conducting enquiry and after considering the previous records, the Enquiry Officer has drawn a proven minute against the second respondent and a second cause notice was issued to him on 29.01.2004. Since the explanation offered by the second respondent was not found satisfactory, the petitioner Management dismissed the second respondent from service, by an order dated 22.03.2004 and to approve the same, an approval petition was filed before the Labour Court. However, the said approval petition was rejected.

8. The approval petition was dismissed in the year 2010. Subsequently, the second respondent was permitted to continue the job and he rendered 8 years service in the petitioner Transport Corporation. Even as per the facts and circumstances of the case, only for the unauthorised absence for a particular period, the second respondent was dismissed from service, which was highly disproportionate. Therefore, the Labour Court, after proper appreciation of facts and law, dismissed the approval petition filed by the petitioner, which does not warrant any interference.

9. For the reasons aforesaid, the writ petition is devoid of merits and, accordingly, the same is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar ()

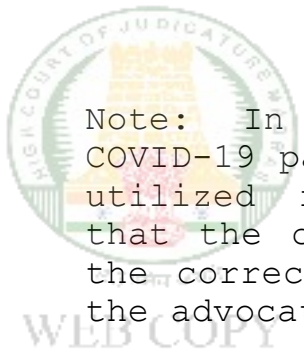
// True Copy //

/ /2021

Sub Assistant Registrar (CS)

SSL

<https://hcservices.ecourts.gov.in/hcservices/>



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 Joint Commissioner of Labour
(Conciliation),
Chennai-6.

W.P (MD) No.15256 of 2012
08.03.2021

KM (23.03.2021) 4P 2C