



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P. (MD)No.15578 of 2012

C.Thangappan

... Petitioner

versus

1. The Presiding Officer,
Labour Court,
Tirunelveli.

2. The General Manager,
Tamil Nadu State Transport
Corporation (TLi.Ltd.),
Nagercoil, Kanyakumari District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for the records of the 1st respondent relating to the final order passed in I.D.No.62/2011 dated 23.08.2012, quash the same and consequently, direct the second respondent herein to reinstate the petitioner with all back wages and continuity of service.

For Petitioner : Mr.S.Govindan for prabhakaran

For Respondents : Mr.K.Sathiya Singh
Standing Counsel for R2

ORDER

This writ petition has been filed seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records of the 1st respondent relating to the final order passed in I.D.No.62/2011 dated 23.08.2012, quash the same and consequently, direct the second respondent herein to reinstate the petitioner with all back wages and continuity of service.

2. The petitioner was appointed as Tradesman in the Tamil Nadu State Transport Corporation, Ranithottam, Nagercoil, in the year 1983. He has been rendering unblemished service in the 2nd respondent Transport Corporation. Since the petitioner's brother's son was hospitalized in Saudi Arabia due to illness, he went on leave to see his brother's son with proper permission from the 2nd respondent for the period from 01.03.2003 to 31.05.2003. During the said visit, for certain ailment, the petitioner was also admitted in a hospital at Saudi Arabia for surgery. As he had to take continuous treatment for his illness, he sent a Medical Certificate by Registered Post to the second respondent on 26.04.2003 for extension of leave. Subsequently, on 28.05.2003, 30.09.2003,



27.12.2003, 28.02.2004 and 26.06.2004 also, the petitioner had requested to extend the leave informing the 2nd respondent about his inability in returning to India. After taking the treatment, the petitioner returned to India in the month of October 2004 and thereafter, he requested the 2nd respondent in person to give back his job for his livelihood. But, the second respondent informed him that he was dismissed from service. Further, the disciplinary proceedings was conducted and without providing an opportunity of personal hearing, an ex parte order was passed. Challenging the said ex parte order, the petitioner raised an Industrial Dispute before the Assistant Commissioner of Labour (Conciliation), Nagercoil, who instructed the 2nd respondent to give back his job. However, the 2nd respondent refused to give back his job. Hence, he filed a petition before the Labour Court, Tirunelveli, in I.D.No.62 of 2011. However, the Labour Court, Tirunelveli, after hearing the matter, dismissed the petition, vide order dated 23.08.2012. Challenging the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner submitted that the petitioner initially applied for leave from 01.03.2003 to 31.05.2003 to go abroad for treatment of his brother's son, which was granted in favour of the petitioner. Thereafter, since the petitioner suffered some illness and after taking treatment, he returned India after a lapse of 17 months. The continuous absence was neither wilful nor wanton. Despite repeated representations, the same was not considered by the respondent. However, the second respondent, without considering the reasons stated by the petitioner, imposed the major punishment of dismissal from service, which is unsustainable. Hence, he prayed for modifying the quantum of punishment.

4. The learned counsel for the second respondent submitted that the issue was elaborately discussed by the Labour Court and further, there is no proof for extension of leave. Hence, the order of the Labour Court does not suffer any perversity. Therefore, he prayed for dismissal of this writ petition.

5. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the second respondent and perused the materials available on record.

6. The fact that initially the petitioner applied for the leave for going abroad from 01.03.2003 to 31.05.2003 after obtaining requisite permission is not disputed. Further, it is the stand of the petitioner that as he suffered illness while at Saudi Arabia, he underwent treatment for which he sent application for extension of leave, which was not considered. Thereafter, the 2nd respondent initiated disciplinary proceedings and dismissed the petitioner from service.

<https://hcservices.ecourts.gov.in/hcservices> of the petitioner going on leave initially and



suffering illness and taking treatment and returning back to India are borne out by record. However, it is the stand of the 2nd respondent that no application for extension of leave has been submitted by the petitioner and, therefore, his claim for continuance cannot be considered. Though such a stand is taken, however, it is to be pointed out that the letter, Ex.A-1, seeking extension of leave, has been marked by the petitioner before the Tribunal. Further, it is to be pointed out that no employee, who submits application for leave, takes a copy of the same and keeps it for his reference or under the illusion that the employer may take a stand that no leave application has been submitted. Therefore, it cannot be expected of the petitioner to have a copy of the said applications, which he had sent to the 2nd respondent requesting extension of leave. But in the present case, the petitioner has filed his letter for extension of leave.

8. Further, it is to be pointed out that though the period of absence is 17 months, during the above said time, the 2nd respondent has not taken any steps by initiating disciplinary proceedings against the petitioner. If really the 2nd respondent was not in receipt of any leave application for extension, it ought to have taken action against the petitioner, more so, the initial leave application submitted by the petitioner would have contained the address in which the petitioner could be communicated. Therefore, it is not open to the 2nd respondent to contend that the petitioner alone is at fault. Equally the 2nd respondent has also to be found fault with. Though normally the Courts shall not interfere with the quantum of punishment imposed on the delinquent, however, in the above backdrop, as noticed above, the issue of quantum of punishment imposed on the petitioner requires consideration.

9. Before proceeding to analyse the facts of the present case to find out whether the punishment awarded to the petitioner is just and reasonable, the ratio laid down with regard to matters in which punishment has been imposed, which is impugned under Article 226 of the Constitution.

10. It has been the consistent view of the Courts that it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere in the same in exercise of powers under Art. 226 of the Constitution. In ***Prem Nath Bali - Vs - High Court of Delhi (2015 (16) SCC 415)***, the Hon'ble Supreme Court held as under :-

"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing



authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."

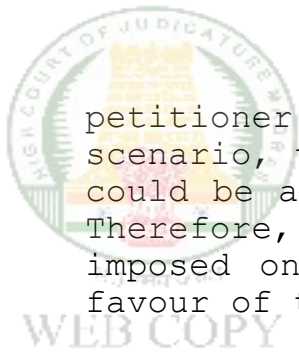
(Emphasis Supplied)

11. This Court, keeping in mind the ratio laid down by the Hon'ble Apex Court in relation to interfering with the punishment imposed by the disciplinary authority, would now proceed to dissect the materials available on record to find out whether the punishment imposed on the petitioner is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court requiring interference.

12. The short issue is whether the petitioner warrants the punishment of dismissal from service.

13. As pointed out above, the petitioner has claimed that he had suffered illness and was taking continuous treatment in Saudi Arabia and he had sent application for extension of leave to the second respondent. On the contrary, the second respondent claimed that no application for extension of leave has been filed by the petitioner.

14. As pointed out above, the petitioner has marked the letter for extension of leave dated 25.04.2003 as Ex.A1 and also marked medical certificates Exs.A2 to A6 and also the medical certificate given by the doctor in Saudia Arabia as Exs.A7, which shows that the claim of the petitioner is genuine. The 2nd respondent, to the contra, has not only marked any material to prove their case, but has also not taken any steps to initiate proceedings against the



petitioner whilst the petitioner was in Saudia Arabia. In the said scenario, this Court is of the considered opinion that no misconduct could be attributed to the petitioner for his unauthorised absence. Therefore, this Court is of the considered view that the punishment imposed on the petitioner deserves to be considered positively in favour of the petitioner.

15. Considering the facts that the petitioner had already rendered unblemished service of 17 years, and taking into consideration the long lapse of time, this Court is of the view that instead of reinstating the petitioner in service, the punishment imposed on the petitioner could be modified into one of compulsory retirement.

16. Accordingly, for the reasons aforesaid, this petition is disposed of by modifying the punishment imposed on the petitioner from one of dismissal from service into one of compulsory retirement. However, it is made clear that the petitioner is not entitled for any backwages and continuity of service. The second respondent Management is directed to calculate the monetary benefits and pay the same to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1. The Presiding Officer,
Labour Court, Tirunelveli.

2.The General Manager,
Tamil Nadu State Transport Corporation (TLi.Ltd.),
Nagercoil, Kanyakumari District.

+1 CC to M/s.K.SATHIYA SINGH, Advocate (SR-14850[F] dated 31/03/2021)

+1 CC to M/s.L.PRABHAKARAN, Advocate (SR-14854[F] dated 31/03/2021)

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