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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.02.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P(MD)No.3349 of 2012

Y.Samuel ... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
District Court Buildings,
Tirunelveli.

2.The Managing Director,
Tamil Nadu Express Transport Corporation Ltd.,
Tamil Nadu Division-I,
Pallavan Chalai,
Chennai-600 002.

3.The General Manager (Administration),
Tamil Nadu Express Transport Corporation Ltd.,
Tamil Nadu Division-I,
Pallavan Chalai,
Chennai-600 002. ... Respondents

**Prayer:** Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of certiorari, to call for the records of the first respondent in I.D.No.97 of 2005 and quash the award dated 03.01.2011 passed therein.

For Petitioner : Mr.T.Ravichandran

For Respondent Nos.2 &3 : Mr.K.Sathiya Singh
Standing Counsel

Respondent No.1 : Labour Court

**ORDER**

This writ petition is filed seeking a writ of certiorari, to quash the award dated 03.01.2011 passed in I.D.No.97 of 2005 on the file of the Labour Court, Tirunelveli.

2. The petitioner is the worker of the State Transport

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Corporation, hereinafter will be referred to as 'Employee' and the respondents 2 & 3 are the State Transport Corporation, hereinafter will be referred to as 'Employer'.

3. The case of the Employee is that he was appointed by the Employer as Driver. While he was working as Driver, he was issued with charge memo on 06.06.1997 on the ground that he was absent from duty from 29.04.1997 onwards. However, the fact remains that as per the basic report, the leave was granted on 15.04.1997 to 18.04.1997 on the ground that his grandmother expired. Thereby, the petitioner was absent unauthorizedly on various dates for which a domestic enquiry was ordered and an enquiry officer was appointed. In the enquiry, one Chelladurai, who was examined as DW.1 deposed that the Employee was absent on various dates up to 05.05.1997. In order to prove the guilt, the attendance register was not marked, however, as per the basic report appended to charge memo itself, absence was only till 05.05.1997. The Enquiry Officer has drawn proven minutes after affording necessary opportunity to the Employee. Based on the proven minute, the Employee was issued with a second show cause notice, for which the Employee also submitted his explanation to the third respondent and as the explanation was not satisfactory, the same was rejected and it was concluded that the charge framed against the Employee was proved and based on the enquiry report, the Employee was dismissed from service by the third respondent, by order dated 08.09.1999, as against which the Employee preferred an appeal before the second respondent on 18.10.1999 and the said appeal was also rejected on 14.07.2000. Thereafter, the Employee raised an industrial dispute before the conciliation officer and since no settlement arrived at between the parties, the Labour Officer filed a failure report.

4. As against the order of dismissal from service, the Employee raised an Industrial Dispute in I.D.No.97 of 2005 before the Labour Court, Tirunelveli. On behalf of the Employee, Ex.P1 to Ex.P5 were marked and one Samuvel was examined as PW.1. On the side of the Employer, Ex.M1 to Ex.M.7 were marked, and one Mohammed Hussain was examined as management witness.

5. After analyzing the oral and documentary evidence, the Labour Court held that the charges levelled against the Employee were not proved and therefore, the Labour Court dismissed the dispute. As against the said dismissal order passed by the Labour Court, the Employee has filed the present writ petition.

6. The learned counsel appearing for the Employee would submit that though the Employee rendered 18 years of service, without considering his service, the charge memo was issued and punishment was awarded to the Employee. He further submitted that the allegation levelled against the Employee is not with regard to any fraud committed by him. However, for absence from duty, the Employee imposed major punishment, which is unsustainable one and

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hence, the order of the Labour Court is disproportionate and liable to be set aside.

7. The learned Standing Counsel for the Employer would submit that though the Employee rendered 18 years of service, during his service, he was awarded 22 punishments out of which 5 were awarded for committing accidents and maximum punishment was imposed for his unauthorized absence. Hence, after analyzing the entire facts and the earlier punishments awarded to the Employee, which were marked before the Labour Court, the Labour court has rightly dismissed the appeal, which cannot be interfered with. Hence, he prays for dismissal of this writ petition.

8. 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.

9. In the present case, admittedly, the Employee was issued with a charge memo, dated 06.06.1997 for his unauthorized absence from duty. It is the Employee's case that initially, leave was granted to the Employee, thereby, he was absent from duty, however, the Employee himself admitted that there was unauthorized absence for a long period, nearly, upto five months and the said fact was also established before the Enquiry Officer by examining the evidence produced on behalf of the management. In order to disprove the case, the Employee did not produce any documents before the Labour Court or before the Enquiry Officer. The documents marked before the Labour Court is only the disciplinary proceedings. Further, on perusal of the previous conduct, already 22 punishments were imposed against the Employee, out of which 5 punishments were imposed for committing accident and other major punishments are for misbehaviour and unauthorized absence. Hence, in view of this Court, the order of the Labour Court is correct and there is no perversity in the order of the Labour Court. Therefore, the order of the Labour Court cannot be interfered with.

10. In the light of the above discussion, I am not inclined to interfere with the order of the Labour Court, Tirunelveli, passed

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in I.D.No.97 of 2005, dated 03.01.2011 and this writ petition stands dismissed accordingly. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

**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.

+1 CC to Mr.K.SATHIYA SINGH, Standing Counsel (SR-7138[F] dated 25/02/2021)

**Order made in**
**W.P(MD)No.3349 of 2012**
**24.02.2021**

VR(CO)
SRS (04/03/2021) 4P : 3C

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