



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P(MD)No.8341 of 2012

and

M.P(MD)No.1 of 2012

WEB COPY

The Managing Director,
Tamil Nadu State Transport Corporation
(Kumbakonam) Limited,
Periya Milaguparai,
Tiruchirappalli - 620 001.

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Tiruchirappalli.

2.R.Thangaraj

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records of the first respondent relating to order passed in I.D.No.31 of 2002, dated 28.02.2007 and quash the same.

For Petitioner : Mr.K.Sathiya Singh

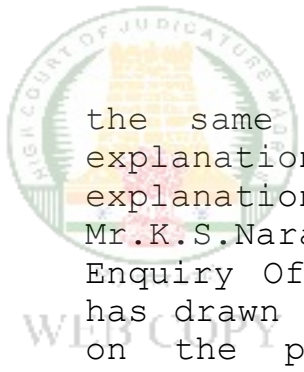
For Respondents : No appearance
for R - 2

R1-Court

ORDER

This Writ Petition is filed seeking for issuance of a writ of Certiorari, to call for the records of the first respondent relating to order passed in I.D.No.31 of 2002, dated 28.02.2007 and quash the same.

2. The case of the petitioner is that the second respondent was employed as Driver in the petitioner Transport Corporation with effect from 01.12.1981 and while he was in the employment, without any intimation or prior permission remained absent from 09.11.1993 to 30.11.1993 and for the unauthorised absence, the second respondent was issued with a charge memo on 23.12.1993 and



the same was served on him by directing him to submit his explanation. However, the second respondent has not submitted his explanation. Hence, an enquiry was ordered. Subsequently, Mr.K.S.Narasimhan, a retired District Judge was appointed as an Enquiry Officer. The Enquiry Officer, after conducting enquiry, has drawn a proven minute against the second respondent and based on the proven minute, the second respondent was given an opportunity to submit his explanation. Even thereafter, the second respondent has not submitted any explanation. Thereafter, the petitioner Transport Corporation imposed a punishment order of dismissal. Subsequently, the petitioner Transport Corporation filed an approval application under Section 33(2)(b) of the Industrial Disputes Act before the Industrial Tribunal and the said application was allowed by the Tribunal. Thereby, the second respondent was dismissed by an order dated 16.10.1995.

3. Against the order of dismissal, the second respondent raised an industrial dispute in I.D.No.31 of 2002 under Section 2-A of the Industrial Disputes Act. To establish their case before the Labour Court, no witness was examined on either side, however, on the side of the second respondent/workman, 3 documents were marked as Exs.P.1 to P.3 and on the side of the Transport Corporation, 11 documents were marked as Exs.M.1 to M.11. After considering the evidences available on record, the Labour Court arrived at a conclusion that the charge against the second respondent was proved, however modified the punishment as simple discharge and denied the continuity of service and back wages. Challenging the same, the present writ petition has been filed by the petitioner Transport Corporation.

4. Learned Counsel appearing for the petitioner would submit that the second respondent, without any intimation or prior permission, remained absent from 09.11.1993 to 30.11.1993 and for the proven charges, he was imposed with the punishment of dismissal from service and earlier, on 14 occasions, he was found guilty for various misconducts and on 12 occasions, he was punished for having remained absent without prior permission and the second respondent is a chronic absentee and for the proven charges, he was dismissed from service, which cannot be interfered with, however, the Labour Court erroneously modified the punishment. Hence, the learned Counsel would pray for appropriate orders.

5. Though notice was served on the second respondent and his name was printed in the cause list, none appeared on behalf of the second respondent.

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



7. 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.

8. The facts in the present case are not in dispute. Admittedly the second respondent was employed as Driver in the petitioner Transport Corporation with effect from 01.12.1981 and for his unauthorised absence from 09.11.1993 to 30.11.1993 and he was issued with a charge memo on 23.12.1993 and after conducting enquiry and based on the proven minute, the second respondent was dismissed from service. However, after thorough perusal of the entire records only, the Labour Court modified the punishment as simple discharge and denied the continuity of service and back wages, which does not warrant any interference by this Court.

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

Sd/-

Assistant Registrar (T&P)

// 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,
Tiruchirappalli.

Copy to

The Record Keeper, VR Section-2 copies
Madurai Bench of Madras High Court, Madurai.
(for returning records if any)

+1 CC to MR.K.SATHIYA SINGH, Advocate (SR-8786[F] dated
04/03/2021)

W.P (MD) No.8341 of 2012
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KM (17.03.2021) 4P 5C