



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.09.2020

PRONOUNCED ON: 27.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

W.P. (MD) .No.13889 of 2015

and

WMP (MD) .No.12433 of 2016

and M.P. (MD) .No.1 of 2015

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The Management,
Tamil Nadu State Transport Corporation,
Kumbakonam Unit II,
Periyamilaguparai,
Tiruchirapalli-1

...Petitioner

.. Vs ..

1. The Presiding Officer,
Labour Court,
Tiruchirapalli.

2.I.Wilfred Dhinagar

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue writ of certiorari to call for the records relating to the order passed by the first respondent herein dated 26.02.2014 in I.D.No. 142 of 2006 and to quash the same.

For Petitioner : Mr.D.Sivaraman
Standing Counsel

R1 : Court

For R2 : Mr.S.K.Mani

ORDER

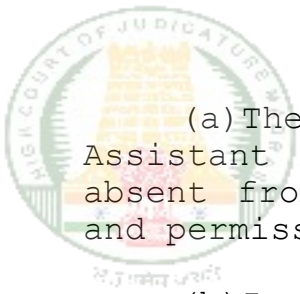
(The case has been heard through video conference)

The Management of the Tamil Nadu Transport Corporation is the writ petitioner herein.

2.The writ petitioner/Management has preferred this writ petition to challenge the order passed in I.D.No. 142 of 2006, dated 26.02.2014, wherein, the Labour Court, Tiruchurapally, has ordered reinstatement of service without back wages and hence, the writ petition.

3.The brief facts of the case that are necessary for determination of the writ petition are hereunder:

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



(a)The second respondent herein was working as a Senior Assistant in the Jayankondam Branch and it is alleged that he was absent from 19.12.2001 to 18.01.2002 without any prior intimation and permission.

(b)In respect of misconduct committed by the second respondent herein, a charge memo dated 17.01.2002 was sent through RPAD directing him to offer his explanation and the same was returned by the postal department. The charge memo was placed in the notice board of the Jayankonam Branch of the writ petitioner/Management from 06.02.2002 to 08.02.2002.

(c)Thereafter, an enquiry was ordered to be conducted. One Thiru.Rai Samuel, B.A. B.L., Advocate was appointed as an Enquiry Officer and the enquiry was fixed on 02.03.2002 and same was intimated to the second respondent herein through the enquiry notice dated 15.02.2002. The second respondent herein did not appear for the enquiry on 02.03.2002 and hence, the enquiry was adjourned to 23.03.2002. The enquiry notice was received by the second respondent herein on 18.03.2002. Even after receiving the intimation, the second respondent herein has not participated in the enquiry. The second respondent herein has sent a letter dated 20.03.2002 by stating that he was taking bed rest till 17.04.2002 and sought adjournment. The second respondent herein had appeared before the writ petitioner/Management on 18.03.2002, submitted a letter requesting a copy of the charge memo and he has also received the copy of the charge memo on the same day itself. Even though the second respondent herein appeared before the writ petitioner/Management, he has not appear before the Enquiry Officer.

(d)The second respondent herein has sent a letter to adjourn the enquiry. As the Management found, there was no *bonafide* reason to adjourn the enquiry, he was set *ex-parte*, the enquiry was conducted and it was completed on 23.03.2002.

(e)Thereafter, the Enquiry Officer has given his findings dated 30.03.2002, wherein, he has come to the conclusion that the all the charges framed against the second respondent herein are proved. The findings of the enquiry was sent to the second respondent herein through a letter dated 09.04.2002 and the same was received by him and he has also submitted his explanation dated 16.04.2002. The second respondent herein was called to appear before the Corporation Doctor through letter dated 20.04.2002 and to appear before the Deputy Manager (Disciplinary) with a medical certificate from the respondent/Corporation Doctor, he has received the same but he did not appear as informed.

(f)The second respondent herein has submitted a letter dated 28.04.2002. Eventhough, through a letter dated 07.05.2002 clarifications were called from the Corporation Doctor. The Doctor replied through his letter dated 10.05.2002, the second respondent



herein was ordered to appear before the Corporation Doctor through letter dated 13.05.2002 and the same was received by him and he has refused to appear before the Doctor and sent a letter dated 18.05.2002.

(g) The writ petitioner/Management has gone through the findings as well as the enquiry proceedings and explanation submitted by the second respondent herein. The writ petitioner/Management had independently come to the conclusion that the charges held by the Enquiry Officer are proved to their satisfaction. The writ petitioner/Management has accepted the findings of the Enquiry Officer in toto.

(h) Taking into consideration the past record of service and also the gravity of the misconducts, the writ petitioner/Management has provisionally come to the conclusion that to dismiss the second respondent herein from service. Accordingly, a second show cause notice dated 01.06.2002 was served on the second respondent herein through RPAD, the same was received by him and he has submitted his explanation dated 12.06.2002. In the meantime, the second respondent herein has filed WP.No.20737/2002 before this Court and has obtained interim stay in WP.MP.No.28707 of 2002 against the second show cause notice dated 01.06.2002. In the above said WP.No.20737 of 2002, the writ petitioner/Management had filed a detailed counter and WP.No.20737 of 2002 came up before this Court on 02.01.2003 and the same was dismissed by this Court.

(i) Thereafter, second respondent's explanation to the show cause notice was considered by the writ petitioner/Management. As there was no valid reasons to modify the proposed punishment, the writ petitioner/Management had passed an order dated 06.01.2003. As there was a dispute pending before the Commissioner of Labour, Chennai, an Approval Application No.6 of 2003 was filed, the writ petitioner/Management and the Authority has granted approval on 22.02.2005 on the dismissal of the Management.

4. As aggrieved against the order of dismissal, dated 06.01.2003, the second respondent herein has preferred I.D.No.142 of 2006 before the Labour Court, Tiruchurapally and the same was allowed, whereby, the writ petitioner/Management was directed to reinstate the second respondent herein without back wages since on the date of the passing of the award viz., before the conclusion of adjudication in the above said I.D.No.142 of 2006, the second respondent retired from the service in the month of March 2013, and hence, it was ordered to be treated as a duty and directed settlement of termination benefits without any back wages. Hence, the writ petitioner/Management has preferred this writ petition for the above relief.

5. Heard Mr.D.Sivaraman, learned Standing Counsel appearing for the writ petitioner/Management and Mr.S.K.Mani for the learned counsel appearing for the second respondent.



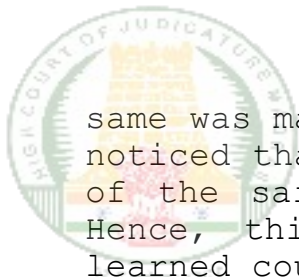
6.The learned Standing Counsel appearing for the writ petitioner/Management would submit that the second respondent herein remained absent without any prior intimation and permission and thereby, the punishment was awarded after careful consideration of merits of the case, past record of service and all relevant factors. The writ petitioner/Management is a Public Utility Service under Section 2(n) of the ID Act. The absence without prior intimation and permission in a Public Utility Service would definitely affect the functions of the Corporation and the second respondent herein was given sufficient chances to correct himself. On above submission contended that in view of the above facts, the punishment of dismissal was justified.

7.Per contra, the learned counsel for the second respondent would contend that the second respondent, who is working in a clerical post, had applied for sick leave and the same was granted for the period 14.12.2001 to 18.12.2001. Thereafter, he had applied for extension of leave along with medical certificate issued by the Government Doctor and the same was said to have been rejected on 27.12.2001 and the communication of the said rejection order was disputed by the second respondent, it was marked as Ex.M4. Taking the period between 19.12.2001 to 08.01.2002, the writ petitioner/Management treated the period as "over stay" and treated the same as unauthorized absent and also treated as a misconduct and had initiated the departmental enquiry on the second respondent herein. Hence, the said act on the part of the writ petitioner/Management does not fall under the Rule 2(H) of the Tamil Nadu State Leave Rules.

8.The second point that is urged by the learned counsel for the second respondent is that the medical certificate has been issued by the Government Doctor, who had treated him and not by the Corporation Doctor. In the absence of any by law or standing order to that effect, the medical certificate issued by the Government Doctor ought to have been accepted and if there is any dispute, they should have intimated to the Second respondent/labour to appear before the Medical Board by marking a copy to the Corporation Medical Officer.

9.The third point that is urged by the learned counsel second respondent is that the punishment is exorbitantly high, does not proportionate to alleged charge of "over staying on medical leave".

10.After hearing rival submissions, after going through records and also the documents filed before the Labour Court by the Second respondent and the Management, it is not in dispute that the second respondent was originally granted sick leave between 14.12.2001 to 18.12.2001 and thereafter, there was a request for extension of leave. The writ petitioner/Management has come forward with a specific plea that the request for extension of leave on medical ground was rejected on 27.12.2001 and the alleged office copy of the



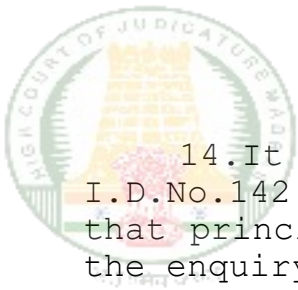
same was marked as Ex.M4 before the Labour Court. On perusal, it is noticed that it is without any date and there is no proof of service of the said order on the second respondent assumes significance. Hence, this Court finds that the contention put forward by the learned counsel for the second respondent is found to have force.

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11.As per Ex.P1, dated 26.12.2001, Ex.P2, dated 07.02.2002 and Ex.P3, dated 19.03.2002, the second respondent herein has applied for sick leave and it was originally granted and extension of sick leave in respect of the disputed portion viz., 19.12.2001 to 08.01.2002, there was no rejection nor approval for the reasons stated supra. Hence, this Court finds that Ex.M4, does not appears to have been served on the second respondent in the absence of any proof of service. Furthermore, as per Ex.P5, dated 20.04.2002, the second respondent was asked to appear before the Corporation Medical Officer. Admittedly, the copy of that letter was not marked to the said Medical Officer as projected by the learned counsel for the second respondent also assumes significance. Further, no document was filed by the writ petitioner/Management to substantiate the plea that a copy of the letter calling upon the second respondent to appear before the Medical Officer is marked to the Medical Officer. The said Medical Officer had returned the second respondent on the ground that he has not given the treatment to the second respondent and the fact also assumes significance. Yet another point is that this period, calling upon the second respondent to appear before the Corporation Medical Officer is not the subject of dispute. More, even for period of leave, are duly covered under Ex.P1 to Ex.P3, Medical Certificate issued Government Medical Collage Hospital at Tirchi, by the concerned Orthopedic Government Doctor where the second respondent was treated as in-patient assumes significance.

12.On a combined reading of Exs.P1, P2 & P3, the first respondent herein/Labour Court had rightly come to the conclusion that the very charge against the petitioner that he is remained absent without prior intimation or permission, does not stands any legal scrutiny and held that the same is unsustainable in law.

13.On a combined reading of Exs.P1, P2, P3 & P4, this Court finds that the second respondent had categorically and correctly intimated to the writ petitioner/Management and he had applied for extension leave for the disputed period 19.12.2001 to 08.01.2002 along with necessary Medical Certificate issued by Government Doctor. The learned counsel for the petitioner/Management had relied upon Ex.M4/an office copy wherein it is said to have been rejected the leave on medical grounds. On a perusal of the lower Court records, this Court finds that there is no posting details or proof of any service having been served or calling upon the second respondent to report duty for non extension of medical leave. The genuineness of Ex.M4 by his very appearance is surrounded by Sea of suspicious. Since, it is writ petition, I am not expressing any view
<https://hcservicescourts.gov.in/hcservices> that Ex.M4, lacks credibility.



14.It remains to be stated that on preliminary enquiry, on I.D.No.142 of 2008 the Labour Court has rendered preliminary finding that principles of natural justice have been violated in conducting the enquiry.

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15(a).After going through records, dates and events and the request made by the petitioner on the medical grounds and seeking extension of the time to appear for enquiry despite Medical records appears to be denied and request for adjournment for appearance for enquiry was rejected without any valid and acceptable reason and ex-parte enquiry appears to have been conducted and concluded against the petitioner.

15(b).After going through the Section 24 of the Standing Order for the Employees of Cholan Roadways Transport Corporation Limited, Kumbakonam, this Court finds that Section 24 of 6(a), 6(b) does not raise on the factual circumstances of this case. In other words, on the factual backgrounds of case and events, the case of second respondent does not fall under 6(a) of Section 24, which reads as under;

"habitual absence without leave or absence or absence without leave or over staying sanctioned leave without sufficient cost or satisfactory extension"

15(c).In the instant case, the writ petitioner/Management trying to bring the case of the second respondent under the category of "over staying sanctioned leave without sufficient cause". Admittedly, the second respondent herein has submitted medical certificate from the Government Medical Hospital and hence on the factual circumstances, the pre-conditions formulated under 6(a) Section 24 of the Standing Order does not attracted to the facts and circumstances of the instant case.

15(d).Furthermore, the Medical Officer before whom the second respondent was called upon to appear, has not examined him on the ground that he has not given the treatment and further, no intimation or copy of the intimation sent to the second respondent was marked to the Medical Officer. In the absence of the any communication to the Medical Officer from the writ petitioner/Management, the Medical Officer of the Corporation has not examined the second respondent, resulted non issuance of Medical Certificate and hence, the same cannot put against the second respondent - employee.

16.Be that as it may, for all the three periods, the second respondent has produced medical certificate from the Competent Government Hospital and Doctor.



17.Though, the learned standing counsel appearing for the petitioner/Management has stated that as per the by law only the Corporation Medical Officer has to examine and give the certificate. Despite several adjournments, the learned standing counsel for the Management has not produced the copy of the said by law or the regulation governing thereto. Despite as stated supra, when the second respondent has appeared before the Medical Officer of the Corporation, he refuses to issue the certificate as he has not treated the second respondent nor the copy was marked to the Medical Officer to examine the second respondent for re-joining and hence, I find that the finding rendered by the Labour Court that Medical Certificate issued by the Government Doctor and at the Government Hospital substantiated the medical cause of the absence of the second respondent and in the absence of any copy being produced regarding the alleged regulation that only Corporation Medical Officer is competent to issue the medical certificate, the plea now araised by the appellant Management, has to fall as it has no legs to stand.

18.The Labour Court, Tiruchirapally, has rightly held that the absence of the second respondent herein between the disputed viz., 19.12.2001 to 08.01.2002 is only due to the illness as stated in the medical certificate issued and copies that are annexed viz., Exs.P1, P2 & P3, cannot be doubted and hence, there is a sufficient cause of the second respondent for non-attending the duty and hence, I find that the finding rendered by the Labour Court, Tiruchirapally, is well considered and well merited, does not warrant any interference and the same does not suffer from any irregularity or illegality.

19.Admittedly, It is an ex-parte enquiry, the Labour Court, Tiruchirapally, has already held on the preliminary point that the domestic enquiry has been held against the second respondent in cross-violation of the principles of natural justice, thereafter, it has proceeds to deal with correctness of the termination order and held the termination order is bad in law as the same not illegally sustainable. Though, the writ petitioner/Management has cited to 18 previous punishment inflicted upon the second respondent, on a close scanning and scrutiny, it is seen that the none of the charges related to absence from the work. Further more, the second respondent is not a driver or conductor, he is a staff attached to the collection Center and hence, the Labour Court has rightly come to the conclusion that the punishment is very harsh and accordingly, set aside the order of the punishment and the said reasoning given by the labour Court does not warrant any interference.

20.Since, the second respondent has already retired from the service during pendency of I.D.No.142 of 2006, the Labour Court has rightly ordered for settlement of terminal benefits as if the second respondent herein worked for the during the period however, denied the back wages by assigning the reasons therefor.



21.In view of the reason assigned by the Labour Court, Tiruchirapally, for denying back wages, this Court is not proceeding to deal with the issue. Hence, all the points raised by the writ petitioner/Management stand negative and the order passed by the Labour Court ordering for reinstatement of the service without back wages with further direction to settle all terminal benefits is hereby confirmed. As this Court find that the domestic enquiry was not conducted in gross-violation of principles of natural justice and genuineness of Ex.M4 appears to be surrounded by Sea of suspicion, this Court is inclined to award a cost of Rs.10,000/- (Rupees Ten Thousand Only) on the writ petitioner/Management.

22.Hence, this writ petition stands dismissed with a cost of Rs.10,000/-. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AD-II)

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Sub Assistant Registrar(CS)

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To

The Presiding Officer,
Labour Court,
Tiruchirapalli.

+1 CC to Mr.D.SIVARAMAN, Advocate (SR-2261[F] dated 27/01/2021)

Judgment in

W.P. (MD) .No.13889 of 2015

and

WMP (MD) .No.12433 of 2016

and M.P. (MD) .No.1 of 2015

27.01.2021

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