



W.P.No.15622 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2022

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

C.R.P.No.15622 of 2010

1. The Managing Director,
State Express Transport Corporation
(Erstwhile Thiruvalluvar Transport
Corporation)
Pallavan salai,
Chennai - 600 002.

2. The General Manager,
State Express Transport Corporation
(Erstwhile Thiruvalluvar Transport
Corporation)
Pallavan salai,
Chennai - 600 002.

.... Petitioners

VS

1. The Presiding Officer,
1st Addl.Labour Court,
Chennai.

2. D.Amaran @ Parabaram,
S/o Deuvasigamani,
80, Rama Street,
Nungambakkam,
Chennai - 600 034.

.... Respondents



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Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records pertaining to the award of the first respondent made in I.D.No.606 of 2004 dated 28.1.2009 and quash the same.

For Petitioner : Mrs.Rita Chandrasekaran
for M/s. Jayesh B Dolia
For Respondent : R1-Court
Mr.R.Karunakaran for R2

ORDER

This writ petition has been filed challenging the award of the first respondent/Labour Court, wherein the petitioner was directed to reinstate the 2nd respondent herein with continuity of service, without backwages.

2. Heard the learned counsel for the petitioner and the learned counsel appearing for the 2nd respondent.

3. Learned counsel for the petitioner would state that the 2nd respondent absented himself unauthorisedly without prior intimation and also failed to establish the same before the first respondent. Learned counsel would further state that having received the registered notice, the 2nd



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respondent failed to submit his explanation which would prove the attitude of the 2nd respondent. Learned counsel would further state that despite several opportunity and reminder were given, the 2nd respondent failed to participate in the enquiry, but the first respondent, without taking into consideration the said fact, had passed an award setting aside the order of termination. Hence, she would pray to quash the award passed by the Labour Court.

4. On the contrary, the learned counsel appearing for the 2nd respondent would state that the 2nd respondent applied for leave on 19.12.1999 on health ground. The petitioner Management, without any show cause notice or enquiry, terminated the service of the 2nd respondent for unauthorised absence. learned counsel would further submit that the 2nd respondent sent a telegram on 15.07.2000 stating that he was taking treatment and was unable to attend the enquiry. Without calling for any explanation from the 2nd respondent and against the principles of natural justice, the petitioner Management terminated his service on 07.03.2001. The Labour Court has observed all these aspects and has rightly set aside the order of termination and reinstated the petitioner with continuity of service, and hence, he would pray that the order of the Labour Court need not be interfered with



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and the writ petition may be dismissed.

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5. On a careful consideration of the submissions made on either side and on scrutiny of the available materials on record, this Court is of the opinion that the award passed by the Labour Court has to be set aside.

6. It appears that the 2nd respondent absented from duty unauthorisedly from 17.12.1999 onwards without any intimation, without any leave application and without getting sanction of any leave. Therefore, a charge memo was issued on 4.1.2000 which was received by him on 18.1.2000 and he did not submit any explanation. Therefore, the petitioner Management was constrained to conduct domestic enquiry and enquiry notice was sent to the petitioner on 14.02.2000 which was received by him but did not participate in the enquiry on 26.02.2000. Thereafter, the enquiry was fixed on 18.03.2000 and was adjourned to 11.04.2000 at the instance of the 2nd respondent. Even then, he failed to attend the enquiry and the same was adjourned to 27.4.2000, 23.5.2000, 03.06.2000 and 22.06.2000. Though several opportunity have been given to the 2nd respondent to participate in the enquiry, he did not attend the enquiry. Further, the opportunity extended by the petitioner Management directing the 2nd respondent to join duty on



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01.07.2000 was also not responded by the 2nd respondent. The above narration, in fact, shows the stages of departmental proceedings leading to termination of the 2nd respondent and thus, there is no violation of principles of natural justice.

7. At this juncture, it is relevant to point out that even in Ex.M2, enquiry officer's findings dated 10.08.2000, it is stated that the 2nd respondent expressed his willingness to join duty on 1.7.2000 through a telegram and once again, the 2nd respondent sent a telegram on 4.7.2000 and sought time upto 15.07.2000 and even after that date, he did not report for duty. Thus, the Enquiry Officer has recorded his finding that the attitude of the 2nd respondent showed his disinclination either to join duty or to participate in the enquiry. Thus, an ex parte enquiry was conducted and thereafter, came to the conclusion that the charges levelled against the 2nd respondent herein were proved. The bonafides of the 2nd respondent has not been established before the Labour Court and the 2nd respondent has also not produced the relevant medical records to substantiate his stand that he had taken treatment continuously from 15.12.1999 and there is also no document to show that the 2nd respondent was ready to join duty. As the second show



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cause notice sent was returned to the petitioner Management, paper publication was effected in Daily Thanthi on 13.01.2001 but no explanation was received from the 2nd respondent. The said paper publication dated 13.01.2001 is also produced before this Court by the learned counsel for the petitioner and the same is also perused by this Court. The above act of the 2nd respondent would prove his lethargic attitude towards his employment. Such an attitude of the 2nd respondent is highly contemned. The petitioner Corporation cannot be compelled to retain an employee who is lethargic and not serious about his employment. Though the Tribunal had touched on the merits of the matter in detail pointing out the attitude of the 2nd respondent, had come to the conclusion that the alleged misconduct is not a grievous misconduct and passed an order of reinstatement which is unsustainable. The petitioner Corporation had shown sufficient cause and reasons for this Court to interfere with the award of the Labour Court.

8. In view of the foregoing discussions, the award passed by the Labour Court in I.D.No.606 of 2004 dated 28.01.2009 is hereby set aside. Accordingly, the Writ Petition is allowed. No costs.



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Index:Yes/No
Speaking/Non-speaking order
vsi

To

The Presiding Officer,
1st Addl.Labour Court,
Chennai.



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J.NISHA BANU,J.

Vsi

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