



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.04.2022

WEB COPY

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.31645 of 2015
and
M.P.No.1 of 2015

J.Kishan Singh

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Salem.

2.The Management,
Tamil Nadu Government Transport Corporation,
Bharathipuram,
Dharmapuri District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records in I.D.No.73 of 2011 dated 26.02.2015 on the file of the first respondent/Labour court, Salem and to quash the same and consequently, direct the second respondent/Management to provide continuity of service, back wages, bonus, increments, promotions and all other benefits to the petitioner.

For Petitioner : Mr.V.Prakash, Sr. Counsel
for M/s.Dass Law Asso.

For Respondent-2 : Mr.A.Sundaravadanan
R1 : Labour Court

O R D E R

Alleging that the petitioner herein was on unauthorized absence from 14.07.2007 onwards, the second respondent Corporation had issued a charge memo dated 26.07.2007. When the enquiry summons dated 16.07.2008, 27.08.2008 and 07.10.2008 were issued to the petitioner, the same were returned unserved with an endorsement as "door locked". On 12.11.2008, the Enquiry



Officer had set the petitioner as 'ex-parte' and held the charges as 'proved'. After about two years, the second respondent Corporation had dismissed the petitioner from services on 21.12.2009. Challenging the order of dismissal, the petitioner had raised an Industrial Dispute in I.D.No.73 of 2011 before the Labour Court, Salem. Before the Labour Court, both the petitioner, as well as the second respondent Corporation herein, had let in oral and documentary evidences. By an Award dated 26.02.2015, the Labour Court had dismissed the Industrial Dispute, which is under challenge in the present Writ Petition.

2. Heard the learned counsel on both sides.

3. At the time of enquiry, three summons issued to the petitioner by the Enquiry Officer were returned unserved with an endorsement as "door locked". The case of the petitioner is that, his son had met with a major accident involving fracture of his two legs and an injury in the stomach and therefore, was continuously in the hospital, attending to his son. In this background, his residential house was locked and the summons sent to the address had been returned. The three summons issued to the petitioner between 16.07.2008 and 07.10.2008, in about a period of 2 ½ months, were returned owing to which the Enquiry Officer had set him ex-parte and had submitted the enquiry report on 12.11.2008, stating that since the petitioner had remained absent continuously from 14.07.2007, he had drawn an inference that the petitioner had admitted the charge of unauthorized absence. However, when the Management/second respondent Corporation herein had issued a second show cause notice after the enquiry report, the petitioner had rendered his explanation on 11.05.2009, citing his son's major accident, as a reason for his inability attend duty and therefore requested permission to join duty. The Management/second respondent Corporation claims to have sent a letter dated 30.09.2009, permitting the petitioner to join duty, which letter was returned as "door locked". In this background, the petitioner was dismissed from services on 21.12.2009. On an overall consideration of the manner in which the enquiry came to be concluded ex-parte, it could be said that the petitioner was not aware of the enquiry proceedings at all, which resulted in setting him ex-parte. Thus, it cannot be said that the enquiry was done in a fair and proper manner.

4. Before the Labour Court, all these aspects were canvassed by the second respondent Corporation herein. Though the Labour Court had taken into consideration the manner in which the second respondent Corporation had attempted to serve the notice on the petitioner and left with no other option, had set the petitioner herein ex-parte, the Labour Court had relied



upon Ex.M5, which is the report of the sergeant of the second respondent Corporation. The nature of the report was that, after the Enquiry Officer had filed his final report dated 12.11.2008 holding that the charges against the petitioner as proved and the second show cause notice was issued on 28.02.2009, the Management/second respondent Corporation had conducted another enquiry through their sergeant at the petitioner's residence. As per Ex.M5 dated 11.05.2009, the sergeant had stated that the petitioner was unable to attend duty due to the major accident met by his son, in which his son had suffered grievous injuries and that he is willing to join duty. Apart from such a statement, the sergeant in his report had stated that the petitioner was constructing a house which he was supervising and therefore he had not been attending the duty. This statement was the sergeant's own view and is not reported to be stated by the petitioner.

5. Among other findings, the Labour Court had placed reliance on Ex.M5 and had come to the conclusion that the period of unauthorized absence was due to petitioner's construction of house. Incidentally, the contents of Ex.M5 was not proved through the concerned sergeant who had given the report, or through any other relevant witness, particularly, when the statement that the petitioner had not attended duty because of the construction of his house, was his unilateral statement. In the absence of examination of the author of Ex.M5, the Labour Court ought not to have placed reliance on that document and come to the conclusion that the petitioner had absented himself for the purpose of supervising the construction activities.

6. Furthermore, though the Enquiry Officer had filed his ex-parte report on 12.11.2008, the second respondent Corporation herein had passed the impugned order of dismissal on 21.12.2009, which is after more than one year. This inordinate delay is unjustifiable. If all these grounds are cumulatively analyzed, this Court is of the view that the punishment of dismissal imposed on the petitioner is disproportionate to the charges.

7. After the order of dismissal was passed, the petitioner had filed an application before the Conciliation Officer on 29.09.2010, which came to be closed with a failure report. In this background, the petitioner had challenged the dismissal order before the Labour Court on 15.07.2011. When the Industrial Dispute was pending, the petitioner had reached his age of superannuation on 31.12.2012. Though this Court had found that the punishment is disproportionate to the charges, remanding back the matter to the second respondent Corporation for imposing lesser punishment would cause further delay and more prejudice to the petitioner and therefore, it would be appropriate that the punishment be reduced by this Court, in



exercise of its powers under Article 226 of the Constitution of India.

8. In the light of the above observations and findings, the impugned Award dated 26.02.2015 passed by the Labour Court, Salem in I.D.No.73 of 2011 dated 21.12.2009 insofar it imposes the punishment of dismissal is concerned, is hereby quashed. Consequently, the second respondent Corporation herein is directed to pass orders, reducing the petitioner's punishment of "dismissal from service" to one of "stoppage of increment for a period of two years with cumulative effect". The second respondent Transport Corporation shall pass such orders notionally modifying the punishment, as for the disbursement of the retiral and pensionary benefits, within a period of twelve weeks from the date of receipt of a copy of this order. The petitioner shall not be entitled for back wages for the period of his non-employment. The Writ Petition is disposed of accordingly. Consequently, the connected Miscellaneous Petition is closed. There shall be no orders as to costs.

Sd/-

Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar

DP

To

1.The Presiding Officer,
Labour Court, Salem.

2.The Management,
Tamil Nadu Government Transport Corporation,
Bharathipuram,
Dharmapuri District.

+1cc to M/s.Dass Law Associates, Advocate SR.No.25591

+1cc to Mr.A.Sundaravadanan, Advocate SR.No.25834

W.P.No.31645 of 2015
and
M.P.No.1 of 2015

PM(CO)
GMY(26/04/2022)