



W.A.No.3298

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.09.2022

DELIVERED ON : 17.10.2022

CORAM:

**THE HON'BLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE K. KUMARESH BABU**

**W.A.No.3298 of 2019
and C.M.P.No.21150 of 2019**

Tamil Nadu State Transport
Corporation (Coimbatore) limited, Coimbatore,
Represented by its General Manager,
No.37, Mettupalayam Road,
Coimbatore. ... Appellant

Vs

1.The Presiding Officer,
Labour Court, Coimbatore.

2.Chandrababu ... Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, praying to
set aside the dated 07.02.2019 passed in W.P.No.16557 of 2011.

For Petitioner : Mr.A.Sundaravathanam

For Respondents : R1 – Court



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: Mr.L.Chandrakumar
for Mr.K.Jayaraman for R2

J U D G M E N T

(Judgment of the court was delivered by K.KUMARESH BABU, J.

This intra Court appeal has been preferred by the Tamil Nadu State Transport Corporation (Coimbatore) Limited, being aggrieved against the order dated 07.02.2019 made in W.P.No.16557 of 2011 upholding the Award made by the 1st respondent herein in I.D.No.263 of 2005 dated 28.09.2010.

2.Heard Mr.A.Sundaravathanam, learned counsel for the petitioner and Mr.L.Chandrakumar, learned counsel for the 2nd respondent.

3.The case of the appellant is that the 2nd respondent was employed in the appellant Management as an Assistant Technician on and from 02.01.1979. A charge memo was issued on 22.06.1999, alleging that the workmen was absenting without prior intimation or sanction of leave. Pursuant to the said charge memo, an enquiry was conducted into the charges which was found to be established. During the course of the enquiry, the workmen had not reported for duty. Therefore, he was allowed to rejoin duty on 28.09.1999.



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However, the workmen again remained absent without any prior intimation on and from 11.01.2000. Considering all these aspects, an order of dismissal was made on 11.02.2000. The 2nd respondent/ workmen had raised an industrial dispute questioning the order of dismissal. The Tribunal without considering the material aspects relying upon a medical certificate that was produced by the 2nd respondent workmen held that the punishment of dismissal from service was not warranted and therefore, ordered reinstatement of the 2nd respondent, however, without backwages and other attendant benefits inclusive of gratuity for the non-employment period commencing from 11.01.2000 till the date of reinstatement. The said Award was challenged by the appellant before this Court in W.P.No.16557 of 2011.

4.The case of the learned counsel for the appellant is that the learned Single Judge also without analysing the facts of the case in its proper perspective has concurred with the reasonings arrived at by the Tribunal to hold that the dismissal from services was excessive, harsh and disproportionate to the gravity of the misconduct, when the workmen has come up with an explanation of illness during the period of absence. The learned Single Judge also agreed with the argument of the workmen that the denial of



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the backwages and other attendant benefits throughout his non-employment, itself is a severe penalty and therefore, the course adopted by the Labour Court was correct.

5.The learned counsel for the appellant would contend that the punishment for dismissal was imposed, was not only on the basis of the misconduct for which he was charged, but also taking into account his past conduct. He relied upon the order of dismissal, which records that the workmen has been imposed with minor punishments for about 14 such incidents of absentism without prior intimation. Hence, he pleaded that the 2nd respondent is in habit of regularly absenting himself from duty without prior intimation. The learned counsel for the appellant further submitted that the learned counsel for the workmen had made an endorsement in the claim statement that the workmen is not attacking the enquiry conducted by the appellant and therefore, he cannot raise an issue as to the fairness in conducting the disciplinary proceedings. When that be so, it is an admitted case that it is deemed that the enquiry proceedings has been conducted in a fair and proper manner. Further the Tribunal had also given an finding that there was no perversity in the findings of the Enquiry Officer. When that is so, the Tribunal ought not to have entered into the issue of proportionality of



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punishment. He further argued, that without admitting, that the Tribunal could enter into the proportionality, he claimed that the Tribunal has not appreciated the issue in the proper prospective. He contended that when the punishment was imposed upon the workmen, the disciplinary authority had taken into consideration his habitual absentism. He relied upon the judgment reported in 2005 (2) SCC 489, wherein the Hon'ble Apex Court has held that, the past record of services is also relevant factor for consideration as to whether the punishment imposed on the delinquent employee is shockingly disproportionate or not. This principle has been given a complete go by, by the Industrial Tribunal in coming to the conclusion that the punishment awarded was disproportionate. The habitual absentism has not been disputed by the workmen. The learned Single Judge had also not considered the conduct of the workmen, in that aspect and therefore, prayed that his Court may be pleased to interfere with the order passed by the learned Single Judge in confirming the Award of the Labour Court.

6.Countering his arguments, Mr.L.Chandrakumar, learned counsel appearing for the 2nd respondent would submit that the workmen was suffering from severe ulcer and he has been taking a regular treatment. He got himself



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admitted into a private hospital and therefore on 01.06.1999, he had given a leave application to the Branch Manager through his son. However, he was marked as absent. He submitted that pursuant to the show cause notices issued calling upon the 2nd respondent to submit his explanation on the report submitted by the Enquiry Officer, the workmen had, in his explanation annexed two medical certificates dated 01.06.1999 and 16.08.1999, indicating his medical illness and his fitness to report to work respectively. This has not been considered by the disciplinary authority while passing the order of dismissal. Therefore, the Tribunal has rightly held that the disciplinary authority has failed to consider the said certificates and the explanation and therefore, held that the punishment was disproportionate and directed reinstatement with continuity of services only. The denial of backwages and other attendant benefits itself is a severe punishment.

7.The learned Single Judge has also not found any illegality or perversity in the Award impugned before him and therefore, upheld the Award. He further pleaded that the workmen had already superannuated in the year, 2015 and therefore, pleaded that there was no necessity in interfering with the Award passed by the Industrial Tribunal as confirmed by the learned



Single Judge and prayed that this Court may be pleased to dismiss the above Writ Appeal.

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8.We have considered the rival submissions made by the learned counsels appearing on either side and perused the materials available on record.

9.It is evident from the Award Passed by the Tribunal that there was no perversity in the report of the Enquiry Officer. It has also been admitted by the learned counsel for the workmen before the Tribunal that he is not attacking the enquiry conducted by the Enquiry Officer. Therefore, the only issue is whether the punishment was disproportionate.

10.The reasons attributed by the Industrial Tribunal as accepted by the learned Single Judge in holding that the punishment is disproportionate on the basis that the disciplinary authority had not considered the explanation of the workman and his medical illness and has disregarded the medical certificates submitted by him. It is pertinent to note that during the course of the enquiry, the workmen had not produced those medical certificates. Only in his explanation to the show cause notices, pursuant to the findings of the Enquiry



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Officer, the workmen has produced the medical certificates. There is no explanation on the part of the workmen as to why he had not produced such certificates during the course of the enquiry or immediately when he absented himself that too when one of the medical certificates is dated 01.06.1999, the date on which he absented from work. This itself would be prima facie suffice to conclude that such an explanation was an after thought of the workmen. It is also pertinent to note that the disciplinary authority while awarding the punishment of dismissal, has taken into account the similar misconduct of the workmen for which he was imposed minor punishments, this is not disputed by the workmen. The Tribunal has given a clear go by to the reasonings adduced by the disciplinary authority in awarding the punishment of dismissal. There is no reasonings assigned by the Tribunal that the disciplinary authority ought not to have taken the past conduct, as rightly pointed by the learned counsel for the petitioner relying upon the judgment in ***Bharat Forge Co.Ltd., Vs Uttam Manohar Nakate***, reported in ***2005 (2) SCC 489***, wherein, the Hon'ble Apex Court has held that the past record of service would also be a relevant factor for considering as to whether the punishment imposed on the delinquent is shockingly disproportionate or not.



11. In the present case, even in the order of dismissal, the disciplinary authority had pointed out the various similar misconducts of the workmen. The same has not been considered by the Tribunal. Hence, in our opinion, the finding of the Tribunal, that the punishment is disproportionate is without appreciating the material facts and hence, is perverse. The learned Single Judge also fell into the same error. Therefore, the findings of the Tribunal that the punishment awarded is disproportionate is set aside.

12. However, considering the fact that the 2nd respondent has already superannuated, even though, we have set aside the findings and reasonings of the Tribunal in support of the conclusion that the punishment was disproportionate, we are of the view that the order of reinstatement need not be set aside. By following the decision of the Hon'ble Apex Court in the case of **Karnataka State Road Transport Corpon., Vs B.S.Hullikatti** reported in **2001 (2) SCC 574**. For better appreciation the relevant paragraph of the said order is extracted hereunder:

“7. In our opinion, the order of dismissal should not have been set aside, but we are informed that in the meantime the respondent has already superannuated. We, therefore, on the special facts of this case, do not set aside the order of reinstatement, but direct that the respondent would not be



entitled to any backwages at all but he would be entitled to the retiral benefits.”

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Hence, the 2nd respondent would not be entitled to any backwages and other attendant benefits. But, the 2nd respondent would be entitled to retiral benefits for the actual period he had worked for. The appellant Corporation is directed to disburse the retiral benefits to the 2nd respondent within a period of three months from the date of receipt of a copy of this order.

13. Accordingly, this Writ Appeal is disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(R.S.M, J.) (K.B, J.)
17.10.2022

Index: Yes/no
Speaking/non-speaking
gba

To
The Presiding Officer,
Labour Court, Coimbatore.



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