



W.P.No.30622 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2022

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.30622 of 2014

The Management,
Tamilnadu State Transport Corporation Ltd.,
Villupuram,
rep. by its General Manager

.... Petitioner

VS

1. R.Arunachalam
S/o of Ramakrishnan
Conductor, CR.No.4061, Thandavasamuthiram Post,
Alampoondi via Gingee Taluk.

2. The Presiding Officer,
Labour Court,
Cuddalore.

.... Respondents

Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorari to call for the records of the 2nd respondent made in I.D.No.39/2012 dated 23.06.2014 and quash the same as illegal.

For Petitioner : Mr.M.Aswin

For Respondents : Mr.R.Muralidharan for R1
R2 - Court



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ORDER

Challenging the award passed by the Labour Court, reinstating the 1st respondent, the petitioner/Transport Corporation has filed this writ petition.

2. The case of the petitioner is that the 1st respondent has joined duty as a Conductor in the petitioner Management on 01.09.2005 and he was unauthorizedly absented from duty from 04.06.2008 to 09.07.2008. Hence, he was issued with a charge memo on 11.07.2008 for the above misconduct. Since the explanation submitted by the 1st respondent was not satisfactory, domestic enquiry was conducted and the charges were found to be proved. Thereafter, the 1st respondent was dismissed from service on 10.09.2011. Against the order of dismissal, the 1st respondent raised an Industrial Dispute in I.D.No.39/2012 praying for reinstatement along with backwages and all other attendant benefits. The Labour Court found that the unauthorized absence was found to be not proved and passed an award of reinstatement along with backwages and other benefits. Against which, the the petitioner Management has filed this writ petition.

3. Heard the learned counsel for the petitioner and the learned counsel appearing for the 1st respondent.

4. Learned counsel for the petitioner Transport Corporation would



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state that due to the unauthorized absence there was a large scale of hindrance in the operation of the vehicle in the petitioner Transport Corporation and therefore, the conduct of the petitioner amounted to grave misconduct. Subsequently, domestic enquiry was conducted and the charges were found to be proved and the 1st respondent was dismissed from service. He would further submit that the enquiry was conducted in a fair and proper manner by providing sufficient opportunity to the 1st respondent and only thereafter, an order of dismissal was passed. The Labour Court did not consider all these aspects but passed an award of reinstatement along with backwages and other benefits.

5. Learned counsel for the petitioner Management would further submit that during admission of this writ petition, an interim order was passed on 24.11.2014 in M.P.No.1 of 2014, staying the order passed by the Labour Court on condition to deposit 50% of the award amount within a period of four weeks and in compliance of the same, a cheque was deposited before the Labour Court. Further, vide interim order dated 22.01.2015 in M.P.No.1 of 2015 the Transport Corporation was directed to pay the last drawn salary of the employee from November, 2014. For the non-compliance of the order dated 22.01.2015, Contempt Petition No.1180 of



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2015 was filed by the 1st respondent and initially, vide order dated 21.03.2016, contempt petition was closed by observing that the petitioner had already joined in employment and then it was reopened by the 1st respondent herein and again, vide order dated 06.04.2016, the same was closed, observing that the 17(B) wages from 9.4.2015 to 19.2.2016 can be decided in the writ petition. Learned counsel for the petitioner would further state that the 1st respondent was reinstated in service on 09.04.2015 and even thereafter, he took leave unauthorizedly. Therefore, the learned counsel would pray to allow the writ petition.

6. Per contra, the learned counsel appearing for the 1st respondent would state that the petitioner Management punished the 1st respondent as if he remained absent for no fault of him. He was not given work regularly. On some occasions, no work was assigned even for a month continuously. Whenever he complained to the head office about non-allocation of work, he would be allocated the work only after marking him absent on the days when no work was allotted to him. The petitioner Management was in the habit of marking him absent whenever they could not assign duty to the 1st respondent. The Labour Court has rightly considered the case of the 1st respondent and has set aside the order of dismissal and directed



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reinstatement with backwages and continuity of service. Therefore, he would pray that the order of the Labour Court need not be interfered with.

7. This Court considered the submissions made on either side and perused the materials available on record.

8. It is the contention of the petitioner that the 1st respondent was absent for about a month and this absence was not authorized by the petitioner Management. The 1st respondent, in his evidence before the Labour Court had stated that he would go to the branch office and wait for work and on many occasions, work would not be assigned and the officers would mark him absent and he reported the same to the head office and the head office would allot duty to him. It is the specific case of the 1st respondent that though he was ready to work, the Controller marked him absent and took disciplinary action against him. This evidence has not been challenged by the petitioner Management in the cross examination and no suggestion was put to the 1st respondent denying the evidence. In the facts and circumstances of the case, this Court is of the view that the penalty of dismissal from service was not justified by the petitioner Management. Moreover, the punishment awarded should be proportionate to the gravity of misconduct. Even if the allegations of unauthorised absence is found to be



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proved, dismissal from service appears to be an extreme punishment.

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9. This Court finds no illegality or infirmity in the award passed by the Labour Court. Therefore, the Writ Petition stands dismissed. No costs.

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

To

The Presiding Officer,
Labour Court,
Cuddalore.



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J.NISHA BANU,J.

vsi

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