



W.P.(MD)No.2762 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.2762 of 2014

The Management through the General Manager,
Tamil Nadu State Transport Corporation,
[Tirunelveli Limited],
Tirunelveli Region,
Tirunelveli District.

... Petitioner

vs.

1. The Presiding Officer,
The Labour Court,
Tirunelveli.

2. A.Rassalraj

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorari*, calling for the records from the first respondent Labour, Tirunelveli, relating to the impugned award passed by in I.D.No.1 of 2011 dated 30.03.2012 and quash the same.

For Petitioner : Mr.K.Sathiya Singh

R-1 : Court

For R-2 : Mr.K.R.Laxman



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ORDER

This Writ Petition is filed for issuance of a *Writ of Certiorari*, to quash the impugned order, dated 30.03.2012 in I.D.No.1 of 2011 passed by the learned Presiding Officer, Labour Court, Tirunelveli.

2. The brief facts of the case are that the second respondent has raised an industrial dispute challenging the punishment of dismissal from service for the allegation that he was unauthorizedly absented from duty from 25.07.2004 to 17.08.2004. The claim of the second respondent is that his father suddenly fell sick and hence in order to attend his father's treatment he could not attend the duty. Subsequently he also fell sick and hence he could not get prior permission and obtain leave. Subsequently, the 2nd respondent produced medical certificate with an endorsement from the Doctor of the Transport Corporation. The Corporation has initiated disciplinary proceedings, a domestic enquiry was conducted and the same was held proved. After taking into the delinquent's past history, the punishment of dismissal was awarded. The contention of the second respondent is that he was not cross examined in the domestic enquiry by the Transport Corporation and therefore, his evidence ought to be taken as proof. The



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management witness was a Conductor and he is not a competent witness. Therefore, the contention of the second respondent is that these facts ought to be considered in a proper perspective. Hence the petitioner contended that the charges was not proved.

3. The Transport Corporation had submitted that through the Management witness, who was a Conductor, who was also in-charge of the Controller of the attendance of the Conductors and Drivers and therefore, he is the competent authority to depose as a witness. The second respondent had participated in the domestic enquiry and full opportunity was afforded to him and therefore, there is no defect in the domestic enquiry. In the domestic enquiry, the charges against the second respondent were held proved and the second respondent / delinquent was working as driver and having the habit of unauthorized absenting frequently and his past service records reveals that he was a habitual absentee. According to the standing orders of the Transport Corporation for unauthorized absence, the prescribed punishment is dismissal from service and hence it has been rightly imposed. However, the Labour Court has not taken any material relevant factors while allowing the petition. The



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Labour Court, has allowed the petition and the dismissal order was set aside and the petitioner/management was directed to reinstate the delinquent with continuity of service with back wages. Aggrieved by the same, the petitioner/management has filed this Writ Petition.

4. Heard Mr.K.Sathiya Singh, learned Counsel appearing for the petitioner and Mr.K.R.Laxman, learned Counsel appearing for the second respondent and perused the material documents available on record.

5. When the case was taken up for final hearing it is submitted by both the Learned Counsels that after passing the award vide dated 30.03.2012, the second respondent was reinstated into service on 15.07.2019.

6. It is an admitted fact that the second respondent was absented to duty from 25.07.2004 to 17.08.2004 i.e., for 23 days. The second respondent was dismissed from service on 10.02.2005. The learned Counsel appearing for the Petitioner/Management submitted that from the year 2005 to 2019 the second



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respondent was not in service and therefore, granting of back wages for the past 14 years is hit by the Principle of 'No work No pay'.

7. The Learned Counsel appearing for the second respondent submitted that the Labour Court has passed an order in the year 2012 itself. If the Petitioner / Management has reinstated in the year 2012 itself, then the delinquent would have received salary from the year 2012. He further submitted that now, the second respondent was deprived of enjoying the fruits of the award, atleast back wages ought to be considered from the date of the award.

8. The Learned Counsel appearing for the second respondent submitted that the petitioner management cannot take into account the past delinquencies while passing an order in the present delinquency and relied upon the Judgment, dated 25.11.2021 rendered in W.A.No.378 of 2011, wherein the Division Bench while dealing with the punishment for misconduct of rash and negligent driving has held as, "*there is no enquiry proceeded before imposing the punishment with regard to the past punishment and in the light of the Judgment reported in 1987(2) LLJ 491, past punishments cannot be treated as past record at all*".



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9. This Court is of the considered opinion that the Hon'ble Division Bench was dealing with the rash and negligent driving and has held past punishment cannot be taken for imposing punishment. In the present case, the petitioner was absented from duty several times and in most of the cases the disciplinary proceedings were initiated and minor punishment was imposed. In one such case severe warning was imposed. In spite of such warning and minor punishments the petitioner has not mend his ways from absenting without prior permission. The petitioner/management has produced an extract of Conduct Register of the second respondent and the Tabular is extracted hereunder:

Sl. No.	Date of Offence	Offence Details	Punishment awarded	Reference number and Date
1.	11.11.2003	Absent	Fine Amount Rs.100/-	9473/L7/03
2.	26.04.2003	Tyre Damage Amount Rs.1687.00	Rec. of Cost Amt. of Rs.85/-	2781/K2/03
3.	06.05.2003	Absent	Absent treated as Absence	2804/K2/03
4.	07.05.2003	Absent	Absent treated as Absence	2813/K2/03
5.	16.06.2002	Tyre Damage amount Rs.2235.00	Rec. of Cost Amount Rs.112/-	205/2002
6.	03.11.1996	Absent Days : 60	Increment cut w.c.e Mon:6	15456/L7/96
7.	04.03.1999	Absent	Increment cut w.c.e. Year 2	3405/L7/99
8.	03.09.2000	Absent	Incr. Cut w.o.c.e Mon:3	292/P1/2000
9.	07.01.2002	Absent	Fine Amt Rs.10	0120/pn/2002
10.	08.01.2002	Absent	Abs. treated as Elg leave	0120/PN/2002
11.	06.09.2002	Absent	Incr.Cut.v.o.c.e Mon: 3	4731/02



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12.	02.10.2002	Spring Leaf : 1	Breakage	Severe Warning	266/PSM1/02
13.	14.12.2002	Absent		Severe Warning	2698/02
14.	20.01.2003	Absent		Incr. Cut. v.o.c.e Mon.6	8583/L7/03

10. The second respondent was absented without prior permission for more than 11 times and this is 12th time. Therefore, this Court is of the considered opinion that the second respondent was imposed with minor punishment and in one case he was severely warned, inspite of the same he had not mended his ways and hence the petitioner is liable for punishment.

11. The second respondent seems to be a habitual absentee without prior intimation. In the present case, the second respondent was absented for more than 23 days. The second respondent has submitted that his father was ill and he was attending his father and he took his father for treatment in the Hospital. The second respondent also stated that he was also not well. The petitioner has taken leave without intimation which would clearly shows that the second respondent was not serious about his work at all. Such activity cannot be allowed. Moreover, the punishment of dismissal from service was set aside by



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the Labour Court and has granted further relief directing the Corporation to take the entire service for monetary benefits and service benefits, which would amount that there is no punishment at all for the second respondent for unauthorizedly absenting for more than 23 days.

12. The contention of the second respondent is that the absented period ought to be considered as medical leave and disciplinary proceedings ought not to have been initiated at all. But the contention of the petitioner Corporation is that the second respondent is a habitual absentee without prior intimation and hence the period should not be considered as medical leave and such leniency cannot be shown to the second respondent.

13. Therefore, this Court is of the considered opinion that the second respondent is not entitled for full back wages and hence the period from 10.02.2005 to 30.03.2012 the petitioner is not entitled to claim any back wages. From the date of the award, till reinstatement i.e., from 01.04.2012 to 14.07.2019 the petitioner is entitled to claim 75% of back wages.



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14. Accordingly, this Writ Petition is partly allowed with the following modifications and no costs:

(i) That the impugned order, dated 30.03.2012 in I.D.No.1 of 2011 passed by the learned Presiding Officer, Labour Court, Tirunelveli, is modified and that the termination order is set aside.

(ii) That the petitioner is liable for punishment of stoppage of increment for one year without cumulative effect.

(ii) That the second respondent is eligible for continuity of service, however, the claim of back wages is entitled only for the period from 01.04.2012 to 14.07.2019 for 75% only.

Index : Yes / No
Internet : Yes
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To
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Labour Court,
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S.SRIMATHY, J

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