



W.P.(MD)No.5759 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.(MD)No.5759 of 2014

and

M.P.(MD) No.1 of 2014 &

W.M.P.(MD) Nos.12384 & 12385 of 2016

The Managing Director,
Tamil Nadu State Transport Corporation (Kumbakonam) Ltd.,
Periyamilaguparai,
Tiruchirapalli.

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Tiruchirapalli.

2.N.Krishnan

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari to call for the



W.P.(MD)No.5759 of 2014

records relates to the impugned order passed by the first respondent in I.D.No.27 of 2006, dated 05.09.2012, quash the same.

For Petitioner : Mr.D.Sivaraman
For Respondents : Mr.G.Purushothaman - for R2
R1 - Court

ORDER

This writ petition has been filed for a Writ of Certiorari to call for the records relateing to the impugned order passed by the first respondent in I.D.No.27 of 2006, dated 05.09.2012 and to quash the same.

2. The learned counsel for the petitioner submitted that the second respondent remained absent unauthorisedly from 14.02.1002 to 09.04.2002, without any intimation. A charge-memo in Ref.No.TNSTC/KMM-II/D2/6246/2002, dated 11.04.2002 was issued to him. He submitted his explanation on 20.04.2002 and his explanation was found not satisfactory and therefore, an oral enquiry was ordered.



W.P.(MD)No.5759 of 2014

WEB COPY

The Enquiry Officer conducted the oral enquiry and submitted his report on 29.05.2002 and concluded that the charges levelled against the second respondent was proved. A second show-cause notice was given to the second respondent on 20.06.2002, and he sent his reply on 30.06.2002. After considering his explanation, the competent authority passed the final order on 12.07.2002, imposing a punishment of removal from service. The second respondent raised an Industrial Dispute in I.D.No.27 of 2006 before the first respondent. The first respondent by award dated 05.09.2012 set aside the punishment, dated 12.07.2002 and directed the petitioner to reinstate the second respondent into service with continuity of service, by accepting his application for voluntary retirement from service and giving retirement benefits. Challenging the said award, this writ petition is filed.

3.It is further submitted by the learned counsel for the petitioner that the second respondent had earlier suffered 21 punishments, including 8 punishments for unauthorised absence. His contention that he submitted a leave application through one



W.P.(MD)No.5759 of 2014

Mathiyalagan, was not proved. There is also a finding in this regard by the Labour Court. When that being the case, setting aside the punishment and directing the petitioner to accept the second respondent's voluntary retirement from service is contrary to the evidence and law. Therefore, he prayed for setting aside the order of the Labour Court and for confirming the order of dismissal from service.

4. In reply, learned counsel appearing for the second respondent submitted that the previous punishments attributed to the petitioner were only minor latches, resulting in punishment. This case concerns about the alleged unauthorised absence from 14.02.2002 to 09.04.2002. The petitioner was absent for the reason that he had undergone surgery for piles and therefore, he was not able to go to work. He submitted his voluntary retirement application on 21.02.2002. Without considering his voluntary retirement application, the charge-memo was issued with ulterior motive only with a view to send him out of service. The Labour Court had rightly found that without taking a decision on the voluntary retirement application, finding the second



W.P.(MD)No.5759 of 2014

respondent guilty of the charges, is not correct. Thus the learned counsel for the second respondent prayed for confirming the award passed by the Labour Court and dismissing the writ petition.

5. Considered the rival submissions and perused the materials available on record.

6. From the facts narrated above and from the records produced, it is evident that the particular charge against the second respondent is that he was unauthorisedly absent from 14.02.2002 to 09.04.2002. It is the claim of the second respondent that the second respondent submitted his voluntary retirement application on 21.02.2002. This claim is not disputed by the petitioner. There is also an observation in the enquiry report about the pendency of the voluntary retirement application. The learned Labour Judge also discussed this aspect in his award and has also made an observation that the order of dismissal did not reveal that the petitioner had considered the second respondent's request for voluntary retirement from service or reject the application.



W.P.(MD)No.5759 of 2014

WEB COPY

7. It is observed in the award that it is not known as to how the authority decided the charges without deciding the voluntary retirement application. As said earlier, the second respondent submitted his voluntary retirement application on 21.02.2002. The charge was issued against the second respondent on 11.04.2002 for the alleged misconduct of unauthorised absence from 14.02.2002 to 09.04.2002. When there is no disposal given on the voluntary retirement application submitted by the petitioner, dated 21.02.2002 immediately after its receipt, the very framing of charges that petitioner was unauthorisedly absent from 14.02.2002 to 09.04.2002, especially, from 21.02.2002 to 09.04.2002, is erroneous and illegal. The voluntary retirement application should have been rejected on the ground of pending disciplinary proceedings and the disciplinary proceedings should have been proceeded with. That was not the case here.

8. Therefore, this Court finds no reason to interfere with the award of the learned Judge, Labour Court that without considering the



W.P.(MD)No.5759 of 2014

WEB COPY

voluntary retirement application given on health ground by the second respondent imposing the punishment of dismissal from service is against the rules and grossly disproportionate.

9. In this view of the matter, this Court finds no reason to interfere with the order passed by the learned Judge, Labour Court and the award is confirmed. Accordingly, this writ petition is liable to be dismissed.

10. The learned counsel for the second respondent submitted that after filing of the writ petition, the second respondent has filed W.M.P(MD) No.12385 of 2016 to direct the petitioner-Management to pay the last drawn wages to the tune of Rs.6,100/- (Rupees Six Thousand and One Hundred only) to the second respondent from the date of filing this writ petition, as per Section 17(B) of the Industrial Disputes Act.

11. Apparently, the second respondent was not paid his last drawn wages from the date of filing this writ petition. It is reported that



W.P.(MD)No.5759 of 2014

the second respondent has attained the age of superannuation in the year 2019. Therefore, the second respondent is entitled to receive his last drawn wages at the rate of Rs.6,100/- (Rupees Six Thousand and One Hundred only) from the date of filing of this writ petition, till the date of superannuation and other retirement benefits as per his entitlements. The amount due to the second respondent should be paid within a period of eight weeks from the date of receipt of copy of this order. Accordingly, W.M.P(MD) No.12385 of 2016 is allowed

12. In the result, this Writ Petition is dismissed. No costs. Consequently, connected M.P(MD) No.1 of 2014 and W.M.P(MD) No.12384 of 2016 are closed.

01.08.2022

Internet: Yes
Index :Yes/No
rm



W.P.(MD)No.5759 of 2014

To
WEB COPY

1. The Presiding Officer,
Labour Court,
Tiruchirapalli.



WEB COPY



W.P.(MD)No.5759 of 2014

G.CHANDRASEKHARAN, J.

rm

W.P.(MD)No.5759 of 2014

01.08.2022