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W.P.No.2228 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.No.2228 of 2019 &
W.M.P. No.2480 of 2019

The Management
Metropolitan Transport Corporation,
Pallavan Illam, Anna Salai
Chennai 600 002

... Petitioner

Vs.

The General Secretary
State Transport Employees Union
Regn. No.73 / MTS (CITU)
No.2, Pallavan Salai
Kalaiaranga Valagam
Chennai - 600 002

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari or any other appropriate writ, order or direction of like nature calling for the records pertaining to the Award passed in I.D. No.20 of 2018 dated 04.10.2018 on the file of the I Additional Labour Court, Chennai.

For Petitioner : Mr. M.Chidambaram
For Respondent : Mr.T. Karkkivelan



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ORDER

WEB COPY This Writ Petition is filed by the Metropolitan Transport Corporation (MTC) Challenging the Award dated 04.10.2018 passed by the Presiding Officer, I Additional Labour Court, Chennai in I.D. No.20 of 2018.

2. Briefly the facts of the case are as follows:

2.1. C. Stephen, a driver employed with the present petitioner Corporation was on continuous absence from 13.03.2009 to 07.05.2011, a period of 775 days. He reportedly was suffering from lower back pain and has been extending his leave periodically, giving medical certificates also periodically. He was issued a Charge Memo (Ex.W7) dated 25.02.2010 and subsequently a regular departmental enquiry was conducted in which he appeared and denied the charges. His argument was that letters alongwith Medical Certificates were submitted regularly and therefore there was no unauthorised absence. However, the Disciplinary Authority held all the charges as proved and imposed a punishment of postponement of one increment with cumulative effect for the charge of unauthorised absence from 13.03.2009. The I Additional Court while deciding on the ID filed by the General Secretary of State Transport Employee Union concluded that there was denial of natural



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justice as the Management ought to have accepted the Medical Fitness Certificate dated 05.05.2011 issued by the Chief Medical Officer of the corporation and submitted by the delinquent employee and also they ought to have referred the matter to Medical Board instead of proceeding with the departmental enquiry and therefore ordered the return of the amount already withheld by the Management within 30 days from the date of publication of Award.

3. This Writ Petition challenges this Award.

4. Mr. M.Chidambaram, learned counsel for the petitioner would contend that the punishment imposed on the employee was after taking a lenient view and that he has been an habitual delinquent employee having got punished 8 times in his service. The Labour Court, according to him, has erred in assessing the situation and by reversing the punishment on flimsy grounds, discipline has been given a go by.

5. Per contra, Mr.T. Karkkivelan, learned counsel for the respondent contended that the medical certificates were issued by the Chief Medical Officer, who is another employee of the Corporation and



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that there is no reason for not accepting the medical certificates. Thus he argued that the Labour Court was right in granting the removal of the punishment.

6. This is a case of absenteeism. The employee who is a driver in a Public Transport Service went on leave for a period of more than 2 years. He claims that he produced the leave letters regularly by extending the leave as detailed below:

11.03.2009 to 07.05.2009	56 days
08.05.2009 to 05.07.2009	57 days
06.07.2009 to 02.09.2009	56 days
03.09.2009 to 31.10.2009	58 days
01.11.2009 to 28.12.2009	57 days
29.12.2009 to 28.02.2010	61 days

Subsequently, on 07.05.2011 he resumed duty after getting a medical fitness certificate dated 05.05.2011 from the Chief Medical Officer. There is no explanation regarding whether there was any leave application/medical certificate for the intervening period i.e. between 01.03.2010 and 07.05.2011.

7. Section 25 (vi) of the certified standing order of Metropolitan Transport Corporation, Chennai reads that if employees unauthorisedly



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and continuously absented themselves from the duty more than eight days, it is an act of misconduct. Similarly Section 25(XLIII) of the certified Standing order states that such unauthorised absence for more than 8 days causing inconvenience to the passengers, disrupting bus services, causing revenue loss to the Corporation and also causing reputation loss are also acts of misconduct. The Labour Court felt that in such a case of long and continuous absence on medical grounds the employee ought to have been referred to a Medical Board and such a reference was not made by the petitioner Corporation. However, the Labour Court has not taken into consideration the past record of the employee which according to me is paramount. It is not that the delinquent employee has a very good track record and that the prolonged absence from duty was really due to the medical condition. According to the petitioner Corporation he has been punished earlier on eight occasions out of which on three occasions due to unauthorised absence and was imposed a punishment of 'censure' on the first occasion and subsequently on two occasions his increments were postponed.

7.1. Leave is not a matter of right and with no explanation whatsoever for the period after 01.03.2010 to 05.05.2011 it cannot be



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said that there was no unauthorised absence. Moreover it was concluded that since the employee had intimated the leave prior to availing it, it cannot be construed as unauthorised. In this regard, I differ. Merely intimating leave alone cannot bring it the sanctity of authorisation unless it is sanctioned. The Thumb rule for leave is 'Leave is not a matter of right'. It has to be intimated and also got sanctioned. Sanction is not automatic or mandatory. Moreover, Public Transport system is one of the essential services coming under the umbrella of public utility and such erratic attendance that too by a bus driver cannot be condoned. According to me the Labour Court has erred in not taking a holistic view of the facts and circumstances of the case.

8. In view of the above discussions, the Writ Petition is allowed. No costs. Consequently, connected Writ Miscellaneous Petition is closed. The order of the Disciplinary Authority is upheld. The Award passed in I.D. No.20 of 2018 dated 04.10.2018, by the Presiding Officer, I Additional Labour Court, Chennai, is set aside.

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Index : yes/no
Speaking /Non speaking Order



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To
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R.HEMALATHA, J.

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