



W.P.No.17857 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	01.12.2022
PRONOUNCED ON	:	16.03.2023

CORAM :

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.No.17857 of 2012
and W.M.P.Nos.6345 & 29579 of 2022

A.Kumaresan

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Salem.

2. The Management, Tamil Nadu
State Transport Corporation,
Division – II, Bharathipuram,
Dharmapuri.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent connected with I.D.No.32 of 2002 dated 04.12.2002 on the file of the 1st respondent and quash the same and direct the second respondent to reinstate the petitioner with full back-wages into the service of the second respondent with all attendant benefits.



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For Petitioner : Mr.P.M.Subramaniam
For M/s.S.Girija

For R-2 : Mr.S.Ilamvaludhi

* *R1- Court*

ORDER

Seeking to quash the order passed by the first respondent in I.D.No.32 of 2002, dated 04.12.2002 and for a consequential direction to the second respondent to reinstate the petitioner with full back-wages into the service of the second respondent with all attendant benefits, the petitioner has preferred the present writ petition.

2. The petitioner was appointed as 'Driver' on 'daily wage basis' on 05.09.1992 in Anna Sathya Transport Corporation, Dharmapuri, now called as T.N.State Transport Corporation Division. On 01.07.1993, the petitioner was made permanent and while in duty, the petitioner was unauthorizedly absent on 06.10.1997 and from 20.10.1997, for which he was issued with a charge memo on 17.11.1997 by the respondent Corporation. For the charge memo, the petitioner did not submit any reply, instead he had submitted a leave letter, dated 23.05.1998.



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3. Thereafter, the respondent Corporation conducted a domestic enquiry and upon completion of enquiry, the petitioner was terminated from service, vide order of dismissal dated 26.08.1998. Therefore, the petitioner had raised an industrial dispute before the Labour Officer, Krishnagiri. Since no settlement was arrived between the parties, the Labour Officer submitted his Conciliation Failure report on 27.11.2001.

4. Subsequently, the petitioner had filed an application in I.D.No.32 of 2002 before the Labour Court, Salem. The learned Judge had held that the punishment imposed on the petitioner by the respondent Corporation is not justified and hence, modified the punishment. An Award dated 04.12.2002 was passed by the Labour Court, by which the petitioner was reinstated back into service, but without continuity of service, backwages and other benefits. Aggrieved against the said Award, the petitioner has preferred the present writ petition.

5. According to the learned counsel for the petitioner, the respondent



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Corporation had accepted his leave letter, dated 23.05.1998 but failed to reinstate the petitioner back into service. Without considering the said fact, the Labour Court has passed the Award, which deserves to be interfered by this Court. Hence, the learned counsel for the petitioner prayed for quashing the Award in I.D.No.32 of 2002 dated 04.12.2002.

6. Per contra, the learned counsel for the second respondent would submit that the petitioner was unauthorizedly absent for his duty on 06.10.1997 and from 20.10.1997 onwards, which has caused dislocation of the work of the respondent Corporation. In this regard, based upon the report sent by the Controller of the respondent Corporation, the General Manager had issued a show cause notice to the petitioner on 17.11.1997. Thereafter, the respondent Corporation had conducted a domestic enquiry, wherein the petitioner has also stated that during the course of enquiry, that he did not want to cross examine the witness.

7. It is the further contention of the learned counsel for the respondent Corporation that the petitioner has been given sufficient opportunity to



examine the witness, but he has not used the same. Also, he had pointed out the fact that the petitioner himself has admitted that he was absent for duty on the relevant date and has not stated proper reasons for his absence. The respondent Corporation, being not satisfied with the reasons cited by the petitioner, has passed the order of termination of the petitioner from service. However, the Labour Court, taking a lenient view on the workman, has set aside the termination order and ordered the Management to reinstate him into service without continuity of service. Therefore, the Award does not need any interference of this Court and prayed for dismissing the writ petition.

8. Heard both sides and perused the records carefully.

9. The records placed before this court would go to show that before the Labour court, the petitioner filed I.D.No.32 of 2002 praying to reinstate him with backwages, continuity of service and all other benefits and to set aside the dismissal order issued by the respondent. On an elaborate trial and on hearing both sides, the learned Judge found that domestic enquiry has been conducted by the respondent; the petitioner/workman has not



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challenged the validity of the domestic enquiry before the Labour court. The learned Judge pointed out that if the Labour court comes to the conclusion that the enquiry was not conducted properly and fairly, it has to give opportunity to other side to adduce evidence to prove the charges; when the petitioner is challenging the validity of the domestic enquiry, it is for him to prove the fact that the enquiry was not properly conducted; admittedly the petitioner has not challenged the validity of domestic enquiry, hence, there is no need to decide the validity of domestic enquiry.

10. The learned Judge pointed out that the petitioner/workman did not report for duty on 06.10.1997 and he remained absent from 20.10.1997 onwards. The controller of the respondent/Management has sent a report under Ex.R.1 to the Branch Manager, Krishnagiri Branch, who forwarded the report to the General Manager of the respondent-Corporation. The General Manager under Ex.R.2 issued show cause notice to the petitioner on 17.11.1997. In the show cause notice, it was stated that the petitioner was absent from duty on 06.10.1997 and from 20.10.1997 onwards. Reply has been submitted by the petitioner under Ex.R.3. The respondent-Corporation



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has not accepted the explanation submitted by the petitioner. Therefore, the Management ordered to conduct domestic enquiry. The petitioner was examined and was cross-examined by the Management and during the cross examination by the management, the petitioner has admitted that he was absent from duty on the relevant date and stated that due to the death of his uncle, he was not able to attend the duty. It was observed by the learned Judge that after enquiry by the Management, the enquiry officer submitted his report under Ex.R.5, on the basis of which, the petitioner was asked to submit his explanation as to why he should not be dismissed from service. The learned Judge, also pointed out that the notice sent to the petitioner was returned to the respondent with endorsement as “not claimed” Finally, the respondent has passed orders dismissing the petitioner from service under Ex.R.8. The order of dismissal was sent to the petitioner, but it was returned as “unserved”. The learned Judge, thus held that the charges framed against the petitioner have been proved beyond doubt; during the enquiry, the petitioner has admitted the factum of absence during the relevant period and hence, the question of punishment is concerned, it is a question of fact.

11. The learned Judge, viewed that the court has power to set aside or



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modify the punishment imposed by the disciplinary authority, when the punishment is not justified; each case should be decided by its own facts and circumstances.

12. The learned Judge, on the one hand, taking note of the submission made by the petitioner for one more opportunity to rectify his mistake in future and on the other hand, taking into consideration the submission made by the learned counsel for the respondent that the petitioner was absent from duty without leave or permission and that he was a chronic absentee and on going through the the previous misconducts of the petitioner as mentioned in the counter, found that the misconducts did not find a place in the second show cause notice issued to the petitioner. The learned Judge, further found that absent from duty is misconduct and the misconduct refers to improper behaviour.

13. The learned Judge, on going through the contentions raised by the Management that since the industrial dispute has been raised after the lapse of 4 years of dismissal from service, the petitioner is not entitled to continuity



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of service, vis-a-vis, the petitioner's prayer for reinstatement into service without backwages, viewed punishment imposed on the petitioner is too harsh and disproportionate to the charges against the petitioner for the charge of absent from duty, the capital punishment like dismissal from service need not be imposed. The learned Judge, further found that since the petitioner was without employment for several years, refusal to grant backwages is also punishment. The learned Judge also held that since the petitioner has not raised the industrial dispute within time, he is not entitled to any continuity of service and other benefits.

14. On the above findings, the learned Judge, held that the punishment imposed on the petitioner is not justified and the punishment is modified to the extent that the petitioner is entitled to reinstatement on the basis of the present full pay, but without continuity of service, backwages and other benefits.

15. Taking note of the conduct of the petitioner, the Labour court, by taking a lenient view, set aside the harsh punishment and modified the same.



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Hence, in the considered opinion of this Court, the petitioner is not entitled to any continuity of service and other benefits. Therefore, this Court finds no merit to interfere with the Award passed by the Labour Court in I.D.No.32 of 2002 dated 04.12.2002.

16. In view of the findings arrived at by this Court, W.M.P.Nos.6345/22 an 29579 of 2022 does not arise for consideration. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

16.03.2023

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes /No
sts/nvsri



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J.NISHA BANU, J.,

sts/nvsri

Order made in
W.P.No.17857 of 2012

Dated:
16.03.2023