



W.P.No.18118 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.12.2023

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.18118 of 2012

J.Devadass

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Salem.

2.The Management of Tamilnadu
State Transport Corporation Ltd.,
Salem Region 1,
No.12, Ramakrishna Salai,
Salem-636 007.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call for the records relating to I.D.No.201 of 2005, dated 18.08.2008 on the file of the first respondent herein and quash the same in so far as denying the benefit of reinstatement in the original post, with continuity of service, backwages and other benefits and consequently direct the second respondent to restore the original



W.P.No.18118 of 2012

WEB COURT

appointment with continuity of service, backwages and other benefits.

For Petitioner : Ms.S.Vijaya
For Respondents : Mr.R.Babu
Standing Counsel – for R2
: R1 – Court

ORDER

This writ petition has been filed assailing the award dated 18.08.2008 passed in I.D.No.201 of 2005 on the file of the Labour Court, Salem, and sought for a consequential direction to direct the Respondent No.2 to restore the original appointment of the petitioner with continuity of service, back wages and other benefits.

2. The brief facts that are relevant for disposal of this writ petition are as under:

The petitioner herein was appointed as Junior Technical Staff in the year 1994 in the Respondent No.2-Corporation and while he was



W.P.No.18118 of 2012

working as such, he remained absent from his duties with effect from 29.05.2001 without any prior permission or intimation, in violation of the Standing Orders of the respondent-Corporation. The respondent-Corporation initiated disciplinary proceedings against the petitioner and the petitioner failed to participate in any of such proceedings, resulting in passing of a final order dated 14.02.2002 dismissing the petitioner from service. During the pendency of the said disciplinary proceedings, the petitioner approached the respondent-Corporation and he was permitted to attend duty on 18.10.2001 and accordingly, he attended till the date of his dismissal from service.

3. Aggrieved by the said final order dated 14.02.2002, the petitioner approached the learned Labour Court by raising an industrial dispute and the same was disposed of by the learned Labour Court through the impugned award. While negating the claim of the petitioner for reinstatement in the same post with back wages and other benefits, the learned Labour Court directed the Respondent No.2 to reinstate the



W.P.No.18118 of 2012

petitioner in a lower grade of service, i.e., as Masalchi with break of service from 29.05.2001, till the date of award and forfeiting all the service benefits during such break of service. Pursuant to the impugned award, Respondent No.2-Corporation through proceedings dated 23.11.2009, reinstated the petitioner into service as Office Assistant and he has been working as such as on date. The petitioner herein, having accepted the reinstatement order issued by the Respondent No.2, claimed to have requested for restoration of his service and reinstatement into the original post of Junior Technical Staff. But having not received any response from the Respondent No.2, approached this Court by filing the present writ petition in the year 2012.

4. From the counter affidavit filed by the Respondent No.2 before the learned Labour Court, it is noticed that the petitioner has been in the habit of absenting himself from his duties and six of such instances were also mentioned in the counter affidavit. There is no dispute about the factum of the petitioner being absent without obtaining leave or without prior intimation including the present instance. The learned Labour Court,



W.P.No.18118 of 2012

having come to the conclusion that the punishment of dismissal from service is disproportionate to the nature of charge levelled against the petitioner, passed the impugned award directing reinstatement into service in a lower post, as noted above.

5. This Court, after having heard the learned counsel on either side and *prima facie* arriving at a conclusion that the conclusion arrived at by the learned Labour Court about the disproportionality of the punishment imposed on the petitioner is right and that the order of reinstatement in the lower post and treating the period from the date of dismissal till the date of award as break in service is also disproportionate to the charges levelled against the petitioner, intended to know as to whether the petitioner was regular to his duties, after his reinstatement in the year 2009 before exercising the discretion of this Court under Article 226 of the Constitution of India and accordingly, by an order dated 13.12.2023, required the learned counsel on either side to inform about the conduct of the petitioner after his reinstatement. In response to the same, the learned counsel on either side informed this Court that the petitioner herein has been regular to his duties



W.P.No.18118 of 2012

since the date of his reinstatement and there are no charges of indiscipline against the petitioner thereafter.

6. As already noted above, the petitioner was appointed in the year 1994 and it is only in the year 2001, he was dismissed from service on the ground of unauthorised absence. In respect of other occasions of unauthorised absence, the respondent-Corporation has already imposed appropriate punishment and there is no dispute about the same. Taking into consideration the aspects, which were already culminated in imposition of punishment, once again for the purpose of imposing the punishment at a subsequent point of time is totally illegal and arbitrary. Thereafter, the only delinquency levelled against the petitioner herein is his unauthorised absence with effect from 29.05.2001. For that, disciplinary proceedings were initiated against him by issuing a charge memo dated 19.06.2001, i.e., within a period of three weeks and admittedly, the petitioner joined duty before concluding the said disciplinary proceedings. Though the learned Labour Court came to the conclusion that the punishment of dismissal from



W.P.No.18118 of 2012

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service is disproportionate to the charges levelled against the petitioner, the Labour Court failed to exercise its discretion in imposing the appropriate punishment and also failed to assign any reasons as to why the reinstatement was ordered in a lower post. Once it is concluded that the punishment imposed is disproportionate and the action of the respondent-Corporation in imposing the punishment of dismissal from service is found illegal and arbitrary, the natural consequences would be to remit the matter back to the respondent-Corporation for imposing the appropriate punishment. No doubt, the learned Labour Court has got discretion to substitute the punishment while setting aside the punishment imposed by the respondent-Corporation, once the same is found disproportionate.

7. As already noted above, the petitioner has been regular to his duties after his reinstatement. By the date of dismissal order passed against the petitioner, the petitioner has completed 16 years of service and there is no major misconduct alleged against the petitioner, except unauthorised absence on few occasions. The petitioner was dismissed from service on



W.P.No.18118 of 2012

14.02.2002 and he was reinstated into service in the lower post, through proceedings dated 23.11.2009 and he joined duty on 10.12.2009. Thus, he was out of service since 14.02.2002 till 10.12.2009. The respondent-Corporation has not chosen to contest the findings recorded by the learned Labour Court about the disproportionality of the punishment imposed on the petitioner.

8. As the modified punishment that was imposed on the petitioner by the learned Labour Court to reinstate him in the lower post is also a major punishment, this Court is of the considered view that the same is also still disproportionate to the charges levelled against the petitioner and the learned Labour Court ought to have taken into consideration the fact that the petitioner was working as Junior Technical Staff in the workshop of the respondent-Corporation, which is a post in the lower cadre and should have ordered for reinstatement of the petitioner in the very same post from which he was dismissed from service while declining to grant back wages, counting of service etc., during the break period. The period from



W.P.No.18118 of 2012

14.02.2002 till 18.08.2008 was ordered to be treated complete break for all purposes. The same itself have serious effect on the petitioner and would be suffice to meet the gravity of charge levelled against the petitioner. Further, the petitioner also must have undergone severe mental agony from 2002 to 2009.

9. In the light of the above, this Writ Petition is partly allowed modifying the award dated 18.08.2008 in I.D.No.201 of 2005 directing the respondent-Corporation to reinstate the petitioner into service as Junior Technical Staff instead of Office Assistant with effect from the date of award in I.D.No.201 of 2005, dated 18.08.2008. However, the petitioner shall not be entitled for back wages during the period he was out of service and the period commencing from the date of dismissal from service till the date of award in I.D.No.201 of 2005 shall be treated as break in service. However, the same shall be counted for pensionary benefits. The respondent-Corporation is further directed to extend all further benefits for which the petitioner is entitled to pursuant to this order as expeditiously as



W.P.No.18118 of 2012

possible, at any rate, within a period of three months from the date of receipt of a copy of this order. No costs.

19.12.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes

ABR



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W.P.No.18118 of 2012

MUMMINENI SUDHEER KUMAR, J.

ABR

To

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W.P.No.18118 of 2012

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