



W.P.No.17073 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2023

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.17073 of 2015
and M.P.No.1 of 2015

The Management,
represented by its General Manager,
Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Villupuram-605 602.

... Petitioner

-Vs-

1. The Presiding Officer,
Labour Court,
Cuddalore.

2. C.Nadanam

... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorari, to call for the records of the first respondent made in I.D.No.33 of 2011 dated 07.10.2013 and to quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.



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For Petitioner : Mr.M.Ashwin

For Respondents

R1 : Court

R2 : Mr.K.Aruna Giri

ORDER

This Writ Petition has been filed challenging the award passed by the first respondent in ID No.33 of 2011 dated 07.10.2013, thereby modified the punishment of dismissal to stoppage of one increment with cumulative effect.

2. Heard the learned counsel for the petitioner and the learned counsel for the second respondent and perused the materials available on record.

3. The second respondent joined as a Conductor on 28.12.1986, in the petitioner's Corporation. He absented for duty from 30.05.2007. Therefore, the second respondent was served with charge memo and enquiry was conducted. However, the second respondent failed to appear before the enquiry officer. Therefore, the Enquiry Officer submitted a report as all the charges were proved against the second respondent.



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Pursuant to the report submitted by the Enquiry Officer, after issuance of show cause notice to the second respondent, due to the misconduct, the competent authority dismissed the second respondent from service on 05.08.2008. Thereafter, the second respondent raised an industrial dispute in ID No.33 of 2011. The first respondent set aside the punishment of dismissal from service and punished the second respondent by stoppage of one increment with cumulative effect.

4. The learned counsel for the petitioner would submit that the second respondent raised an industrial dispute after a period of two years from the date of his dismissal. It is against the provision under Section 2(a)(3) of the Industrial Disputes Act, which prescribes for the limitation in raising industrial dispute. He also submitted that the grave misconduct and grave violation of discipline would greatly jeopardize the functioning of the establishment, more particularly, all employees of the Road Transport Corporation remaining absent had caused serious repercussions on the functioning of the Corporation and hindering of service to public. The Corporations have been brought into existence under the Road Transport Corporation Act, 1951, requires a treatment of



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such dereliction of duty with certain amount of seriousness.

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5. A perusal of records revealed that the second respondent was absent for about two months from 30.05.2007 to 10.07.2007. Therefore, a charge memo was issued to the second respondent on 10.07.2007. However, the second respondent failed to appear before the Enquiry Officer. The Enquiry Officer held that the charges proved against him and dismissed the second respondent from service. Though the second respondent had taken a specific stand that he had applied for leave through an application, the same was not produced by him. The petitioner also failed to prove that the second respondent was absent for duty without any permission or any leave letter.

6. Further, once the workman had put in long years of service, dismissing him only on the ground of unauthorized absence is disproportionate. Further, the absence from duty without any application or prior permission may amount to unauthorized absence, but it does not mean willful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances



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beyond his control like illness, accident, hospitalization etc, but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant.

7. Therefore, the first respondent had rightly set aside the order of dismissal and ordered for stoppage of one increment with cumulative effect. Further, the second respondent had already retired from service.

8. Therefore, this Court finds no infirmity or illegality in the order passed by the first respondent and this writ petition is devoid of merits and is liable to be dismissed. Accordingly, this writ petition is dismissed. Consequently, connected Miscellaneous petition is closed. No costs.

20.07.2023

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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G.K.ILANTHIRAIYAN, J.

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To

The Presiding Officer,
Labour Court,
Cuddalore.

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