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W.P.No.39583 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	27.06.2023
Pronounced on	16.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE J. SATHYA NARAYANA PRASAD

W.P.No.39583 of 2004
and WMP.No.47202 of 2004

1. Tamil Nadu State Transport
Corporation (Salem) Ltd.,
rep. by its Managing Director,
12, Ramakrishna Road,
Salem 636 007.

... Petitioner

Vs.

1. The Presiding Officer
Labour Court, Salem.

2. T.B.Santharam (deceased)

3. Sathiya

... Respondents

(R3 substituted as legal heir of the deceased second respondent)

PRAYER : Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Certiorari to call for the records of the 1st respondent in I.D.No.460 of 2002 dated 12.02.2004 and quash the same.

For Petitioner :Mr.R. Babu

For Respondents :Mr.K.V.Shanmuganathan for R2 & R3



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ORDER

This writ petition has been filed to call for the records of the 1st respondent in I.D.No.460 of 2002 dated 12.02.2004 and quash the same.

2. The learned counsel appearing for the petitioner submitted that the second respondent joined the services of the petitioner Corporation on 09.08.1993 and lastly worked as a Clerk in the Audit section, Head Office. He absented from duty from 05.04.1999 without prior intimation and prior permission. As this amounted to a misconduct under Clause 19 (1) (f) of the Standing orders of the petitioner Corporation, two charge memos dated 20.04.1999 and 28.05.1999 were issued to him for his unauthorised absence by RPAD. As there was no reply from the 2nd respondent on receipt of the charge memos, a domestic enquiry following the principles of natural justice was conducted in which the 2nd respondent fully participated. The Enquiry Officer by his report dated 13.07.1999 held that the charges against the 2nd respondent have been proved. Taking into account the enquiry report and also the past record of service of the 2nd respondent, the petitioner Corporation issued a second show cause notice dated 31.07.1999 proposing the punishment of dismissal. As the explanation of the 2nd respondent was not satisfactory the



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petitioner Corporation dismissed him from service by order dated 17.08.1999.

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3. The learned counsel further submitted that the second respondent raised an Industrial Dispute in I.D.No.460/2002 before the 1st respondent challenging the order of dismissal. The first respondent by order dated 12.02.2004 has set aside the order of dismissal and has directed reinstatement of the second respondent with continuity of service and other benefits but without backwages.

4. The learned counsel further submitted that the first respondent/Labour Court, Salem erred in finding that since the second respondent has given proper explanation for his absence, the punishment can be modified and has also failed to take note of the past conduct of the 2nd respondent before interfering with the punishment made by the petitioner Corporation in dismissing the 2nd respondent from service by order dated 17.08.1999. The first respondent/labour Court, Salem has also erred in finding that the punishment imposed on the 2nd respondent was excessive and the same is disproportionate. Aggrieved by the above order of the 1st respondent/Labour Court, Salem the petitioner has come forward with the present writ petition.



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5. The learned counsel appearing for the respondents 2 & 3 submitted that initially 2nd respondent claimed a sum of Rs.4,96,320/- towards wages with increments for two years, with 6% interest on arrears of wages for 16 years, gratuity for 13 years from 09.08.1993 to 07.03.2006 and maximum interest payable on gratuity. However, the second respondent had passed away and his wife also no more. Thereafter, his only legal heir viz., Sathiya was impleaded as 3rd respondent on 15.02.2023 by this Court. He further submitted that the third respondent is an Engineering Graduate without job, residing at Rasipuram and she would be satisfied if a sum of Rs.2,52,000/- towards gratuity and wages for two years is paid to her by the petitioner/Tamil Nadu State Transport Corporation, Salem, it would be more helpful for her.

6. The learned counsel further submitted that the award passed by the 1st respondent/Labour Court, Salem is sustainable in law for the reason that for the absence of the second respondent he has submitted the medical records, despite that, the punishment of dismissal from services was imposed by the petitioner Corporation on 17.08.1999. The punishment of dismissal from services imposed by the petitioner Corporation is disproportionate to the delinquency committed by the second respondent and the same has to be set



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aside and the 1st respondent/Labour Court, Salem has rightly set aside the order passed by the petitioner Corporation vide its award dated 12.02.2004. It is also pertinent to note that during the pendency of the writ petition, the second respondent died and his daughter was substituted as the only legal heir. In regard to this, the learned counsel also produced a memo of calculation filed on behalf of the respondents, claiming a sum of Rs.4,96,320/- and the break up details are extracted as hereunder:-

The workman joined the service on	09.08.1993
His services were regularised w.e.f.	07.05.1995
Date of termination of the workman	07.08.1999
Award passed in I.D.No.460/2002	12.02.2004
Last drawn wages	Rs.5,000/-
Date of death of workman	07.03.2006
The deceased workman was entitled to receive wages with increments for 24 months (labour Court has passed Award directing reinstatement with continuity of service and other attendant benefits). There were two settlements between 1999 to 2004. Hence the wages payable to the workman in 2004 would be around Rs.8,000/-, therefore arrears of wages due to the deceased workman is 24x8000	
	= Rs.1,92,000/-
6% interest on arrears of wages for 16 years	= Rs.1,84,320/-
Gratuity for 13 years from 09.08.1993 to 07.03.2006 (13x8000/26x15)	= Rs.60,000/-
Maximum interest payable on gratuity is	= Rs.60,000/-
Total	= Rs.4,96,320/-

However, the third respondent would be satisfied if a sum of Rs.2,52,000/-



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towards gratuity and wages for two years is paid to her by the petitioner/Tamil Nadu State Transport Corporation, Salem.

7. Heard both sides and perused the materials available on record.

8. The second respondent was absented from duty from 05.04.1999 without prior intimation and prior permission which amounted to misconduct under Clause 19 (1) (f) of the Standing orders of the petitioner Corporation. Hence he was served with two charge memos dated 20.04.1999 and 28.05.1999 and an enquiry was conducted and based on the enquiry, the second respondent was dismissed by the petitioner Corporation by order dated 17.08.1999. Aggrieved by the dismissal order, the second respondent preferred I.D.No.460 of 2002 dated 12.02.2004 before the 1st respondent/Labour Court, Salem and the 1st respondent/labour Court, Salem passed an award dated 12.02.2004 directing the petitioner Corporation to reinstate the second respondent with continuity of service and other benefits but without backwages. **The finding of the labour Court is that for his absence from duty he has properly give an explanation and medical certificate produced by the second respondent was also accepted by the petitioner Corporation. The punishment of dismissal**



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from service imposed on the second respondent by the petitioner Corporation dated 17.08.1999 is disproportionate to the delinquency committed by the second respondent.

9. The first respondent/labour Court has rightly come to the conclusion that the punishment imposed on the petitioner is disproportionate to the delinquency committed by the petitioner based on the evidence and documents submitted by the parties.

10. It is a well settled law that this Court under Article 226 of the Constitution of India cannot interfere with the award passed by the Labour Court/Tribunal unless it is perverse, arbitrary, unreasonable and unsustainable in law.

11. In view of the above discussion, this Court is of the considered view that the award passed by the first respondent/labour Court, Salem in I.D.No.460 of 2012 dated 12.02.2004 is perfectly valid and no interference is warranted.



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12. In the result, the writ petition is dismissed and the petitioner Corporation is directed to pay a sum of Rs.2,52,000/- (Rupees Two lakhs Fifty Two Thousand Only) towards gratuity and wages for two years to the third respondent/Sathiya, daughter of the deceased 2nd respondent herein as a full and final settlement, within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected WMP is also closed.

16.08.2023

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
dpq



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J. SATHYA NARAYANA PRASAD, J.

dpq

To

1. The Presiding Officer
Labour Court, Salem.

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