



W.P.No.10432 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.10432 of 2018

and

W.M.P.No.12396 of 2018 and W.M.P.No.5073 of 2019

The Management,
Tamil Nadu State Transport
Corporation (Salem) Limited,
Represented by its Managing Director,
Head Office at No.12, Ramakrishna Road,
Salem - 636 007.

... Petitioner

Vs.

1. The Presiding Officer,
Labour Court,
Salem.

2. M.Alagiri,
Conductor.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records pertaining to the order dated 18.09.2017 passed by the first respondent in Compliant No.1 of 2012 in I.E.S.O.P No.1 of 2010 and quash the same.



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For Petitioner : Mr.R.Babu
For Respondents : Mr.K.M.Ramesh, Senior Counsel
for Mr.S.Apunu for R2
R1 - Labour Court

ORDER

The impugned order dated 18.09.2017 made in Compliant No.1 of 2012 in I.E.S.O.P.No.1 of 2010 passed by the first respondent is under challenge in the present Writ Petition.

2. The petitioner is the Tamil Nadu State Transport Corporation. The second respondent was working as a Conductor in the petitioner Corporation. He was a member of a Tamil Nadu Thozhilalar Kuraitheerkkum Thozhil Sangam which had filed a petition in I.E.S.O.P No.1 of 2010 before the first respondent under Section 13A of the Industrial Employment (Standing Orders) Act, 1946. While the said petition was pending before the first respondent, the petitioner Corporation issued a charge memo to the second respondent for the alleged misconduct of unauthorised absence. After conducting an enquiry, the second respondent



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was dismissed from service on 16.08.2010. Challenging the same, the second respondent filed Interlocutory Complaint petition in Complaint No.1 of 2012 in I.E.S.O.P No.1 of 2010 to set aside the order of dismissal from service. The Labour Court allowed the said petition directing reinstatement of the second respondent with backwages and other attendant benefits. Challenging the same, the present Writ Petition has been filed.

3. The learned counsel for the petitioner contended that the second respondent was removed from service only after conducting proper enquiry. The second respondent had filed Interlocutory Complain Petition in the main petition, i.e., I.E.S.O.P No.1 of 2010 pending before the first respondent under Section 13A of the Act to set aside the order of dismissal from service. He further contended that the first respondent / Labour Court failed to note that there is no conciliation proceedings or any other proceedings pending before it under the Industrial Disputes Act. Only a petition under the Industrial Employment (Standing Orders) Act, 1946 was pending before the first respondent. Hence, the first respondent has wrongly interpreted the



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section has set aside the order of dismissal inflicted on the second respondent without going into the merits of the case. That apart, the learned counsel for the petitioner submits that the charges levelled against the second respondent were serious in nature and the order of dismissal inflicted upon the second respondent is perfectly justified and the Labour Court had erred in setting aside the order of dismissal and ordering reinstatement with backwages.

4. Per contra, the learned Senior Counsel for the second respondent submits that the petition filed in I.E.S.O.P No.1 of 2010 before the first respondent under Section 13A of the Industrial Employment (Standing Orders) Act, 1946 for forbearing the petitioner Corporation from using the Standing Orders of the erstwhile Anna Transport Corporation and to direct the petitioner Corporation to use the Model Standing Order issued by the State Government, is perfectly justified. Therefore, when the said petition was pending before the first respondent, the petitioner Corporation was not justified in passing the order of dismissal which was challenged by



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the second respondent before the Labour Court. The Labour Court after considering the materials submitted on either side came to the conclusion that the said compliant in I.E.S.O.P No.1 of 2010 has to be considered only as a Industrial Dispute under Section 33 of the Industrial Disputes Act. Therefore, when such a dispute under Section 33 of the Industrial Disputes Act is pending, it is not justified on the part of the employer to dismiss the employee or impose any punishment without considering the provision under Section 33(2)(b) of the Industrial Disputes Act. Hence, the first respondent / Labour Court was justified in passing the impugned order in Compliant No.1 of 2012 in I.E.S.O.P No.1 of 2010. Therefore, the learned Senior Counsel seeks for dismissal of the Writ Petition.

5. Admittedly, the case of the petitioner is that the second respondent was employed as Conductor in the petitioner Corporation and is also member of Thozhilalar Sangam and he already filed I.E.S.O.P No.1 of 2010 before the first respondent under Section 13A of the Industrial Employment (Standing Orders) Act, 1946 and when the same is pending,



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the second respondent was dismissed from service for his un-authorized absence. Now the issue for consideration is whether the punishment imposed by the Authority is proportionate or dis-proportionate for the alleged misconduct.

6. Before proceeding to analyse the facts of the present case to find out whether the punishment awarded to the second respondent is just and reasonable, the ratio laid down with regard to matters in which punishment has been imposed, which is impugned in this Writ Petition.

7. Normally, this Court would not interfere with the punishment imposed on the delinquent unless it is shown to be arbitrary, perverse, illegal and further the punishment imposed on the delinquent shocks the conscience of this Court, as this Court is guided by the ratio laid down in ***Prem Nath Bali – Vs – High Court of Delhi (2015 (16) SCC 415)***. So long as the punishment imposed is not disproportionate to the charges framed against, the Courts normally would not interfere with the punishment.



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8. It has been the consistent view of the Courts that it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere with the same in exercise of powers under Article 226 of the Constitution. In ***Prem Nath Bali – Vs - High Court of Delhi***, reported in ***2015 (16) SCC 415***, the Hon'ble Supreme Court held as under :-

“20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the



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punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority.”

(Emphasis Supplied)



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9. In the present case, the second respondent being member of the Thozhilalar Sangam made complaint before the Authority under the Industrial Employment (Standing Orders) Act, 1946 and when the same is pending, the petitioner Corporation initiated proceedings against the second respondent for his un-authorized absence and imposed the punishment of dismissal from service. However, for un-authorized absence, the punishment of dismissal from service is dis-proportionate and applying the ratio laid down in the decision *supra*, the said punishment cannot be said to continue.

10. Hence, this Court is inclined to modify the order passed in Complaint No.1 of 2012 in I.E.S.O.P No.1 of 2010 to the effect that the second respondent is only entitled for continuity of service and other attendant benefits without backwages. The petitioner Corporation is directed to settle the pensionary benefits and other terminal benefits to the second respondent within a period of four weeks from the date of receipt of a copy of this order.



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11. With the above observations, this Writ Petition is disposed of.

No costs. Consequently, connected Miscellaneous Petitions are closed.

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NCC: Yes / No

Index : Yes / No

Speaking Order : Yes / No

vji

To

1. The Presiding Officer,
Labour Court,
Salem.
2. The Managing Director,
Tamil Nadu State Transport
Corporation (Salem) Limited,
Head Office at No.12, Ramakrishna Road,



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