



W.P.No.26610 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on 21.02.2023

Order delivered on 13.04.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.26610 of 2013

I.Purushothaman

.... Petitioner

VS

1. The Joint Managing Director,
Metropolitan Transport Corporation
(Chennai) Ltd.,
Pallavan Illam, Anna Salai,
Chennai – 600 002.

2. The Management,
Metropolitan Transport Corporation
(Chennai) Ltd.,
Pallavan Illam, Anna Salai,
Chennai – 600 002.

3. The Presiding Officer,
III Additional Labour Court,
Chennai.

.... Respondent

Writ Petition filed under Article 226 of the Constitution to issue a

Writ of Certiorarified Mandamus to call for the records relating to the order



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dated 29.06.2012 in I.D.No.398/2009 of the 3rd respondent and quash the same and consequently direct and 2nd respondents to reinstate the petitioner into service with continuity of service backwages attendant benefits and pay the retiral benefits.

For Petitioner : Mr.K.Malai Kannu

For Respondents : Mr.M.Chidambaram for R1 & R2
R3-Court

ORDER

This writ petition has been filed by the petitioner challenging the order of the 3rd respondent, rejecting the claim of the petitioner, to set aside the order of removal from service for the alleged unauthorized absence, but awarding compensation of Rs.1,00,000/-.

2. i) The case of the petitioner is that the petitioner joined the the 1st respondent Corporation as Conductor in the year 1986 and worked for the past 22 years. While so, his wife met with an accident on 01.11.2006 and sustained grievous head injuries, lost her conscious and was under treatment in coma stage. Since the petitioner had to look after his wife, his



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school going children and his aged mother who is a cancer patient, he requested the 1st respondent through his colleague to grant him leave till he rejoin duty. But his leave was not considered by the 1st respondent.

ii) Subsequently, a charge memo was issued on 13.02.2007 framing false charges that the petitioner was not attending duty from 01.11.2006 without prior permission. The memo was received by the petitioner on 5.3.2007. The petitioner submitted his explanation to grant him leave from 01.11.2006 till he rejoin duty. But his request was not considered. The 1st respondent conducted domestic enquiry and the petitioner participated and gave a statement that he had to look after his wife who was in coma stage due to accident, his school going children and his ailing mother who is a cancer patient. The enquiry officer found the petitioner guilty of the charges, though the enquiry was not conducted properly, following the principles of natural justice. The enquiry report was not communicated to the petitioner to submit his explanation. The 2nd show cause notice was issued on 15.10.2007, wherein, it is stated that the petitioner had admitted the charges in the domestic enquiry, which is contrary to facts, and it was provisionally concluded to remove the petitioner from service. The petitioner was directed to offer his explanation. The petitioner submitted



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his explanation to the second show cause notice and produced the medical records. Thereafter, accepting his explanation, he was permitted to rejoin duty. The petitioner rejoined duty on 19.11.2007 and performed duty regularly. While so, he was removed from service vide order dated 4.2.2009. The petitioner raised industrial disputes in I.D.No.398/2009, wherein the Labour Court came to the conclusion that the punishment of removal from service is extreme penalty, disproportionate to the alleged misconduct, but observed that since the petitioner attained the age of superannuation, there is no necessary to pass order to reinstate him into service and instead, awarded Rs.1,00,000/- as compensation. Therefore, the petitioner prays to modify the award by setting aside the order of removal from service and to reinstate him with continuity of service and attendant benefits. Hence, this writ petition.

3. Heard the learned counsel for the petitioner and the learned counsel appearing for the 1st and 2nd respondents.

4. i) Learned counsel for the petitioner would submit that 3rd respondent has committed grave error in not setting aside the removal order



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after having concluded that the punishment of removal from service for the alleged misconduct is disproportionate and extreme penalty. Thus, it has deprived his retirement benefits including pension. On the date of award i.e., 29.06.2012, the petitioner has not attained the age of superannuation. He attained the age of superrannuation on 30.06.2012 A.N. The 3rd respondent failed to note that the petitioner has informed about the illness of his wife due to accident to the department and in fact, in the basic report dated 8.2.2007, it is clearly admitted that the petitioner had informed the 2nd respondent about the illness of his wife. The contention of the 2nd respondent that the petitioner had not offered his explanation to the charge memo dated 13.02.2007 is wrong, whereas the petitioner has given explanation vide letter dated 19.03.2007 for not attending duty from 01.11.2006.

ii) Learned counsel would further submit that neither the complainant nor the Branch Manager who recommended to initiate disciplinary action against the petitioner was examined. Hence, the enquiry was not properly conducted. Learned counsel would further submit that after accepting the petitioner's explanation and medical records submitted to the 2nd show cause notice dated 15.10.2007 to the 2nd respondent, the petitioner was permitted



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to rejoin duty and he rejoined duty on 19.11.2007 and performed duty. While so, order of removal from service citing that the petitioner did not attend duty, one or two days after 19.11.2007, without giving notice to him and conducting fresh enquiry, is unsustainable.

5. i) Per contra, the learned counsel appearing for the 1st and 2nd respondents would submit that as per Section 25(VI) of the Certified Standing Order, those employee who unauthorisedly absented to the duty for 8 consecutive days, the employer has every right to take disciplinary action against the employee. Due to unauthorized absence of the petitioner, there was revenue loss to the Corporation. Hence, charge memo was issued asking him to submit explanation. The explanation given by the petitioner was not satisfactory and hence, domestic enquiry was conducted in a fair and proper manner and a report was submitted by the enquiry officer on 4.10.2007. Based on the enquiry officer's report and the past service of the petitioner, the respondent Corporation came to the conclusion that the petitioner has to be removed from service.

ii) Learned counsel would further submit that the petitioner was punished 8 times but none of the punishment was challenged by the



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petitioner and the respondent Corporation felt that the petitioner had indirectly admitted the punishments. The respondent Corporation issued 2nd show cause notice on 15.10.2007. It was received by the petitioner on 02.11.2007. For the 2nd show cause notice, he submitted his explanation with medical certificate and hence, reinstatement order was passed. After reinstatement, the petitioner's performance was very worst. Hence, the respondent Corporation was forced to issue the termination order on 04.02.2008. Against the same, the petitioner preferred department appeal and the same was rejected on 04.04.2008. The petitioner raised Industrial Dispute in I.D.No.38 /2009.

iii) Learned counsel would further submit that the Labour Court, after considering the oral and documentary evidence, allowed the I.D., by directing the respondent Corporation to pay compensation of Rs.1,00,000/- to the petitioner instead of reinstatement, since the petitioner had attained the age of superannuation. Thereafter, the respondent Corporation deposited the award amount into court and the same was also withdrawn by the petitioner. The petitioner had unauthorizedly absented to duty with effect from 01.11.2006 and the final order was passed on 04.02.2008 and that there was 461 days unauthorised absence to duty and he was punished



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for 8 times. None of the punishments was challenged by the petitioner. The respondent Corporation has not violated the certified Standing order. Due to the pendency of writ petition, the respondent corporation is not in a position to settle the service benefits to the petitioner, otherwise, it would have been settled long back i.e., immediately after disposal of I.D. Therefore, he would pray to dismissed the writ petition.

6. This Court, considered the submissions made on either side and perused the materials available on record.

7. As per Section 25(VI) of the Certified Standing Order, the employee who is unauthorisedly absent for duty for 8 consecutive days, the employer has every right to take disciplinary action against the employee. It is the contention of the respondent Corporation that due to his unauthorized absence, the petitioner has caused revenue loss to the Corporation. Therefore, a charge memo was issued on 13.02.2007 and the petitioner submitted his explanation. Not satisfactory with the same, domestic enquiry was conducted and a report was submitted by the enquiry officer on 4.10.2007. The petitioner was removed from service, based on the enquiry



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officer's report and his past service.

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8. It is also the contention of the respondent Corporation that the petitioner was punished 8 times but none of the punishments were challenged by the petitioner and the respondent Corporation felt that the petitioner had indirectly admitted the punishments. The petitioner was unauthorisedly absent from 2006 onwards. The respondent Corporation issued 2nd show cause notice on 15.10.2007, for which, the petitioner submitted his explanation with medical certificate. The petitioner was permitted to rejoin duty on 19.11.2007 and performed duty. Even thereafter, the petitioner was unauthorisedly absent and his performance was also very worst. Hence, the respondent Corporation was forced to issue the termination order on 04.02.2008. The appeal filed against the same was rejected on 04.04.2008.

9. The petitioner had unauthorizedly absented to duty with effect from 01.11.2006 and the final order was passed on 04.02.2008 and totally, there was 461 days unauthorised absence to duty. The Labour Court, taking into consideration the plight of the petitioner has found that the punishment of



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removal from service passed by the respondent Corporation is disproportionate and granted compensation of Rs.1,00,000/- to the petitioner, instead of reinstatement. Therefore, this Court is of the opinion that the award of compensation of Rs.1,00,000/- passed by the Labour Court is justified and the same need not be interfered with. It is also brought to the notice of this Court that the respondent Corporation had deposited the entire award amount into court and the same was also withdrawn by the petitioner.

10. In view of the above discussion, this Court is of the opinion that there is no infirmity or illegality in the award passed by the Labour Court. Therefore, the Writ Petition stands dismissed. No costs.

13.04.2023

Index: Yes/No
Speaking/Non-speaking order
vsi



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J.NISHA BANU,J.

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