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W.P.No.6593 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

W.P.No.6593 of 2018

J.Anthony

... Petitioner

Vs.

1.The Presiding Officer,
Labour Court, Coimbatore.

2.The Management,
Tamil Nadu State Transport Corporation (Kovai)
Limited,
37, Mettupalayam Road, Chennai – 43.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the Preliminary Award dated 26.06.2015 and Final Award dated 22.06.2017 passed in I.D.No.449 of 2009 by the 1st respondent Labour Court and quash the same on the ground of it being violative of the principles of natural justice, arbitrary exercise of power, non-application of mind and consequently direct the 2nd respondent to grant the petitioner arrears of wages, continuity of service, other attendant benefits.

For Petitioner : Mr.SP.Srinivasan

For Respondent (R1) : Labour Court

(R2) : Mr.A.Sundaravadhanan



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ORDER

The writ petition has been filed seeking to quash the Preliminary Award passed in I.D.No.449 of 2009 dated 26.06.2015 and Final Award dated 22.06.2017 passed by the 1st respondent/Labour Court and consequently direct the 2nd respondent to grant the petitioner's arrears of wages, continuity of service and other attendant benefits.

2. It is the case of the petitioner that the petitioner joined in the services of the 2nd respondent-Management as Conductor on 13.12.1985. The petitioner has stated that since he was suffering from diabetics and was taking treatment, he had taken Medical Leave. On 12.05.2006, he was issued with a charge memo dated 12.05.2006 for his continuous absence of more than 10 days from 21.04.2006 without prior permission in advance as per Rule 14(f) of the Standing Orders of Tamilnadu Cheran Transport Corporation Limited. Though the enquiry was conducted and concluded in a single day on 11.08.2006, the petitioner was not permitted to cross-examine the witness of the 2nd respondent-Management and his request to call for and cross-examine his superior was not called for and cross-examined by the enquiry officer. Further, the enquiry report was submitted on 12.08.2006. On 16.06.2008, the 2nd show cause notice referred to previous alleged 25 charges and two new charge



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memos dated 30.04.2006 and 06.08.2008 were issued, for which no enquiry was conducted. The petitioner submitted his explanation to the 2nd show cause notice through his advocate on 30.07.2008. Without considering his explanations, the petitioner was terminated from service on 29.09.2008 on the ground of alleged misconduct under Rule 14(f) of the Cheran Transport Corporation Standing Orders and the said Rule is not valid from 01.09.2003 since Tamilnadu State Transport Corporation Limited came into existence.

3. The petitioner raised an Industrial Dispute, challenging the order of termination before the 1st respondent/Labour Court, Coimbatore in I.D.No.449 of 2009. He had challenged the fairness of the Domestic Enquiry before the Labour Court, Coimbatore. After adjudication, the Presiding Officer, Labour Court confirmed the order of dismissal by stating that the Enquiry Officer has conducted the enquiry in a fair and proper manner and the enquiry report is valid under law.

4. The learned counsel for the petitioner submitted that the petitioner has completed more than 20 years of service. From 2006 and even prior to that, the petitioner had medical ailments and he was under continuous



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treatment. On 03.10.2006, the petitioner had submitted VRS or requested for light job. But the second respondent was rejected. Since the petitioner was bedridden due to spinal cord pain, he could not attend duty and he informed the same to the second respondent. The enquiry officer conducted the enquiry in a biased manner and he did not permit the petitioner to cross examine the management witnesses. Hence, the learned counsel prays to allow this petition.

5. Per contra, the learned counsel for the second respondent submitted that admittedly, the petitioner joined duty in the year 1985 as a Conductor. The petitioner was absent from duty on 21.04.2006 without any intimation or previous sanction of leave. The act of the petitioner was misconduct under Section 14F of the Standing Order of the Corporation, for which, a charge memo was issued to the petitioner on 12.05.2006. In turn, he submitted his explanation along with medical records. Again the petitioner has sent a letter on 28.06.2006 for 45 days and 05.06.2006 to 27.06.2006 for 23 days requesting the respondent to allow him to join duty. Considering the same, he was allowed to join duty. Though the petitioner did not join duty, an enquiry was ordered, for which, a notice has been sent to the petitioner. The petitioner participated the enquiry on 11.08.2006 and found him guilty of the charges



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and filed a report. Based on which, a termination order has been passed against the petitioner. During enquiry, he was not produced his medical records. Prior to the enquiry, 25 punishments were given to the petitioner for 25 charges. The enquiry officer conducted the enquiry in a fair and proper manner and the petitioner has violated the principles of natural justice. Hence, he prays to dismiss the petition.

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

7. The facts of the case are not in dispute. Admittedly, the petitioner entered into service in the second respondent Corporation in the year 1985. For his unauthorised absence for three spells, due to ill health, the enquiry was conducted. Based on the enquiry report, the petitioner was dismissed from service.

8. This Court perused the entire records. On perusal of the same, it is seen that the enquiry conducted by the enquiry officer is satisfied and there is no violation for principles of natural justice and the reason assigned by the



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enquiry officer is perfectly in order.

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9. Now the issue arises in the present case is whether the punishment imposed on the petitioner is highly disproportionate or not. The dismissal order has passed by the respondent for unauthorised absent of the petitioner and the Labour Court failed to consider that the petitioner has entered into service in the year 1985 and after lapse of 20 years, he committed the misconduct viz., in the year 2006. During enquiry, the Corporation has not stated about the 25 punishment imposed on the petitioner. In the second showcause notice, it was mentioned about the alleged 25 misconducts and all the allegations are about unauthorised absence.

10. This court perused the original records. On perusal of the same, it is clearly seen that the petitioner has affected from chronic spinal cord problem, which cannot be cured immediately. Considering the past service rendered by the petitioner, this Court feels that the punishment imposed on the petitioner is highly disproportionate and it has to be modified.

11. Applying the ratio laid down by the Hon'ble Supreme Court, in the



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case of **Prem Nath Bali vs Reg., High Court Of Delhi & Anr reported in AIR**

2016 SCC 101, this Court modifies the punishment imposed on the petitioner as compulsory retirement. For better understanding, the relevant paragraphs are extracted hereunder:

24) It is a settled principle of law that once the charges leveled 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 punishment as provided in the Rules.

25) 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.

12. Now coming to the facts of the case in hand and keeping the factors



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in mind, this Court is of the considered view that the petitioner has suffered with chronic spinal cord pain and it is not possible for the employer to attend duty at the chronic stage. Considering the facts and circumstances, which are taken note of supra, this court is of the view that the service of the petitioner and his past records should have been taken into account by the respondents before imposing punishment for termination.

13. In view of foregoing discussion, the dismissal order passed by the second respondent is set aside and the petitioner shall be given compulsory retirement as he is eligible for VRS. Therefore, the second respondent is directed to settle the entire terminal benefits to the petitioner within a period of twelve weeks from the date of receipt of a copy of this order.

14. With the above observation, the writ petition is allowed. No costs.

30.08.2023

rli

Index : Yes / No

Speaking order / Non speaking order



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Netrual Citation Case : Yes / No

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To

1. The Assistant Commissioner of Labour,
The Authority under Tamil Nadu,
Payment of Subsistence Allowance Act, 1981,
Office of the Assistant Commissioner of Labour,
4th Floor, Collectorate,
Salem.

2. The Deputy Commissioner of Labour,
The Appellate Authority under Tamil Nadu,
Payment of Subsistence Allowance Act, 1981,
Office of the Assistant Commissioner of Labour,
4th Floor, Collectorate, Salem.



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M.DHANDAPANI, J.

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