



Writ Appeal No.76 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.03.2023

Coram:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

Writ Appeal No.76 of 2023

R.S.Jesudoss

.. Appellant

Vs.

1. The Presiding Officer,
Labour Court,
Salem-646 007.
2. The Management,
Tamil Nadu State Transport
Corporation Ltd.,
12, Ramakrishna Road,
Salem-636 007,
Rep. by its General Manager.

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 18.11.2019 passed by the learned Single Judge, in W.P.No.8275 of 2017 on the file of this Court.

For appellant : Mr.S.Ayyathurai

For respondents: R-1 - Labour Court

R-2 - Mr.K.Raja

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JUDGMENT

(The Judgment of the Court was delivered by S.Vaidyanathan, J)

The present appeal has been preferred against the order passed by the learned Single Judge in W.P.No.8275 of 2017, dated 18.11.2019, in interfering with the impugned Award passed by the Labour Court in I.D.No.30 of 2013, dated 16.02.2016.

2. The appellant/employee joined service of the second respondent-Management (Transport Corporation) as Conductor in the year 1989. For his unauthorised absence from duty from 25.05.2011 without prior intimation/permission, a charge memo dated 14.06.2011 was issued, treating it as misconduct falling under the Certified Standing Orders of the second respondent-Corporation. Not satisfied with the explanation, domestic enquiry was conducted, wherein the charges have been held to be proved.

3. After issuance of the second show cause notice, the order of dismissal from service was passed on 23.04.2012, along with one month's salary. Questioning the order of dismissal from service, the appellant/employee raised an industrial dispute in I.D.No.30 of 2013 after failure of conciliation was



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adjudicated by the Labour Court and an Award was passed in the said industrial dispute on 16.02.2016.

4. Even though the Management has referred to the gravity of the proved charges and the past record of service of the employee, the Labour Court, without considering the same, ordered reinstatement of the employee, with continuity of service and without back-wages. Though the employee did not challenge the fairness of the enquiry, finding has been rendered by the Labour Court on the fairness of the enquiry. We feel that it is inappropriate for the Labour Court to render a finding on the fairness of the enquiry, when it has not been questioned.

5. Coming to the merits of the matter, the Labour Court has categorically held that though the employee has not intimated the employer and has not taken permission before going on leave, there cannot be any wilful absenteeism, as he has produced documentary evidence, namely the medical certificate to show that he was un-well. The Labour Court referred to Ex.W-2, which is the additional explanation dated 24.03.2012 of the employee, along with a copy of the medical certificate, and came to the conclusion that the employee was un-well and that the charges are not proved. That apart, it was observed that for



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the absence of the employee, the employer ought not to have dismissed the employee from service.

6. Assailing the Award passed by the Labour Court, the appellant/employee filed W.P.No.8275 of 2017, which was allowed by the learned Single Judge and challenging the order passed by the learned Single Judge, the employee has preferred the present Writ Appeal.

7. From a reading of the Award of the Tribunal, it is clear that the employee has not intimated the employer about his absence. There are three aspects in this issue, namely (i) no prior intimation; (ii) not taking prior permission and (iii) absence from duty. However, there is no charge with regard to the wilful absence of the employee. The factum of absence is not in dispute. That apart, neither prior intimation was given, nor prior permission was obtained. The Labour Court has therefore rightly come to the conclusion that there was no wilful absence and the absence was on account of the ill health, as could be seen from Ex.W-2, along with the Medical Certificate produced by the employee and the same has been reflected in paragraph 14 of the Award, relevant portion of which reads to the effect that, "தற்போது உடல்நிலை சரியில்லை என்ற காரணத்தினால் மனுதாரரால் பணிக்கு வர இயலவில்லை என்று கூறப்பட்டு, அதற்குரிய மருத்துவச் சான்றுகள் ம.சா.ஆ.2 உடன் இணைக்கப்பட்டுள்ளது."

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8. Moreover, unless the findings of the Labour Court are perverse, the Labour Court's Award cannot be interfered with. In this case, we find that there is no perversity in the impugned Award of the Labour Court, more so, when there is no wilful absence. It is no doubt true that the past record of the employee is bad. The past record of the employee can be referred to , provided the present charges are proved. In the present case on hand, the Labour Court came to the conclusion that the present charges, more so, the wilful absence, is not there and hence, the appellant was deprived of the entire back-wages while ordering reinstatement with continuity of service and other attendant benefits.

9. The learned Single Judge proceeded on the basis that the Labour Court has shown misplaced sympathy. The Labour Court is empowered to come to a different conclusion by re-appreciating the entire evidence on record and also to substitute the punishment imposed by the employer. In the case on hand, after holding that the charges are not proved and that even if they are proved, the punishment is excessive, the punishment imposed was interfered with by the Labour Court exercising its discretionary jurisdiction under Section 11-A of the said Act.

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10. Only when the charges are proved, the question of referring the past record will arise. In the case on hand, inasmuch as the charges are held not proved by the Labour Court, merely because another view is possible, it cannot be a ground to replace the Award with another view and set at naught the Award. Further, when a document has been considered by the Labour Court and a different interpretation has been given to the said document, certainly, this Court cannot give another interpretation, as laid down by the Apex Court in the case of W.M.Agnani Vs. Badri Das and others, reported in 1963 (1) LLJ 684 (SC) (Civil Appeal No.881 of 1962, decided on 25.03.1963), wherein, it has been held that it cannot be said to introduce an error apparent on the face of the record in the order of the Industrial Tribunal and if it can be said that the view taken by the Tribunal is not even reasonably possible, perhaps an argument can be urged that the error is apparent on the face of the record. In the abovesaid case of the Supreme Court, the High Court therein exceeded in its writ jurisdiction in interfering with the finding of the Industrial Tribunal based on the construction put by it upon the resolution of the Management. For better appreciation, relevant portion of the judgment rendered in Agnani's case (cited supra) is extracted hereunder:

"11. The Tribunal took the view that this resolution clearly showed that the enquiry had to be held about the incident which took place on November

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16, 1959 and it thought that the reference to his previous conduct was incidental and may have been necessary for determining the question of sentence, but it was not intended to be the subject-matter of the enquiry. The High Court has taken a different view. Apart from the correctness of one view or another, it seems to us plain that in a matter of this kind, if the Tribunal put one interpretation upon the resolution and the High Court thought it better to put another, that cannot be said to introduce an error apparent on the face of the record in the order of the Tribunal. If it can be said that the view taken by the Tribunal is not even reasonably possible, perhaps an argument may be urged that the error is apparent on the face of the record; but, in our opinion, it would not be possible to accept Mr.Setalvad's argument that the construction placed by the Tribunal is an impossible construction. On the other hand, while conceding that the view taken by the High Court may be reasonably possible, we are inclined to think that the construction put upon the resolution by the Tribunal is also reasonably possible; in fact, if we had to deal with the matter ourselves, we would have preferred the view of the Tribunal to the view of the High Court."



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The above principle of the Apex Court would apply *a fortiori* in defining the scope of jurisdiction/discretion under Article 226 of the Constitution of India.

11. In view of the law enunciated by the Supreme Court in the decision cited supra, we are of the view that the impugned order passed by the learned Single Judge is liable to be interfered with. Accordingly, the same is set aside. The Award of the Labour Court is restored.

12. It is seen that during the pendency of the Writ Petition, as has been represented by the counsel on either side, the appellant/employee had the benefit of wages under Section 17-B of the Industrial Disputes Act. Since the employee had the benefit of the Award dated 16.02.2016 in I.D.No.30 of 2013 and he has attained the age of superannuation on 25.12.2017, the employee would be entitled to the benefit of wages only for a period of 22 months, after adjusting the salary paid under Section 17-B of the said Act. Had the employee been in service, the Award of the Labour Court holding that the employee would be entitled to reinstatement with continuity of service and other benefits. Since the employee is covered by the Old Pension Scheme, as he has joined the service of the second respondent/Corporation in 1989 itself, the pensionary benefits shall be extended to him. Apart from that, the wages which the



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employee would have drawn on the date of superannuation, shall be taken into account for the purpose of settlement of Gratuity.

13. Except the gratuity, pension and difference in wages for the period of 22 months, the employee would not be entitled to any other benefits.

14. The above benefits shall be given to the appellant/employee by the second respondent/Management within a period of four months' time from the date of receipt of a copy of this judgment.

15. With the above observations and directions, the Writ Appeal filed by the appellant/employee is allowed. There shall be no order as to costs.

(S.V.N., J) (R.K.M., J)
14.03.2023

Index: Yes

Speaking Order: Yes

Neutral Citation: Yes

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To

The Presiding Officer,
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