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W.P.No.9150 of 2019 & W.M.P. No.9675 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2023

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.P.No.9150 of 2019 & W.M.P. No.9675 of 2019

The Managing Director,
Tamil Nadu State Transport Corporation
(Salem Division-I) Limited
12, Ramakrishna Salai,
Salem 636 007

... Petitioner

Vs.

M. Selvaraj

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records pertaining to the order dated 19.07.2018 passed by the Labour Court, Salem in I.D.No.15 of 2016 and quash the same.

For Petitioner : Mr.M. Aswin
For Respondent : Mr. Su. Srinivasan

ORDER

The respondent M. Selvaraj was working as a driver in the Writ Petitioner Corporation since 18.10.1997. Since he unauthorisedly



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absented himself from attending duty from 01.04.2009 to 16.04.2010

without prior intimation, a charge memo was issued to him and the Enquiry Officer also held that the charges against the respondent are proved and subsequently he was dismissed from service. Thereafter, the respondent filed a petition under Section 2A(2) of the Industrial Disputes Act, 1947 before the Labour Court, Salem. The Labour Court Judge, Salem, vide his orders dated 19.07.2018 allowed the petition filed by the respondent/workman on the ground that the Petitioner Management has not proved the charges against the respondent/workman. Aggrieved over the same, the present Writ Petition is filed.

2. Mr.M. Aswin, learned counsel for the Writ Petitioner would contend that the respondent was working in Erumapalayam Branch as a driver and he was transferred to Namakkal Mofussil Branch on 27.02.2009. Challenging the same, the respondent filed a Writ Petition in W.P. No.14910/2009 in which this Court had observed that since the petitioner (respondent herein) has not been relieved from his present place of work, he can continue to work in the said place and if any order is passed by the Management subsequently, it is open to him to challenge the same in the manner known to law. Subsequently, the Management,



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on 16.04.2010, relieved the respondent from the place of work and the respondent did not join duty. The learned counsel for the Writ Petitioner further contended that the respondent had not also explained the reasons for his unauthorised absence from 01.04.2009 to 16.04.2010.

3. Per contra, Mr. Su. Srinivasan, learned counsel for the respondent would contend that though this Court in W.P. No.14910/2009 permitted the respondent to continue in the present place of posting i.e. Erumapalayam Branch, vide orders dated 30.07.2009, the Management relieved him from the existing place of posting to Namakkal Branch on 16.04.2010 vide Memo No.729-32449-D4/TGTC/2009. According to him, the Writ Petitioner was not permitted to join duty in Erumapalayam Branch. He therefore, would contend that the orders passed by the Labour Court, Salem, is perfectly in order.

4. This is yet another case of unauthorised absence. In the instant case, a driver of Tamil Nadu State Transport Corporation (Salem Division I) Limited unauthorisedly absented himself from 01.04.2009 to 16.04.2010. He did not adduce any reason for his absence. However, on 27.02.2009, he was transferred from Erumapalayam Branch to



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Namakkal Branch of the Writ Petitioner Corporation vide proceedings

No.E2/11560/TGTC(Salem)/2009. This order of transfer was challenged

by the respondent in W.P.No.14910/2009. Since the respondent was not

served with a relieving order, a Single Judge of this Court (Hon'ble Justice

R.N.Basha as he then was) observed that the petitioner (respondent

herein) can continue to work in the same place and if any other order is

served on him, it is open to the petitioner to challenge the same in the

manner known to law. Subsequently on 16.04.2010, relieving

instructions in Memorandum No. 729-32449-D4/TGTC/2009 was served

on the respondent. The relieving instructions have not been challenged

by the respondent as directed by this Court in W.P. No.14910/2009. For

better understanding, the order of this Court in the abovesaid Writ

Petition is extracted hereunder:

"The fact remains that as per the impugned order dated 27.02.2009, the petitioner was originally transferred from Erumapalayam 2 branch to Namakkal Mofussil branch. It is brought to the notice of this Court that though such order was passed on 27.02.2009, the petitioner was not relieved till date from the existing place. It is seen from the



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order dated 20.07.2009 produced before this Court by the learned counsel for the petitioner that in view of the representation of the petitioner dated 02.07.2009, the petitioner was allowed to join duty in the existing place at Erumapalayam 2 branch. It is seen that the petitioner is having a mere apprehension to the effect that an order is likely to be passed relieving him from the existing place/Erumapalayam 2 branch. It is further submitted that the transfer was despatched through post. However, as on date the petitioner was not served with the said order and therefore, this Court is constrained to state that it is open to the petitioner to continue in the present place as it is submitted before this Court that this petitioner is yet to be relieved from the existing place, namely, Erumapalayam 2 branch. It is made clear that if the petitioner is aggrieved on the ground of serving any other order, it is open to the petitioner to challenge the same in the manner known to law."



WEB COPY 4.1. The Labour Court had observed that the Writ Petitioner Management in their counter had not mentioned about the orders passed by this Court and on the other hand, relieved him from the existing place of posting on 16.04.2010. Based on this ground alone, the respondent was directed to be reinstated into service with all back wages and with continuity of service. It is pertinent to point out that the respondent in his petition before the Industrial Tribunal had not pleaded and proved that he was not gainfully employed elsewhere. The Labour Court, without taking this aspect into consideration had directed petitioner Management to pay the full back wages. It is also pertinent to point out that the thumb rule for leave is 'Leave is not a matter of right'. It has to be intimated and also got sanctioned. Sanction is not automatic or mandatory. In the instant case, no explanation was given by the respondent for his unauthorised absence. He mainly relied on the order passed by this Court in W.P.No.14910 of 2009. As already observed since relieving instructions were not given, the respondent was permitted to work in the same place. Moreover, the respondent was dismissed from service only for his unauthorised absence from 01.04.2009 to 16.04.2010, for which no explanation was offered by him. Even after passing of the order by this



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Court on 30.07.2009 in W.P.No.14910 of 2009, he did not join duty. In the circumstances, the order passed by the Labour Court is totally perverse and the same is liable to be set aside.

5. In the result, the Writ Petition is allowed. No costs. Consequently connected Writ Miscellaneous Petition is closed. The order dated 19.07.2018 passed by the Labour Court, Salem in I.D.No.15 of 2016 is quashed.

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R.HEMALATHA, J.

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