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W.P.No.18142 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.18142 of 2014 and
MP.No.1 of 2014

The Management,
Tamilnadu State Transport Corporation Ltd.,
Salamedu, Vazhuthareddy, Villupuram,
Villupuram District
Rep. by its General Manager

... Petitioner

Vs.

1.K.Ramanujalu
2.The Presiding Officer,
Labour Court,
Cuddalore

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue Writ of Certiorari calling for the records of the second respondent made in ID.No.72 of 2010 dated 02.09.2013 and to quash the same as illegal.

For Petitioner : Mr.M.Ashwin

For Respondents

For R1 : Mr.V.Ajay Khose

R2 : Court

ORDER



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This writ petition has been filed challenging the order passed by the second respondent in ID.No.72 of 2010 dated 02.09.2013, thereby ordered to reinstate the first respondent with continuity of service and to pay 25% of backwages from the date of application to the Conciliation Officer.

2. The first respondent had joined duty as Temporary Driver on 19.01.2001 in the petitioner Management. His service was regularised on 01.09.2005. However, he was unauthorisedly absent from duty from 22.01.2007 onwards. The unauthorised absence amounted for grave misconduct and there was a large scale of hindrance in the operation of the vehicle. Therefore, the first respondent was issued charge memo on 02.04.2007 for the said misconduct. No explanation was submitted and ordered for domestic enquiry. In the domestic enquiry, the first respondent fully participated in the enquiry. During the enquiry, the first respondent produced medical certificate and by oral submission and written submission cited medical reasons as reason for his absence. The first respondent was absented from duty 151 days in the year 2005, 288



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days in the year 2006, 341 days in the year 2007, 152 days in the year 2008. After completion of enquiry, the first respondent was served with show cause notice and called for explanation. However, the said explanation was not satisfactory and the petitioner dismissed him by order dated 24.01.2009. Though in the interregnum period, the first respondent was offered employment, again he absented from duty for so many days i.e. 11 days in the month of June, 5 days in the month of July, 25 days in the month of October of the year 2008. Thereafter, the first respondent raised industrial dispute in ID.No.72 of 2000 challenging the order of dismissal.

3. The learned counsel for the petitioner would submit that the first respondent committed very serious misconduct by absenting from his employment continuously for so long days. Though the first respondent produced medical records, it revealed that the first respondent was not even admitted for one day for inability and sufferings referred in the prescription. Without considering the same, the Labour Court ordered for reinstatement with backwages of 25%.

4. While pending the writ petition, the first respondent was



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paid 17(b) salary till 2009. Thereafter, the Management did not pay salary as contemplated under Section 17(b) of Tamilnadu Civil Service (Discipline & Appeal) Rules. The first respondent was subjected for medical examination as directed by this Court. He was subjected for medical examination before the Government Villupuram Medical College & Hospital and the Neurosurgeon opined that the person should be assigned alternative indoor work for the reason he suffered with multiple spondylosis C3C4, C4C5, C5C6, L5S1 disk bulge. Again the first respondent was subjected for medical examination before the Regional Medical Board, Rajiv Gandhi Government General Hospital, Chennai. The opinion given by the Villupuram Medical Board was confirmed by Regional Medical Board by the report dated 13.03.2020. Therefore, during the employment, he was suffered with illness and as such he could not able to report duty for those period.

5. Though the first respondent deserves some punishment, dismissal from service appeared to be disproportionate for the charges levelled against him. Therefore, the Labour Court rightly set aside the



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order of dismissal and ordered for reinstatement with continuity of service and to pay 25% of backwages.

6. As directed by this Court, the first respondent is present before this Court today and submitted that he is ready to forgo backwages (other than the backwages which was already paid by the petitioner). He is also ready and willing to do indoor work as opined by the Medical Board.

7. Considering the above, this Court do not find any infirmity or illegality in the order passed by the second respondent. However, the first respondent is not entitled for any backwages for the period in which the petitioner failed to pay any backwages. The petitioner shall reinstate the first respondent and assign alternate indoor employment in the same scale of pay of post of Driver with continuity of service within a period of four weeks from the date of receipt of copy of this order.

8. With the above directions, this writ petition is disposed of.



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Consequently, connected miscellaneous petition is closed. There shall be
no order as to costs.

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Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To

1. The Presiding Officer,
Labour Court,
Cuddalore
2. The Public Prosecutor,
High Court, Madras.

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