



W.P.No.29917 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on 10.04.2023

Order delivered on 28.04.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.29917 of 2014

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

... Petitioner

vs

1. A.Nallathambi

2. The Presiding Officer,
Labour Court,
Cuddalore.

.... Respondents

Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorari to call for the records of the 2nd respondent made in I.D.No.271/2007 dated 24.09.2013 and to quash the same

For Petitioner : Mr.M.Aswin

For Respondents : Mr.J.Lakshmi Narayanan for R1
R2-Court



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ORDER

This Writ Petition has been filed by the petitioner challenging the award passed by the Labour Court in I.D.No.27/2007 dated 24.09.2013, setting aside the order of dismissal and imposing the punishment of stoppage of one increment with cumulative effect with continuity of service and to pay 50% of the wages from the date of dismissal till the date of superannuation to the petitioner.

2. The brief facts of the case of the petitioner is as follows:

The 1st respondent workman had joined duty as a Driver in the petitioner Management on 30.11.1996. The 1st respondent was unauthorizedly absented from duty from 04.02.2001 to 20.03.2001 and thereafter, from 21.03.2001 onwards till the date of dismissal. Since the unauthorized absence amounted for grave misconduct there was large scale of hindrance in the operation of the vehicle. hence, the 1st respondent was issued with a charge memo dated 24.03.2001 for the above misconduct. thereafter, domestic enquiry was conducted and the 1st respondent participated in the enquiry and examined a witness and other documents were marked through him. Sufficient opportunity was given to the 1st



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respondent to cross examine the Management witnesses and adduced necessary documents. The 1st respondent did not choose to cross examine the management witness. On completion of enquiry, the Enquiry Officer sent a report concluding that the charges were proved. Based on the domestic enquiry report, the petitioner's management sent second show cause notice dated 18.02.2002 to the 1st respondent along with enquiry officer's report and called for explanation for the provisional conclusion arrived by the management for his dismissal. There was no explanation received from the 1st respondent. Therefore, an order was passed on 25.03.2002 as against the 1st respondent. The 1st respondent raised Industrial Dispute in I.d.No.271/2007 challenging the order of dismissal and prayed for reinstatement along with backwages and all other attendant benefits. The Labour Court, passed an award dated 24.09.2013 setting aside the order of dismissal and awarded stoppage of one increment with cumulative effect along with 50% backwages with continuity of service and all other attendant benefits. Hence, this writ petition with the aforesaid relief.

3. Heard the learned counsel for the petitioner Management and the learned counsel appearing for the 1st respondent workman.



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4. i) Learned counsel for the petitioner would submit that the award passed by the 2nd respondent is highly illegal and against the principles of Section 11-A of the Industrial Disputes Act, 1947. The willful absence is proved from the fact that there was a notice and reply sent by the respondent. The absence without any authorization and without any reasoning amounts to willful absence. The Labour Court has eschewed from entertaining the adduced evidences. Therefore, the approach of the Labour Court shows the non-application of mind.

ii) Learned counsel for the petitioner Management would submit that the dismissal order was passed in the year 2002, but the I.D. was filed in the year 2007 after a period of 5 years. There was no proper reason given for the delay in filing the Industrial Dispute after the period of 5 years. The reasons for the absent stated in the petition filed in I.D.No.271/2007 is that his wife was suffering from Typhoid and she was bedridden and since there was no other person to take care of her, he took leave, but Management did not accept his leave application and marked absent from 4.2.2001 to 20.03.2001. However, it is stated by the 1st respondent that after the termination order was passed, the reason for the delay in filing the I.D. is that he suffered stork on 20.04.2003 and therefore, he could not raise the



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dispute immediately. Learned counsel would further submit that unauthorised absence is grave violation of discipline and grave misconduct. If the employees of the Transport Corporation remain absent, it will have serious repercussions on the functioning of the Corporation and hindrance to public service and hence, required a treatment of such dereliction of duty with certain amount of seriousness.

iii) Learned counsel would further submit that the exercise of power by a Labour Court as under Section 11-A should be in a judicious manner and shall arise only in the event of absence found to be justified and for reasonable causes. Learned counsel would further submit that if in the past the employee has remained absent without prior permission and thereafter commits the similar misconduct which is proved in a domestic enquiry after following the principles of natural justice, the habitual unauthorised absenteeism is grave indiscipline and termination from service does not call for interference under Section 11-A of the I.D.Act. Hence, he would pray to set aside the award passed by the Labour Court.

5. i) Per contra, the learned counsel appearing for the 1st respondent would submit that the 1st respondent availed leave from 04.02.2001 to 20.03.2001 and he reported to duty on 21.03.2001. The Branch Manager



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refused to assign him duty and told him that he could be permitted to work only after getting necessary orders from the Head Office. Thereafter, the petitioner Management issued undated charge memo to the 1st respondent. The Branch Manager assured that the inquiry was only formal and he would be reinstated soon. The petitioner appeared for enquiry on 21.08.2001 and no witness was examined on that date. The petitioner produced medical records pertaining to his wife. The inquiry officer asked the 1st respondent to give statement that he could not come to work due to his family circumstances. He assured that he would be reinstated and no inquiry need to be conducted. After some time, the petitioner Management issued second show cause notice. The Branch Manager advised the 1st respondent not to submit any explanation and that he would be reinstated soon. But on 25.03.2002, the petitioner management dismissed the petitioner from service.

ii) Learned counsel would further submit that on 20.04.2003, the petitioner suffered stroke and therefore, he could not raise the dispute immediately. After recovery from stroke, he filed application before the conciliation officer and the settlement failed. Hence filed industrial dispute. Even before Industrial Dispute was raised, the 1st respondent had reached



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the age of superannuation. The Labour Court, after careful consideration of all these aspects passed an award, setting aside the order of dismissal and reinstated the petitioner in service with stoppage of one increment with cumulative effect and also granted continuity of service and 50% backwages from the date of dismissal till the date of superannuation. The award passed by the Labour Court is well founded and the same need not be interfered with.

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

7. On perusal of the materials available, it is seen that the 1st respondent, after availing leave from 04.02.2001 to 20.03.2001, reported for duty on 21.03.2001, but the Branch Manager refused to assign him duty and told him that he could be permitted to work only after getting necessary orders from the Head Office. Thereafter, charge memo was issued as against the 1st respondent on 29.03.2001. The only charge against the 1st respondent is that he was absent for about a month. It is not the case of the 1st respondent that he was suffering from any illness, but he had stated that his wife was suffering from typhoid. So, he could not have applied for medical leave. There is also no proof to show that he presented the application for



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leave to the petitioner Management.

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8. Further, the 1st respondent admitted that he did not go to work from 04.02.2001 to 20.03.2001. Since he failed to prove that he had submitted leave application, it can only be held that the period of absence was an unauthorized absence. Unauthorized absence from duty for about a month would certainly amount to misconduct. Thus, the petitioner Management has rightly initiated disciplinary proceedings. But the punishment of dismissal imposed on the 1st respondent is disproportionate to the charges levelled against him.

9. The 1st respondent was employed in the petitioner Corporation since 1986 and thus, he has put in long years of service. Dismissing from service only on the ground of unauthorised absence is grossly disproportionate. It is not the case of corruption, embezzlement of funds, fraudulent deeds, forgery of recorded and cheating etc. Therefore, punishment of dismissal may not be appropriate. The Labour Court has rightly gone into all aspects and had come to the conclusion that the punishment of stoppage of one increment with cumulative effect instead of dismissal would be a proper punishment and awarded so. The Labour Court also considered the fact that the 1st respondent had reach the age of



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superannuation and directed the respondents to grant continuity of service and pay 50% backwages from the date of dismissal till the date of superannuation. This Court is of the opinion that there is no infirmity or illegality in the award passed by the Labour Court.

10. In the result, the Writ Petition stands dismissed. No costs.

28.04.2023

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

To

The Presiding Officer,
Labour Court,
Cuddalore.



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J.NISHA BANU,J.

vsi

Pre-delivery order made in

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