



WEB COPY



W.P.No.21970 of 2019
and W.M.P.No.21209 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

W.P.No.21970 of 2019
and W.M.P.No.21209 of 2019

The General Manager,
Tamil Nadu State Transport Corporation
(Covai) Limited, Erode Region,
Erode.

... Petitioner

Vs.

1.The Special Duty Commissioner of Labour,
D.M.S. Compound, Chennai.

2.K.Balasubramanian

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the first respondent made in A.P.No.194/2014 dated 19.03.2018 and quash the same.

For Petitioner : Mr.M.Muralivinodh

For R1 : Mr.D.Gopal, GA

For R2 : No appearance

ORDER

Challenge in this writ petition is made to the orders passed by
the Special Deputy Commissioner of Labour, Chennai in
A.P.No.194/2014 dated 19.03.2018.



W.P.No.21970 of 2019
and W.M.P.No.21209 of 2019

WEB COPY

2. The second respondent, K.Balasubramanian was working as a Driver in the writ petitioner Corporation and he absented himself from attending duty since 20.01.2011. The Management after issuing necessary Show Cause Notice conducted a Departmental Enquiry against him and the Enquiry Officer in his report held that the charges are proved. Subsequently, a second Show Cause Notice was issued to the second respondent and he was dismissed from service with effect from 28.08.2014. Thereafter, the Management filed an Approval Petition under Section 33(2)(b) of the Industrial Disputes Act, 1947 before the Special Deputy Commissioner of Labour, Chennai in A.P.No.194/2014. The Special Deputy Commissioner of Labour, Chennai, vide her orders dated 19.03.2018 dismissed the Approval Petition on the ground that the punishment imposed by the Management for the unauthorized absence of the respondent workman is too harsh. Aggrieved by the said orders, the present Writ Petition is filed.

3. Though several opportunities were given to the second respondent, there is no representation on his behalf either in person or



W.P.No.21970 of 2019
and W.M.P.No.21209 of 2019

through a counsel.

WEB COPY

4.It is seen from the records that the second respondent workman absented himself from attending duty since 20.01.2011 without any prior intimation. He was also issued with Show Cause Notice and a domestic enquiry was conducted. In fact, the second respondent workman did not want to cross examine the witnesses presented by the Management and his only explanation was that he was not in possession of driving license and hence, he could not attend duty.

5.The first respondent authority mainly it relied on the decision in ***Tamil Nadu State Transport Corporation (Villupuram Division -I) Ltd. Vs. The Joint Commissioner of Labour (Conciliation) and Others*** reported in ***(2011)1LLJ646 (Mad)*** had held that the punishment of removal from service is too harsh. In the said decision the decision of the Hon'ble Supreme Court in ***Bhagwan Lal Arya Vs. Commissioner of Police Delhi*** reported in ***AIR 2004 SC 2131*** has been relied upon in which it was held thus :

"11.....It is not the case of the respondents that the appellant is a habitual absentee. He had to proceed on



WEB COPY



W.P.No.21970 of 2019
and W.M.P.No.21209 of 2019

leave under compulsion because of his grave condition of health and, therefore, the punishment of removal from service is excessive and disproportionate. We are of the view that the punishment of dismissal/removal from service can be awarded only for acts of grave nature or as cumulative effect of continued misconduct proving incorrigibility or complete unfitness for police service. Merely one incident of absence and that too because of bad health and valid and justified grounds/reasons cannot become the basis for awarding such a punishment. We are, therefore, of the opinion that the decision of the disciplinary authority inflicting a penalty of removal from service is ultra vires Rules 8(a) and 10 of the Delhi Police (Punishment and Appeal) Rules, 1980 and is liable to be set aside. The appellant also does not have any other source of income and will not get any other job at this age and the stigma attached to him on account of the impugned punishment. As a result of which, not only he but his entire family totally dependent on him will be forced to starve. These are the mitigating circumstances which warrant that the punishment/order of the disciplinary authority is to be set aside. The appellant also does not have any other source of income and will not get any other job at this age and the stigma attached to him on account of the impugned punishment. As a result of which, not only he but his entire family totally



WEB COPY



W.P.No.21970 of 2019
and W.M.P.No.21209 of 2019

punishment in the departmental proceedings in lieu of the punishment of removal from service which has been set aside. The appellant must report on duty within a period of six weeks from today to take benefit of this judgment."

The facts of the present case are entirely different. In the instant case, it is not that the second respondent / workman could not attend duty on account of his health conditions. His contention is that he was not in possession of driving license cannot be accepted as the same has not been properly explained.

6. A Constitution Bench of this Court in the case of ***P.H.Kalyani Vs. Air France Calcutta*** reported in ***AIR 1963 SC 1756*** it has held thus :

"4.The main point which was raised in this appeal is now concluded by the decision of this Court in Straw Board Manufacturing Co. Limited Saharanpur v. Govind [AIR 1962 SC 1500] . This Court has held in that case that "the proviso to Section 33(2)(b) contemplates the three things mentioned therein, namely, (i) dismissal or dis-charge, (ii) payment of wages, and (iii) making of an application for approval, to be simultaneous and to be part of the same



WEB COPY



W.P.No.21970 of 2019
and W.M.P.No.21209 of 2019

transaction so that the employer when he takes the action under Section 33(2) by the dismissing or discharging an employee, should immediately pay him or offer to pay him wages for one month and also make an application to the tribunal for approval at the same time". It was further held that "the employer's conduct should show that the three things contemplated under the proviso, are parts of the same transaction; and the question whether the application was made as part of the same transaction or at the same time when the action was taken would be a question of fact and will depend upon the circumstances of each case".

In the circumstances, I hold that the orders passed by the first respondent as totally perverse.

7. Accordingly, this Writ Petition is allowed. The orders dated 19.03.2018 in A.P.No.194/2014 passed by the Special Duty Commissioner of Labour, Chennai, is set aside. No costs. Consequently, connect Writ Miscellaneous Petition is closed.

20.11.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl



WEB COPY



W.P.No.21970 of 2019
and W.M.P.No.21209 of 2019

R. HEMALATHA, J.
mtl

To

1.The Special Duty Commissioner of Labour,
D.M.S. Compound, Chennai.

W.P.No.21970 of 2019
and W.M.P.No.21209 of 2019

20.11.2023