



W.P.No.9850 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.07.2023

C O R A M

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.9850 of 2017
and W.M.P.No.10838 of 2017

The Management
Tamil Nadu State Transport Corporation
(Kumbakonam Division-I) Limited
Railway Station Road, Kumbakonam
Tanjore District.

... Petitioner

Vs

1.The Presiding Officer
Labour Court, Cuddalore.

2.A.Mohamed Rafi

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, call for the records pertaining to the order dated 25.02.2016 passed by the 1st respondent in I.D.No.40 of 2012 and quash the same.

For Petitioner	... Mr.S.Sathya Gandhi
For Respondents	... Mr. T.Anantha Sekar for R2



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W.P.No.9850 of 2017

ORDER

Aggrieved by the order passed by the 1st respondent/Labour Court in I.D.No.40 of 2013, the petitioner is before this Court.

2. It is the case of the petitioner that the 2nd respondent was working as an Assistant in the petitioner corporation. Due to his unauthorized absence to work during the year 2005, in the month of November and during the year 2006, in the month of December, he was issued with charge memo. Since, there was no response from the 2nd respondent, enquiry notice was issued to the 2nd respondent, pursuant to which, domestic enquiry was conducted. Though he was given sufficient opportunity to participate in the enquiry, however, the 2nd respondent did not turn up for the enquiry. Hence, the enquiry officer concluded the proceedings and held that the charges were proved against the petitioner. Subsequently, the second show cause notice was issued to the 2nd respondent, since there was no response from the 2nd respondent even for the show cause notice, he was dismissed from the services of the petitioner corporation. Challenging the dismissal order, the 2nd respondent raised an industrial dispute in I.D.No.40 of 2012 before the 1st respondent/Labour Court



W.P.No.9850 of 2017

wherein, the Labour Court has ordered for stoppage of increment for two years and back wages with continuity of service. Challenging the order passed by the 1st respondent, the petitioner has come up with this Writ Petition.

3. Learned Counsel for the petitioner submitted that there were already 118 charges as against the 2nd respondent/workman for various misconducts committed by him during the course of his employment for which he was punished, which clearly shows that the petitioner is a habitual offender. He was dismissed from service on the basis of his unauthorized absence to work during the course of his employment, for which enquiry was conducted. Without taking the aforesaid facts into consideration and properly adjudicating the issue, passing of the award by the Labour Court in favour of the workman is not sustainable. Hence, the award passed by the Labour Court is liable to be set aside.

4. Per Contra, learned counsel for the 2nd respondent/workman submitted that there is no perversity in the award passed by the Labour Court as it has been passed only after taking all the relevant documents into consideration as also the other grounds raised by the 2nd respondent. Hence, the



W.P.No.9850 of 2017

award passed by the Labour Court cannot be found fault with and the same needs no interference.

5. This Court heard the learned counsel appearing on either side and perused the materials available on record.

6. The facts in the present case is not in dispute. Admittedly, the 2nd respondent was working in the petitioner's management as an Assistant. However, due to his unauthorized absence to work, departmental proceedings were initiated against him which resulted in dismissal from service, aggrieved by which, the workman raised an Industrial Dispute before the Labour Court in I.D.No.40 of 2012 wherein, the Labour Court has passed the impugned award for stoppage of increment for a period of two years and for payment of back wages with continuity of service, on the ground that the punishment imposed by the petitioner management is highly disproportionate.

7. Before proceeding to analyse the facts of the present case to find out whether the punishment awarded to the petitioner is just and reasonable, the ratio laid down with regard to matters in which punishment has been imposed,



W.P.No.9850 of 2017

which is impugned under Article 226 of the Constitution.

WEB COPY

8. It has been the consistent view of the Courts that it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere in the same in exercise of powers under Art. 226 of the Constitution. In ***Prem Nath Bali – Vs - High Court of Delhi (2015 (16) SCC 415)***, the Hon'ble Supreme Court held as under :-

“20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major)



W.P.No.9850 of 2017

then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority.”

(Emphasis Supplied)

9. From the decision it clearly shows that where the punishment imposed shocks the conscience of the Court, the Court is duty bound to interfere with the same. In the case on hand, the delinquency is unauthorized absence for which the punishment of dismissal from service is too severe. Therefore, rightly the Labour Court has modified the punishment on the basis of the findings, which findings are borne out by record and could neither be termed perverse or unreasonable. Therefore, no interference is warranted with the well considered award passed by the Labour Court.



W.P.No.9850 of 2017

WEB COPY

10. For the reasons aforesaid, this Writ Petition is devoid on merits and the same is dismissed accordingly. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition stands closed.

21.07.2023

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Index: Yes/No

Internet: Yes

Speaking/Non-Speaking order



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W.P.No.9850 of 2017

M.DHANDAPANI, J.

NHS

To

The Presiding Officer
Labour Court, Cuddalore.

W.P.No.9850 of 2017
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