



W.A. No.2634 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2023

CORAM:
THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN
and
THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.A. No.2634 of 2023

The Management
Tamil Nadu Government Transport Corporation
Bharathipuram
Dharmapuri District

Appellant

v

1 J. Kishan Singh

2 The Presiding Officer
Labour Court
Salem

Respondents

Writ Appeal filed under Clause 15 of the Letters Patent challenging the order dated 12.04.2022 passed in W.P. No.31645 of 2015.

For appellant Mr. K. Raja
Standing Counsel

For R1 Mr. Vasanthanayagan

R2 Labour Court

JUDGMENT

(delivered by S. VAIDYANATHAN, J.)

For the sake of better understanding, the appellant, the first respondent and the second respondent will be adverted to as the Transport Corporation, the workman and the Labour Court, respectively.



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2 The facts leading to the filing of this writ appeal could be succinctly stated thus:

2.1 The workman joined as a Conductor in the Transport Corporation in the year 1979. While he was working in the Palacode Branch, since he absented himself from 14.07.2007 sans prior permission, he was issued with a charge memo dated 26.07.2007 followed by three enquiry summonses dated 16.07.2008, 27.08.2008 and 07.10.2008, all of which, got returned with an endorsement “door locked”.

2.2 Hence, the Enquiry Officer, *vide* report dated 12.11.2008, set the workman *ex parte* and held that the charges were proved. The Enquiry Officer's report was forwarded to the workman along with a show cause notice dated 28.02.2009.

2.3 In response, the workman submitted his reply dated 11.05.2009 stating that since his elder son met with an accident on 14.07.2007, he could not report for duty, pursuant to which, the Transport Corporation addressed a communication dated 30.09.2009 to the workman requiring him to join duty at once, which was also returned unserved and hence, the said communication was pasted in the notice board. Since the workman did not respond to any of the letters, he was dismissed from service on 21.12.2009.



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2.4 Challenging the dismissal order and seeking continuity of service, backwages and all other attendant benefits, the workman raised an industrial dispute being I.D. No.73 of 2011.

2.5 The Labour Court, on an analysis of the evidence on record, more so, the antecedents of the workman, *viz.*, absenteeism on twenty occasions sans prior permission and the punishment inflicted therefor, held, *vide* award dated 26.02.2015, that the workman does not deserve sympathy and accordingly, dismissed the industrial dispute.

2.6 The workman assailed the aforesaid award of the Labour Court by filing W.P. No. 31645 of 2015, in which, the Single Bench, *vide* order dated 12.04.2022, finding that the Sergeant of the Transport Corporation who was sent by the Transport Corporation to find out the genuineness of the reasons assigned by the workman for his absenteeism and who had given his report (Ex.M.5), was not examined before the Labour Court and that the dismissal order was passed one year later from the date of the Enquiry Officer's report, set aside the award of the Labour Court. Further, the Single Bench, finding that the punishment of dismissal from service is disproportionate to the charges and that the workman had reached the age of superannuation on



India, reduced the punishment of dismissal from service into one of stoppage of increment for a period of two years with cumulative effect, by itself, instead of remanding the matter to the Labour Court, as it would lead to further delay.

2.7 The aforesaid order passed by the Single Bench is appealed against before us by the Transport Corporation.

3 Heard both sides and perused the materials available on record.

4 At the outset, this Court deems it appropriate to have a look at the reasons based on which the Labour Court came to the conclusion that the workman is not entitled to any relief.

4.1 According to the workman, his elder son met with a vehicular accident on 14.07.2007, in which, he got both his legs fractured; he (son) had to be admitted in hospital for treatment; he (workman) had to stay in Coimbatore for mobilising a sum of Rs.4 lakhs for hospital expenses; further, adding to his woes, his younger son also lost his digesting capacity and he had to take care of him by admitting him in hospital; because of these two reasons, he could not report to duty and he informed the Transport Corporation of his



shred of evidence, either documentary or oral, was let in by him to buttress the above stand of his.

4.2 Smelling a rat, the Transport Corporation sent a Sergeant to the workman's house to find out the genuineness in the reasons assigned by the workman for not reporting to duty. The Sergeant who had gone to the workman's house, was informed the same reasons by the workman for not reporting to duty. The Sergeant had further observed in his report (Ex.M.5) that the workman was constructing a three-storeyed house in Pannathur and owing to that reason only, he abstained from reporting to duty.

4.3 Subsequently, the Transport Corporation, in order to afford an opportunity to the workman, sent a letter to him asking him to join duty which was returned and hence, the same was pasted in the Transport Corporation's notice board.

4.4 The Labour Court, observing that only in order to construct house, the workman had absented from duty by citing a false excuse that he had to take care of his ailing sons and that he had no intention of reporting to duty at all, concluded that he is not entitled to any relief.



Sergeant was one of the reasons that weighed in the mind of the Single Bench to set aside the award of the Labour Court. Even assuming that Ex.M.5, the report of the Sergeant, has got to be ignored, it is to be noted that the workman's absenteeism has been proved in the enquiry and the workman also, on his part, has not let in any evidence to show that he evinced interest to report to duty.

6 No doubt, when the punishment imposed is shockingly disproportionate, the Court is empowered to reduce the punishment and there can be no quarrel with regard to this. But, if the punishment modified by the Single Bench is allowed to stand, the workman would be entitled to other benefits too, *viz.*, continuity of service, *etc.*, which means that he will be placed on a higher pedestal for the purpose of receiving terminal and other benefits, which, in the opinion of this Court, the workman does not deserve, given the gravity of his misconduct.

7 In such perspective of the matter, the punishment of dismissal from service imposed by the Transport Corporation, which has been modified by the Single Bench into one of stoppage of increment for two years with cumulative effect, is converted into one of compulsory retirement with effect



W.A. No.2634 of 2023

that the workman is entitled to get only Pension, Gratuity and his share of Provident fund for the actual period of service rendered by him from 1979 to 21.12.2009, being the date of his dismissal, and the pensionary and Gratuity benefits shall be calculated based on his last drawn pay.

In the result, this writ appeal stands disposed of accordingly.

(S.V.N., J.) (K.R.S., J.)
13.09.2023

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and
K. RAJASEKAR., J.

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To

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