



W.P.(MD)No.2163 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.2163 of 2020

N.Valliammal

... Petitioner

Vs.

1. The Managing Director,
Tamil Nadu State Transport Corporation,
(Madurai Division-II) Limited,
Vannarpettai, Tirunelveli Region,
Tirunelveli District.

2. The General Manager,
Tamil Nadu State Transport Corporation,
(Madurai Division),
Vannarpettai, Tirunelveli Region,
Tirunelveli District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records in I.D.No.71 of 2005 passed by the Labour Court, Tirunelveli, dated 24.01.2011 and quash the same and to direct the respondents to notionally reinstate the petitioner with backwages, continuity of service and all other



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attendant benefits and to pay all the retirement benefits of the petitioner's husband.

For Petitioner : Mr.V.Ajay Khose
for Mr.A.Rahul

For Respondents : Mr.D.Jebaraj

ORDER

This Writ Petition has been filed to call for the records of the impugned order in I.D.No.71 of 2005 passed by the Labour Court, Tirunelveli, dated 24.01.2011, quash the same and direct the respondents to notionally reinstate the petitioner with backwages, continuity of service and all other attendant benefits and to pay all the retirement benefits of the petitioner's husband.

2. The case of the petitioner is that the petitioner's husband has joined in the services of the respondent Corporation in the year 1988, as Assistant Tradesman. While he was in service, nine charges were framed against him and he has given explanation to all those charges, however, not



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being satisfied with the same, the respondents ordered for enquiry. Finally, the respondents issued a second show cause notice on 27.08.1992 seeking her husband's explanation towards their intended decision to terminate him from the services of the respondent Corporation. However, the proceedings of the enquiry as well as the order of termination were not supplied to her husband and the petitioner's husband came to know about the issuance of dismissal order only from the notice board of the respondent Corporation. Thereafter, the petitioner's husband filed an appeal before the Appellate Authority on 12.06.1993 and the same was rejected on 25.08.1993. Challenging the rejection of the appeal, he filed W.P.No.4362 of 1994 before the Principal Seat of this Court. This Court, by order dated 23.07.2001, set aside the order of dismissal of the Managing Director and remanded the matter for fresh consideration to the appellate authority. As against the order passed by this Court, the respondent Corporation filed a Writ Appeal before the Principal Seat of this Court in W.A.No.2588 of 2001 and the same was dismissed on 15.10.2004. In formal compliance with the order of this Court, her husband's appeal dated 12.06.1993 was taken up for hearing and the appeal pertaining to the cancellation of the dismissal was



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rejected confirming the order of dismissal dated 28.12.1992, as against which, the petitioner's husband raised an Industrial Dispute under Section 2(A)(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') before the Labour Court, Tirunelveli. The Labour Officer, Tirunelveli, conducted a conciliation on various dates and submitted a failure report on 27.04.2005 to the Government under Section 12(4) of the Act. The Labour Court, Tirunelveli, by its order dated 24.01.2011, dismissed the petition filed by the petitioner's husband. Challenging the same, the present Writ Petition has been filed with the aforesaid prayer.

3. The learned counsel appearing for the petitioner would submit that during the pendency of the Writ Petition, the petitioner's husband passed away on 29.09.2013 and thereafter, the petitioner has filed the present Writ Petition seeking employment in the place of her husband. The petitioner is in penurious condition. Further the petitioner has not aware of all those technical proceedings which were raised before the trial Court as well as Labour Court. However, the fact remains that the charges against the petitioner's husband is not grave one and for improper maintenance of the



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buses, the charges were issued, for which, imposing a major punishment of dismissal from service is not sustainable one and hence, he seeks for some modification of the dismissal order. Accordingly, he prayed for allowing the Writ Petition.

4. The learned counsel appearing for the respondents would submit that the allegation made against the petitioner's husband is a serious one and for improper maintenance of the buses, the charges were issued, for which, a fair opportunity was also given to the petitioner's husband. Even after availing the opportunity, the petitioner's husband has not taken any effective steps to adjudicate the matter before the Enquiry Officer as well as Disciplinary Authority. Hence, the Disciplinary Authority passed the order of dismissal which was confirmed by the Appellate Authority and based on the failure report, the Labour Court also dismissed the petition, which cannot be interfered with. Accordingly, he prayed for dismissal of the Writ Petition.

5. Heard the learned counsel appearing for the parties and perused



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the materials placed before this Court.

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6. The facts in the present case are not in dispute. Admittedly, during the pendency of the Writ Petition, the petitioner's husband passed away and thereby, the petitioner has filed this Writ Petition seeking employment in the place of her husband.

7. The sum and substance of the charge memo is follows:

Charge No.1 pertains to not attending mechanical work regarding break, thereby causing damage worth Rs.1,000/- to the bus.

Charge No.2 pertains to not checking the log sheet with respect to diesel main tube crack, thereby disrupting the operation of the vehicle.

Charge No.3 pertains to not attending the minor repairs and delay in starting the service of the vehicle.

Charge No.4 pertains to negligence in attending the duty, thereby causing revenue loss to the corporation.

Charge No.5 pertains to usage of abusive words against the co-employee.



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Charge No.6 pertains to negligence in duty and non-performance of the duty assigned by the supervisor.

Charge No.7 pertains to non attendance of maintenance work of shock observer sheet.

Charge No.8 pertains to misconduct relating to wordy quarrel with a co-employee.

Charge No.9 pertains to using abusive words against the officer of the corporation.

8. On the above charges, which were held proved, it was held to be grave in nature resulting in termination of the petitioner's husband from service and, accordingly order was passed by the Disciplinary Authority, which was confirmed by the Appellate Authority and the Industrial Tribunal. Aggrieved by the same the present petition has been filed.

9. However, prior to the filing of the Writ Petition, the delinquent passed away and, therefore, his wife, viz., the petitioner, has filed the Writ Petition assailing the orders and seeking notional reinstatement of the petitioner along with all attendant retiral benefits.



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10. Normally, this Court would not interfere with the punishment imposed on the delinquent unless it is shown to be arbitrary, perverse, illegal and further the punishment imposed on the delinquent shocks the conscience of this Court, as this Court is guided by the ratio laid down in ***Prem Nath Bali – Vs – High Court of Delhi (2015 (16) SCC 415)***. So long as the punishment imposed is not disproportionate to the charges framed against, the Courts normally would not interfere with the punishment.

11. However, in the case on hand, the fact remains that before a writ could be filed by the delinquent, the delinquent passed away and assailing the legality of the termination, the delinquent's wife has knocked the doors of this Court.

12. A careful perusal of the materials available on record reveal that the manner in which the enquiry had been conducted had not been put in issue before this Court. The only issue put before this Court is the disproportionality of the punishment imposed on the delinquent.



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13. 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 with the same in exercise of powers under Article 226 of the Constitution. In ***Prem Nath Bali – Vs - High Court of Delhi***, reported in ***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) 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



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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)

14. It is evident from the records that the petitioner’s husband has rendered more than ten years of service in the respondent Corporation, however, without considering the past service, the delinquent has been terminated from service. A perusal of the charges reveal that it pertains to the petitioner’s lethargic attitude in attending to the works entrusted to him. The charges have been proved, which has resulted in the punishment of termination.

15. However, as held by the Apex Court in *Prem Nath Bali’s case*, the punishment imposed should not be disproportionate to the charges and



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that it should not shock the conscience of this Court. However, the fact remains that the charges have an element of graveness in it, as the non-maintenance of the buses would resultantly affect the travelling public. Therefore, the delinquent, performing public duty, is bound to act in a proper manner and discharge his duties. However, the lethargic attitude of the delinquent was visited with the punishment upon enquiry.

16. However, the petitioner's husband has since died and, therefore, at this point of time, it would not be in the interest of either side to keep the issue continuing as the charges against the petitioner's husband are grave in nature, but equally, it is also to be noted that this is the first action initiated against the petitioner's husband and, therefore, visitation of termination at the first instance also needs to be looked into along with the service of ten years rendered by the delinquent.

17. Though this Court should not normally interfere with the punishment imposed on the delinquent, unless it shocks the conscience of this Court, but this Court, taking into consideration the fact of the long



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number of years of service rendered by the delinquent and also the fact that the petitioner's husband is not a chronic defaulter, while not interfering with the punishment of termination from service imposed on the petitioner, however, considering the factum of his association with the respondents for ten years, is inclined to order some compensation to the petitioner, which would meet the ends of justice, as at this point of time, it would not be in the interest of justice to give a finding in favour of one party or the other.

18. Accordingly, this Court, while confirming the order of dismissal of the petitioner's husband, however, invoking its inherent powers under Article 226 of the Constitution, in the interest of justice, directs the respondents to pay a sum of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) to the petitioner in view of the services rendered by the petitioner's husband with the respondent corporation for a period of ten years within a period of twelve weeks from the date of receipt of a copy of this order. The above sum is ordered to be paid to the petitioner only with a view to render substantial justice to the party and not touching upon the merits of the case.



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19. The Writ Petition is allowed in part with the aforesaid observations and directions. There shall be no order as to costs.

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NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji

To

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Tamil Nadu State Transport Corporation,
(Madurai Division-II) Limited,
Vannarpettai,
Tirunelveli Region,
Tirunelveli District.
2. The General Manager,
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M.DHANDAPANI, J.

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