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WP(MD)No.3075 of 2016 and 10683 of 2017

**BEFORE THE MADURAI BENCH OF MADRAS HIGH
COURT**

DATED : 18.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

**WP(MD)No.3075 of 2016 and 10683 of 2017
and
WMP(MD)Nos.3334 of 2016 & 2554 & 8154 of 2017**

WP(MD)No.3075 of 2016

K.Venkatesh

... Petitioner

Vs

The Management,
Tamil Nadu State Transport Corporation Limited,
(Madurai) Limited,
Represented by its General Manager,
Madurai Region,
By-Pass Road,
Madurai – 625 010.

... Respondent

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a writ of mandamus directing the respondent to reinstate the petitioner in service in the post of Conductor at the respondent Corporation with continuity of service and back wages payable to him with effect from 29.06.2012 with all other attendant benefits in the light of the order passed by the Special Deputy Commissioner of Labour, Chennai dated 30.03.2015 passed in A.P.No.2730 of 2012 in rejecting the petition for approval of the order of dismissal from service filed by the respondent under Section 33(2) of the Industrial Disputes Act, 1947.



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WP(MD)No.3075 of 2016 and 10683 of 2017

For Petitioner : Mr.A.Rahul

For Respondent : Mr.J.Senthil Kumaraiah

WP(MD)No.10683 of 2017

The Management,
Tamil Nadu State Transport Corporation Limited,
(Madurai) Limited,
Represented by its General Manager,
Madurai.

...Petitioner

Vs

1.The Special Deputy Commissioner of Labour,
Office of the Commissioner of Labour,
Teynampet,
Chennai. - 600 006.

2.K.Venkatesh

...Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a writ of certiorari calling for the records of the 1st respondent in his proceedings in Approval Petition in A.P.No.273 of 2012 dated 30.03.2015, quash the same.

For Petitioner : Mr.J.Senthil Kumaraiah

For Respondent : Mr.G.V.Vairam Santhosh,

No.1 Addl.Govt.Pleader

For Respondent : Mr.A.Rahul

No.2



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COMMON ORDER

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Since these writ petitions are arising out of the order passed by the 1st respondent in WP(MD)No.10683 of 2017 / The Special Deputy Commissioner of Labour, Chennai under Section 33(2) (B) of the Industrial Disputes Act, 1947 in A.P.No.273 of 2012 dated 30.03.2015 they are heard together and disposed of by this common order.

2.The writ petition in WP(MD)No.3705 of 2016 is filed by the workman seeking a direction for reinstatement with continuity of service and back wages with effect from 29.09.2012 in the light of the order dated 30.03.2015. The writ petition in WP(MD)No.10683 of 2017 is filed by the Management of Tamil Nadu State Transport Corporation Limited, Madurai, challenging the order of the 1st respondent.

3.The workman / conductor was appointed in the Transport Corporation as a Reserve Crew Conductor on 11.08.2008. He was unauthorisedly absent from duty from 12.04.2012 for more than 10 days and therefore a charge memo was issued to him on 18.05.2012. Thereafter a domestic enquiry was conducted by the management and based on the



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enquiry report second show cause notice was issued to the workman on 17.09.2012. Not satisfied with the reply of the workman, he was dismissed from service on 29.09.2012. This order of termination dated 29.09.2012 was referred to the Special Deputy Commissioner of Labour, Chennai for approval as required under Section 33(2)(B) of the ID Act and it was adjudicated in AP.No.273 of 2012. The request of the management for approval of the dismissal order was rejected by order dated 30.03.2015 on the ground of harsh punishment and unfair labour practice. Despite that order, the management has not reinstated the workman into service and therefore, the workman has filed this writ petition for reinstatement with all other benefits in the light of the order dated 30.03.2015 and challenging the order dated 30.03.2015 the management has filed the writ petition to set aside the same.

4.The learned Counsel for the workman submits that the workman was suffering with jaundice and therefore, he was absent for 36 days for taking treatment. The punishment of termination from service is very grave in nature and therefore, the order dated 30.03.2015 in not approving the dismissal order is justified. Despite the order dated 30.05.2015 the management has not reinstated the workman till the year 2016 and



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therefore, the workman was constrained to file this writ petition seeking appropriate direction on 19.02.2016. Even after receipt of the notice in WP(MD)No.3075 of 2016, the management has neither reinstated the petitioner into service nor challenged the order dated 30.03.2015 immediately. However, they have filed the writ petition challenging the order dated 30.03.2015 on 06.06.2017 with a huge delay of 27 months, which itself shows the attitude of the management in victimising the workman.

5. The learned Counsel for the management submits that the workman was appointed only as a Reserve Crew Conductor in the year 2008 and he is not made as a permanent employee. Even at this position, the workman absented himself unauthorisedly from duty in the year 2011-2012 for 196 days and from 12.04.2012 he was unauthorisedly absent for 136 days. As per the Standings Orders of the Management any unauthorised absent for more than 10 days is considered to be a misconduct and therefore, charge memo was issued to this petitioner for his unauthorised absence on 18.04.2015. The workman submitted his explanation that he was suffering with jaundice and therefore, he could not attend the duty. However he had not supported the same with any medical certificate. Therefore being not



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satisfied with his reply, domestic enquiry was conducted, he was provided with sufficient opportunity. Further action was taken based on the enquiry report and the order of termination from service was passed for his misconduct as defined in the Standing Orders. Since the workman had committed misconduct deliberately by absenting for duty for more than 10 days, and sine he was absent for 199 days in the year 2011 -2012 and also was absent for 135 days upto September 2012 from 12.04.2012. The order of termination was passed as per the Standing Orders. However, the same was not appreciated properly by the Special Deputy Commissioner of Labour and hence, the order is liable be set aside.

6.The learned Counsel further submits that pursuant to the order dated 30.03.2015 the workman was reinstated into service on 29.07.2022 subject to the out come of the the present writ petition. The petitioner joined duty on 29.07.2022 and worked till 21.08.2022. Thereafter he did not turn up for duty till date from 21.08.2022, without any reason or without any leave letter. The Transport Corporation is involved in public services, which is an essential service also and if any delay or defects in such services the ultimate sufferers would be the public.



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7.This Court considered the rival submissions and perused the materials placed on record.

8.Though this Court appreciated the contention of the learned Counsel for the workman that the management has filed the writ petition as against the order passed on 30.01.2015 after a period of 27 months on 06.06.2017, this Court has to consider the subsequent conduct of the workman also. Though he was reinstated into service on 29.07.2022, subject to the outcome of the writ petition filed by the management,, he joined duty on 29.07.2022 and from 21.08.2022 he was again unauthorisedly absent from duty. The management terminated him considering his unauthorised absence of 196 days in the year 2011-2012 and also his continuous absence from 12.04.2012 upto September 2012 for 135 days. Any unauthorised absence for more than 10 days is a misconduct as per the Standing Orders of the Transport Corporation. The Transport Corporation is having powers to impose punishment of termination as per the Standing Orders. As rightly pointed out by the learned Counsel for the management, the Transport Corporation is involved in providing essential service to the general public. This type of misconduct would certainly affect the smooth functioning of the transport corporation and it would ultimately affect the general public.



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9. In view of the above discussion, the order of the Special Deputy Commissioner of Labour, Chennai in A.P.No.273 of 2012 dated 30.03.2015 is set aside. The writ petition filed by the management in WP(MD)No.10683 of 2017 is allowed and the order dated 29.09.2012 of the management terminating the workman from service is approved. Consequently, the writ petition filed by the workman in WP(MD)No.3075 of 2016 is dismissed. No costs and connected miscellaneous petitions are closed.

18.09.2024

Internet : Yes / No

Index : Yes / No

DSK

1. General Manager,
Tamil Nadu State Transport Corporation Limited,
(Madurai) Limited,
Madurai.

2. The Special Deputy Commissioner of Labour,
Office of the Commissioner of Labour,
Teynampet,
Chennai. - 600 006.



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B.PUGALENDHI.J.,

DSK

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