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W.A.No.1279 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on 07.06.2024

Order delivered on 27.06.2024

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

and

THE HONOURABLE Mr.JUSTICE.P.DHANABAL

W.A.No.1279 of 2024

and

C.M.P.Nos.9310 & 9311 of 2024

The Management
Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd.,
rep. by its General Manager,
Railway Station New Road,
Kumbakonam - 612 001

....Appellant

Vs

1. The Presiding Officer,
Labour Court,
Cuddalore.

2. A.Mohamed Rafi
S/o Abdul Majit

...Respondents



W.A.No.1279 of 2024

Prayer: Writ Appeal filed under Clause 15 of Letter Patent as against the order passed in W.P.No.9850 of 2017 dated 21.07.2023 by this Court.

For Appellant : Mr.C.Senapathi

For Respondents : R1-Court
Mr.D.Venkatachalam for R2

J U D G M E N T

(The judgment of this Court was delivered by J.Nisha Banu,J.)

This Writ Appeal has been filed challenging the order passed in W.P.No.9850 of 2017 dated 21.07.2023, in which, the order of dismissal from service passed by the appellant Corporation, which was modified by the Labour Court to that of stoppage of increment for two years with continuity of service and backwages, was confirmed.

2. The brief facts of the case of the appellant are as follows:

i) The 2nd respondent was working as an Assistant in Vedaranyam Branch of the Appellant Corporation. He was absented from work without giving leave letter and intimation to the higher officer for 24 days in the month of November, 2005, 30 days in the month of December 2005 and 31 days in the month of January, 2006. Due to the unauthorized absent of the 2nd



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respondent, the day today work of the Corporation was affected.

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ii) The appellant Corporation issued a charge memo dated 05.12.2005 for the unauthorized absent of 24 days in the month of November 2005 and another charge memo dated 04.02.2006 for the unauthorized absence of 30 days and 31 days in the months of December, 2005 and January 2006 respectively. The appellant Corporation sent the charge memos to the 2nd respondent through registered post with acknowledgement. But the postal covers were returned with the endorsements "Refused, Returned to sender" and "Left without instruction".

iii) An enquiry officer was appointed for conducting domestic enquiry who sent a notice dated 17.04.2006 to the 2nd respondent informing that the enquiry would be held on 03.05.2006. The same was returned with an endorsement "Unclaimed returned intimation delivered". However, to give another opportunity to the 2nd respondent, the enquiry officer adjourned the enquiry to 18.05.2006 and informed the same to the 2nd respondent by notice dated 05.05.2006. The same was also returned with an endorsement that "Left India returned to sender".

iv) Though sufficient opportunity was given to the 2nd respondent to participate in the domestic enquiry, he did not utilise the same. Therefore,



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the enquiry officer had no other option except to conduct ex-parte enquiry. In the ex-parte enquiry, the appellant Corporation examined one witness and marked 10 documents. The enquiry officer found the 2nd respondent guilty of the charges and submitted the enquiry report dated 18.05.2006 to the appellant Corporation.

v) The appellant Corporation vide letter dated 29.05.2006 had sent the enquiry report to the 2nd respondent but the postal cover was returned with the endorsement "Left India, Returned to sender". Hence, the appellant Corporation decided to dismiss the 2nd respondent and issued second show cause notice dated 19.06.2006 through registered post to get his explanation. In this regard, a paper publication in Tamil daily "Dinamalar" was also given on 08.11.2006, but there was no response. Thereafter, the appellant Corporation passed the order dated 30.03.2007 dismissing the 2nd respondent from service. As against the dismissal order, the 2nd respondent raised an industrial dispute before the 1st respondent in I.D.No.40 of 2012. The 1st respondent had set aside the order of dismissal dated 30.03.2007 and modified the punishment from dismissal to that of increment cut for two years with cumulative effect and directed the appellant Corporation to reinstate the 2nd respondent with continuity of service along with backwages.



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vi) Challenging the said order passed by the Labour Court, the appellant Corporation filed a writ petition before this Court in W.P.No.9850 of 2017 and the same was ordered on 21.07.2023 as against the appellant Corporation confirming the award passed by the Labour Court, finding that the punishment of dismissal from service is too severe for the unauthorized absence of the 2nd respondent. Hence, the present writ appeal for the aforesaid said relief.

3. Learned counsel for the appellant Corporation would state that the misconduct as defined in Service rules is attracted and the truth or correctness of the facts alleged as against the 2nd respondent, necessitates for the dismissal of the 2nd respondent from service. Learned counsel would further state that the writ Court failed to consider the previous punishments imposed on the 2nd respondent for various misconducts which is also the cumulative factor for considering the delinquency of the 2nd respondent, leading to his dismissal. The learned single Judge had considered only the unauthorized absence and held that the punishment imposed is highly disproportionate. Learned counsel for the appellant Corporation would further state that the learned single Judge failed to note that the 2nd respondent had travelled to



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various places within India and also travelled out of the country between 2009-2015 which would prove that either he would have travelled pertaining to his employment or business, and thus, the 2nd respondent had been in gainful employment or engaged in business for his source of income. Learned counsel would further state that the learned single Judge ought to have ordered in respect of payment of backwages to the 2nd respondent on the ground of "No work, No pay". Hence, the learned counsel would pray to allow the writ appeal and to approve the order of dismissal of the 2nd respondent.

4. Per contra, the learned counsel appearing for the 2nd respondent would contend that the 2nd respondent was working in the appellant Corporation for nearly 17 years. Since he had some problem in his spinal cord, in November & December, 2005 and January, 2006, he was unable to attend office. He had given leave letter in writing and it was also informed to him that leave will be granted. Since he was taking medical treatment, he changed his residence and the change of address was also informed to the Corporation as well as to the postal department. However, the Corporation sent the charge memo and the enquiry proceedings to the old address. Only the show cause notice dated 19.06.2006 was received by him and he gave his



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explanation. However, without considering the explanation submitted by the 2nd respondent, the Corporation passed an order of dismissal on 30.03.2007 which is illegal. Hence, he raised Industrial Dispute in I.D.No.40 of 2012 and the Labour Court has set aside the dismissal order and modified the punishment to that of stoppage of increment for two years and ordered for backwages with continuity of service. There is no infirmity or illegality in the award passed by the Labour Court as it has been passed only after taking all the relevant documents into consideration and all the grounds raised by the 2nd respondent. Therefore, the award passed by the Labour Court needs no interference which was rightly confirmed by the order passed in the writ petition.

5. Heard the learned counsel for the appellant Corporation, the learned counsel appearing for the 2nd respondent and perused the materials available on record.

6. It is an admitted fact that the 2nd respondent was working in the appellant Transport Corporation as an Assistant from the year 1990. According to the 2nd respondent, he was suffering from spinal cord problem



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and hence, he applied for leave on 03.11.2005 for the month of November and December, 2005 and January, 2006. However, after returning to duty, he was not allowed to join duty. He was informed that disciplinary action had been initiated against him and only after the disciplinary proceedings was over, he will be permitted to join duty. According to the 2nd respondent, without issuing charge memo and without issuing departmental enquiry notice, an ex-parte enquiry was conducted and thereafter, only the second show cause notice was issued to him and he has given his written explanation to the same, however, without consider the same, the order of dismissal was passed against him.

7. According to the Management, they have not received any explanation for the second show cause notice issued to the 2nd respondent and hence, an ex-parte enquiry was conducted and an exparte order was passed. It is seen from the documentary evidence that though WW.4 & WW.5, the leave letters dated 05.11.2005 and 06.11.2005 were marked by the workman/2nd respondent herein, no acknowledgement for receipt of the same was marked by him. Thus, the Labour Court found that the enquiry was conducted by the Management by following the principles of natural justice.



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8. Insofar as the punishment of dismissal from service is concerned, it is the contention of the Management that already 5 times, the 2nd respondent had taken leave without getting permission and for the same, disciplinary action had been taken and punishments were imposed on him. The same was also observed in the award passed by the Labour Court and found that for the unauthorized absence of the 2nd respondent prior to 2005 and 2006, disciplinary action was taken and punishment was also imposed. However, as the Labour Court had found that since the 2nd respondent had stated that only due to his health problem in November & December, 2005 and January, 2006, he was not able to attend duty and that for the previous delinquencies, he suffered punishments and that he was not in any other job during the aforesaid period, modified the punishment of dismissal from service to that of stoppage of increment for two years with cumulative effect and directed the Management/appellant to reinstate the 2nd respondent with continuity of service along with backwages. The Writ Court has also held that the punishment of dismissal from service is too severe and confirmed the order passed by the Labour Court. The Labour Court has considered all the relevant factors of the delinquent/2nd respondent, the oral and documentary evidence



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adduced and had modified the punishment of dismissal from service, with which, we are not inclined to interfere.

9. In view of the above discussions, we are of the opinion that there is no infirmity or illegality in the order passed by the Writ Court, confirming the award passed by the Labour Court. Accordingly, the Writ Appeal fails and the same stands dismissed. No costs. Consequently connected miscellaneous petitions are closed.

(J.N.B.,J.) (P.D.B.,J.)
27.06.2024

vsi

Index : Yes / No

Internet : Yes / No

To

The Presiding Officer,
Labour Court,
Cuddalore.



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and
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vsi

Pre-delivery order in
W.A.No.1279 of 2024

27.06. 2024