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W.A.No.490 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :	25.06.2024
PRONOUNCED ON :	10.07.2024

CORAM:

THE HON-BLE MRS. JUSTICE J.NISHA BANU

AND

THE HON-BLE MR. JUSTICE P.DHANABAL

W.A.No.490 of 2024

R.Ashokan

... Appellant/ Petitioner

Vs.

1.The Management,

Metropolitan Transport Corporation (Chennai) Ltd.

Pallavan Illam, Chennai 600 002

2. The Special Deputy Commissioner of Labour,

Labour Office,

DMS Compound, Teynampet,

Chennai 600 006

...Respondents/ Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters patent to set aside
the order of the learned Judge made in W.P.No.33388of 2018 dated



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06.11.2023.

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For Appellant : Mr.T.Kumaravijayan

For R-1 : Mr.R.Balaji

For R-2 : Mr.V.Ravi,
Special Government Pleader

J U D G M E N T

(Judgment of the Court was made by **J.NISHA BANU,J.**)

Aggrieved against the order made by this Court in W.P.No.33388 of 2018, wherein, the learned Judge has confirmed the order of the Labour Court in dismissing the petition filed by the petitioner under Section 2A(2) of the Industrial Disputes Act, the petitioner therein has preferred the present appeal.

2. The material facts which need to be summarized for the purpose of the present appeal are thus:- The appellant had joined the service of the Tamil Nadu State Metropolitan Transport Corporation / first respondent as a driver on 18.10.1989. Since he absented for duty from 01.05.2008 onwards, a charge memo was issued to him and a domestic enquiry was conducted. Since the appellant did not attend the domestic enquiry, second show cause notice dated



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25.03.2009 was issued through registered post with acknowledgment card.

Since no explanation was given by the appellant, he was terminated from service on 10.06.2010.

3. Thereafter, the respondent Management filed an approval petition under Section 33(2)(b) of the ID Act, before the Deputy Commissioner of Labour in A.P.No.60 of 2010 which came to be allowed on 27.12.2012. Aggrieved against the same, the appellant filed a petition under Section 2A(2) of the Industrial Dispute Act 1947, in I.D No.779 of 2015 before the II Additional Labour Court claiming reinstatement, continuity of service, backwages and other attendant benefits.

4. The Presiding Officer, Labour Court, Chennai by Award dated 12.08.2018 dismissed the petition filed by the writ petitioner on the ground that domestic enquiry was conducted properly and that since the appellant has absented himself from attending duty, he was not entitled for reinstatement, continuity of service with backwages and that he could get only the other attendant benefits with his duty period. Aggrieved against the dismissal of the petition filed by the appellant under Section 2A(2) of the Industrial Dispute Act 1947, in I.D No.779 of 2015, the appellant filed W.P.No.33388 of 2023 before



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this Court.

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5. This Court, vide order dated 06.11.2023, dismissed the writ petition and confirmed the findings of the Labour Court. Aggrieved against such dismissal, the present appeal has been filed.

6. The learned counsel for the appellant submitted that the second respondent herein failed to follow Section 33(2)(b) of the Industrial Dispute Act before granting approval in A.P.No.60 of 2010. It is the contention of the learned counsel for the appellant that by considering the facts submitted by the first respondent alone and without giving any opportunity to the appellant herein, an order came to be passed by this Court in W.P.No.33388 of 2018.

7. Furthermore, the learned counsel for the appellant submitted that the appellant was removed from service on 10.06.2010 and the approval was granted on 27.12.2012 and the I.D. was dismissed on 06.11.2023. The grievance of the appellant is that, nearly more than a decade, the appellant and his family were starving, as the appellant was the only breadwinner of the family, which was not considered by this Court.



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8. The learned counsel for the appellant also submitted that the punishment of dismissal from service for absenting from duty is against the natural justice and disproportionate as held in ***Rajendra B.Oza vs. Air India, Bombay*** reported in **2003 (1) LLN 705** and that has not been appreciated by the Writ Court while passing the impugned order.

9. The learned counsel for the appellant also relied on the judgment passed by this Court in W.A.No.421 of 2023 dated 28.04.2023 in the case of ***G.Rajaguru vs. the Management and another***, wherein this Court has modified the order of the learned Single Judge by directing the respondents to settle the terminal benefits such as Provident Fund, Gratuity, Pension etc. taking into account the punishment of compulsory retirement for the actual services rendered by the appellant employee. Therefore, the learned counsel for the appellant prayed for allowing the appeal.

9. Per contra, the learned counsel appearing on behalf of the respondents would submit that the order of the learned Single Judge is a well reasoned one and the same needs no interference of this Court and hence,



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prayed for dismissing the appeal.

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10. Heard the learned counsel appearing on either sides and perused the materials placed before this Court.

11. Perusal of the records would show that the appellant has absented himself for the duty from 01.05.2008 onwards. For his unauthorised absence, charge memo came to be issued by the respondent Management. No explanation was submitted by the appellant within the stipulated period. Domestic enquiry was conducted by the respondent Management, in which the appellant was set *ex parte*. It can also be seen that the appellant has already been punished 6 times for earlier mistakes. Even for the second show cause notice issued by the respondent Management, no explanation was submitted by the appellant. Therefore, on 10.06.2010, the appellant was terminated from service.

12. The appellant has averred that he was sick and has availed medical leave, however, to substantiate the said fact, he failed to submit a medical certificate, which falls under procedural mistake. The appellant has



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also admitted that notice intimating the date of enquiry was issued by the respondent Management and the appellant was late to attend the enquiry and thereafter, he was told that the date of enquiry was postponed.

13. The grievance of the appellant is that, without conducting the enquiry on another date, the order came to be passed against the appellant. This Court is of the opinion that the burden falls on the appellant to prove that he was wrongly guided by putting oral or documentary evidence before the Labour Court, in order to prove his innocence, which has not been done by the appellant. Moreover, it is the duty of the appellant to attend the domestic enquiry in time, failing which, it should be explained properly. Since no proper explanation has not been given by the appellant in this regard, his submissions cannot be accepted.

14. The judgment relied by the learned counsel for the appellant in W.A.No.421 of 2023 dated 28.04.2023 in the case of ***G.Rajaguru vs. the Management and another***, is not applicable to the present case as the facts of the cited case is different from the facts of the present case.



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15. The appellant also averred in the petition that he has given a leave letter on 28.04.2008 asking for medical leave from 02.05.2008 for one month.

But the respondent Management has charged the appellant that he was absent from 01.05.2008 onwards. This makes it clear that the appellant has given his leave letter only after availing leave, which is not proper. The Labour Court has rightly held that a worker has to get sanction of leave in advance, if it is causal leave and in case of medical leave, a letter has to be submitted on that day or atleast next day. Since the petitioner did not avail leave by following proper procedure, and was lethargic in submitting his leave letter after 27 days, his absence is considered as unauthorised absence.

16. Further it could be seen that in the representation made by the appellant to the respondent Management, the appellant has stated that he has given the leave letter in advance and the same was sanctioned by the 'Panimanai' clerk, who actually has no authority to sanction any such medical leave. Therefore, without getting prior sanction for leave, the appellant was absent for work stating that he was sick, wherein no medical records was also filed by the appellant to prove that he was really sick.



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17. Considering the above aspects, the learned Single Judge has rightly observed that the appellant failed to adduce acceptable evidence before the Labour Court to support his contentions that he actually submitted a medical certificate along with his leave letter and has rightly dismissed the writ petition. We find that the order of the learned Single Judge, is perfectly in order and no interference is warranted. Accordingly, the Writ Appeal stands dismissed. No costs.

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

10.07.2024

sts

Internet : Yes/ No

Index: Yes / No

To:

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2. The Special Deputy Commissioner of Labour,
Labour Office,
DMS Compound, Teynampet,



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J. NISHA BANU, J.,

and

P.DHANABAL, J.,

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Order made in
W.A.No.490 of 2024

Dated:
10.07.2024