



Writ Petition No.30999 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved On	27.03.2024
Orders Pronounced On	05.04.2024

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THE HON'BLE DR. JUSTICE D.NAGARJUN

Writ Petition No.30999 of 2015

Tamil Nadu State Transport Corporation-
(Kumbakonam Region – I) Ltd,
Kumbakonam,
Rep by its Managing Director

...Petitioner

Versus

1.The Presiding Officer,
Labour Court,
Cuddalore.

2.K.Kaliyamoorthy S/o Gurusamy

...Respondents.

Prayer: This writ petition is filed under Article 226 of the Constitution of India, with a prayer to issue a writ of Certiorari to call for the records of the order passed by the 1st Respondent in Industrial Dispute in ID.No.13/2014 dated 20.08.2014.

For Petitioner	:	Mr.M.Murali Vinoth
For Respondents	:	Mr.K.Arunagiri – R2 Labour Court - R1



ORDER

This writ petition is filed under Article 226 of the Constitution of India, with a prayer to issue a writ of Certiorari to call for the records of the order passed by the 1st Respondent in Industrial Dispute in ID.No.13/2014 dated 20.08.2014.

2. The 2nd respondent/K.Kaliyamoorthy S/o Gurusamy was working as Conductor under the Petitioner/Tamil Nadu State Transport Corporation. The petitioner has issued a charge memo to the 2nd respondent on 24.02.1997 to which the 2nd respondent given an explanation and the same was not accepted by the Management and ordered a domestic enquiry. On completion of enquiry second show cause notice was issued on the 2nd respondent dated 28.04.1998, for which the petitioner has submitted explanation. The petitioner was dismissed from service on 04.07.1998. The 2nd respondent, sent a representation the Chief Minister Cell and the same was forwarded to the Managing Director of the Petitioner/Corporation and the same was rejected on 28.10.1998.

3. Aggrieved by the same, the 2nd respondent raised an Industrial Dispute on 07.04.1999 before the Labour Officer, Thanjavur. However,



no settlement could be arrived at. Aggrieved by the same, he has filed W.P.No.46884 of 2002 before this Court, and the same was disposed off with a direction to the Labour Court to complete its enquiry and pass Award within a period of four (4) months from the date of taking the case on file. Accordingly the second respondent has filed ID.Nos.13/14 and the same was allowed, setting aside the dismissal order and imposed punishment of stoppage of one increment with cumulative effect with a direction to reinstate him with continuity of service and backwages.

4. The learned counsel for the petitioner/Tamil Nadu State Transport Corporation submits that the 2nd respondent was in the habit of absenting himself from duty without obtaining any prior permission. It is submitted further that when he was working at Kumbakonam Branch, during the month of January 1998, he absented for 21 days, without prior permission, on which a Charge Memo has also been issued to him on 06.02.1998, but the 2nd respondent had not offered any explanation. On which a domestic enquiry was conducted against him by Mr.Madhvacharia, a Retired Judicial Magistrate. The 2nd respondent has participated in enquiry, he has also cross examined the corporation witnesses. Enquiry report was filed holding that the charges levelled against the 2nd respondent were proved. Second show cause notice was



served on the 2nd respondent on 28.04.1998. The explanation submitted by the 2nd respondent was not satisfactory, hence, the management had dismissed him from service from 04.07.1998.

5. The Labour Court during the course of enquiry has framed the following issues:

1. Whether the evidence produced by the management against the petitioner had proved the guilt of the petitioner ?

2. If so, the punishment awarded to the petitioner is correct?

3. Whether the dismissal of the petitioner from service should be set aside and he should be reinstated into service with service continuity and back wages ?

6. The Labour Court has observed that the absence of 21 days as a serious lapse and confirmed the finding that the Enquiry Officer that Second Respondent has committed misconduct by absenting unauthorizedly. The Labour Court has relied on several judgments of this Court and Hon'ble Apex Court including ***The Management, Tamil Nadu State Transport Corporation Vs. The Presiding Officer*** (CTJ 201 4897) and ***The Management, Tamil Nadu State Transport Corporation Vs. The Presiding Officer, Labour Court*** (CTJ 2012 5898). These



judgments were quoted for a proposition that the dismissal of a workman from service for absenting without prior permission, particularly a worker who has been working for a longer period, is highly disproportionate.

(7. The Hon'ble Apex Court has ruled in ***Krishnakanth B.Parmer Vs. Government of India*** (CTJ 202 SC 128) that if a worker absented from duty due to sickness or being involved in an accident and admitted to the hospital, it should not be considered as preplanned absence. The court emphasized that such absences should not be deemed as wanton and should not be considered as a lapse. This ruling indicates that the court recognizes legitimate reasons for worker absence and emphasizes the need to consider the circumstances surrounding the absence before deeming it as a lapse.)

(8. The Labour Court stated such a severe punishment is appropriate only in cases involving embezzlement, falsification of documents, corruption, or prolonged absence from duty. It is observed that dismissal from service of misconduct for a 21-day absence, as in the case of the petitioner/K.Kaliyamoorthy is unjust and excessive. The Labour Court suggests an alternative punishment of stoppage of increment with cumulative effect for one year is more suitable disciplinary



action in this scenario.)

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9. Heard both sides and perused the available materials placed on record.

10. During the course of submissions , the counsel for the petitioner has informed this Court that the petitioner has attained the age of superannuation even prior of passing of the impugned award on 20.08.2014. However a direction was given by the Labour Court to the petitioner/corporation to reinstate the petitioner with continuity of service and backwages. The Labour Court in ID No.13 of 2014 having gone through the entire records in respect of the dismissal of the 2nd respondent found that the Principles of Natural Justice have been followed and the enquiry was properly done and also did not find fault with the appreciation of the evidence, and the Enquiry Officer's finding, that the 2nd respondent was guilty of the misconduct. However, the Labour Court/1st Respondent has not agreed with the punishment of dismissal from service and while setting aside the dismissal order, it has imposed punishment of stoppage of one increment with cumulative effect. Aggrieved by the impugned order, the petitioner corporation is before this Court.

11. During the course of pendency of this petition and as per the



interim orders dated 01.10.2015, the petitioner corporation was directed to deposit an amount of Rs.5 Lakhs to the credit of I.D.No.13 of 2014 out of the deposited amount of Rs.5 Lakhs, an amount of Rs.3 Lakhs was permitted to be withdrawn by the second respondent. Since the 2nd respondent has attained the age of superannuation as on the date of the passing of the impugned order, the directions of the Respondent No.1/Labour Court to reinstate the 2nd Respondent into the petitioner corporation cannot be implemented, thereby what is left to be implemented is continuity of service and backwages. Learned counsel for the Petitioner Corporation has submitted that there is no objection for giving the continuity of service as per the orders of the Labour Court. Finally the aspect which is to be determined, is in respect of the backwages.

12. It is submitted strenuously by learned counsel for the petitioner corporation that the direction given by the respondent No.1/Labour Court in the impugned order for payment of all the backwages is without any basis and erroneous. According to the petitioner corporation the 2nd respondent who was working as conductor in the petitioner corporation was unauthorizedly absent and thereby after



conducting the domestic enquiry, he was removed from services on 04.07.1998. The 2nd respondent however has not immediately approached any of the forums and that he has raised an Industrial Dispute after 27 years of the dismissal thereby the request of the petitioner cannot be considered on the ground of delay and laches. In the contrary learned counsel for the 2nd respondent submitted that the 2nd respondent has immediately initiated proceedings for conciliation and later he filed WP.No.4688 of 2002 on failure of conciliation proceedings, and same was disposed off in the year 2011.

13. The 2nd respondent has initiated conciliation proceedings in the year 1999. Therefore, from the date of failure of the conciliation proceedings until petitioner has raised industrial dispute through ID.No.13 of 2014, there is a delay of absence of 14 years. The 2nd respondent has approached wrong forum for which the petitioner corporation cannot be penalized with a direction of pay of backwages for the said period as well.

14. Learned counsel for the petitioner has cited following judgments in support of his contentions. The relevant portion of which are extracted hereunder:

(i). The High Court of Karnataka in WA.No.7268 of 1999 dated



03.07.2000 in **Divisonal Controller NWKRTC Vs. Raghavendra**

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Madhava Katti of which relevant Paragraph No.3 runs as under:

“From the facts as noticed above it is quite clear that the respondent had remained unauthorizedly absent for 162 days without even making any application for leave much less with any acceptable reason. If one has to accept the evidence of the Depot Manager, which has gone uncontroverted on the record, then one has to reasonably conclude that the respondent is guilty of gross misconduct since despite the reminders, he had refused to report to duty though he was wandering about in the Corporation's office. The Supreme Court in the case of Burn and Co. Limited v. Their Workmen, AIR 1959 SC 529 : 1959-I-LLJ-450, has held that unauthorized absence is gross misconduct and gross violation of discipline. It cannot be disputed that unauthorized absence greatly jeopardises the functioning of the establishments and particularly if a driver of a road transport corporation remains absent it will certainly have serious repercussions on the functioning of the Corporation and hinder services to the public for which the said corporations have been brought into existence under the provisions of the [Road Transport Corporation Act, 1951](#). One has to treat such dereliction of duty with certain amount of seriousness. By placing misplaced sympathies and benevolence, gravity of such misconduct and acts of indiscipline cannot be mitigated. If the public undertakings are to exist to serve its objective then it is not only the duty of the management but also of the Courts to ensure strict discipline in such Corporations or else it will certainly have detrimental effects on the public rights and conveniences. The larger interest must prevail over self-created individual hardships.”

(ii). The Supreme Court of India in a case reported in AIR 2005



SCC 1993 SC (From : 2002 Lab IC 3682) (Bombay) in ***Mahindra and***

Mahindra Ltd. Appellant Vs. N.B.Naravade, etc. Respondents. of

which relevant Paragraph No.20 runs as under:

"It is no doubt true that after introduction of [Section 11-A](#) in the [Industrial Disputes Act](#), certain amount of discretion is vested with the labour court/Industrial Tribunal in interfering with the quantum of punishment awarded by the Management where the concerned workman is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to herein above and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under [Section 11-A](#) is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which requires the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court can not by way of sympathy alone exercise the power under [Section 11-A](#) of the Act and reduce the punishment. As noticed herein above atleast in two of the cases cited before us, i.e. Orissa Cement Ltd. (supra) and [New Shorrock Mills](#) (supra), this Court held: "punishment of dismissal for using of abusive language cannot be held to be disproportionate." In this case all the forums below have held that the language used by the workman was filthy. We too are of the opinion that the language used by the workman is such that it cannot be tolerated by any civilized society. Use of such abusive language against a superior officer, that too not once but twice, in the presence of his subordinates cannot be termed to be an



indiscipline calling for lesser punishment in the absence of any extenuating factor referred to herein above.”

(iii). The Supreme Court of India in a case reported in (1995) 1

SCC 181 in ***Regional Provident Fund Commissioner Vs. K.T.Rolling***

Mills Pvt. Ltd. has observed at Paragraph Nos.5,6 and 7 as under:

“ 5. The aforesaid shows that the delay was of 12 years viewed generally and was of 1 1/2 years qua the case at hand. Though the general period of delay is quite long, unreasonably long, but if it is borne in mind that in view of large number of establishments in the State of Maharashtra, default at hand came to notice only in April 1985, the killing effect of delay gets eroded. We do not, therefore, think if the order merits to be struck down on the ground of delay, when it is also kept in mind that the default related even to the contribution of the employees, which money the respondent (after deducting the same from the wages of the employees) must have used for its own purpose and that too without paying any interest, at the cost of those for whose benefit it was meant. Any different stand would encourage the employers to thwart the object of the Act, which cannot be permitted.

6. Shri Mohan, learned counsel for the respondent, pleads that keeping in view what had been ordered by this Court in Christian Medical College and Brown Memorial Hospital v. R.P.E Commr4, we may not sustain the order of the Commissioner. In that case dues were not paid in time because of some controversy as to whether hospitals are covered by the Act. It was, therefore, contended that as the appellants would be complying with the provisions of the Act and would pay all the arrears, damages for delayed payment of the arrears may not be approved. This Court, having regard



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to the facts of that case, accepted the submission. The facts of the present case are entirely different.

7. We, therefore, set aside the impugned judgment of the High Court. But then we state that the respondent would not be called upon to pay any interest on the damages as fixed by the Commissioner, if it would pay the entire amount within two months from today. On the failure of the respondent to so pay, it shall have to pay interest at the rate of 18% from today till full realization”

(iv). The Supreme Court of India in a case reported in (2006) 1

SCC 589 *State of Rajasthan and Another Vs. Mohd. Ayub Naz,*

observed at Paragraph No.18 as under:

“For the foregoing reasons, we are of the opinion that a Government servant who has willfully been absent for a period of about 3 years and which fact is not disputed even by the learned Single Judge of the High Court has no right to receive the monetary/retrial benefits during the period of question. The High Court has given all retriial benefits which shall mean a lumpsum money of lakhs of rupees shall have to be given to the respondent. In our opinion, considering the totality of the circumstances, and the admission made by the respondent himself that he was willfully absent for 3 years, the punishment of removal imposed on him is absolutely correct and not disproportionate as alleged by the respondent. The orders passed by the learned Single Judge in S.B. Civil Writ Petition No. 2239/1991 dated 24.08.2001 and of the order passed by the Division Bench in LPA No. 1073 of 2001 dated 13.12.2001 are set aside and the punishment imposed by the disciplinary authority is restored. However, there shall be no order as to costs. The appeal stands



allowed.”

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15. The learned counsel for the 2nd respondent has submitted the following judgment in respect of his contention that even though there was a delay in approaching the proper forum, the workman cannot be penalized The Hon'ble Supreme Court in the Civil Appeal arising out of SLP (C). No.4137 of 2007 in ***Kuldeep Singh Vs. G.M.Instrument Design Development and Facilities Centre and Anr.*** as reported in LAWS (SC)–2010-12-5 it is held at Paragraph No.21 thus:-

“ 21) In view of the above, law can be summarized that there is no prescribed time limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is more so in view of the language used, namely, if any industrial dispute exists or is apprehended, the appropriate government “at any time” refer the dispute to a Board or Court for enquiry. The reference sought for by the workman cannot be said to be delayed or suffering from a lapse when law does not prescribe any period of limitation for raising a dispute under Section 10 of the Act. The real test for making a reference is whether at the time of the reference dispute exists or not and when it is made it is presumed that the State Government is satisfied with the ingredients of the provision, hence the Labour Court cannot go behind the reference. It is not open to the Government to go into the merit of the dispute concerned and once it is found that an industrial dispute exists then it is incumbent on the part of the Government to make reference. It cannot itself decide the merit of the dispute and it is for the appropriate Court or Forum to decide the same. The satisfaction of the appropriate authority in the matter of



making reference under Section 10(1) of the Act is a subjective satisfaction. Normally, the Government cannot decline to make reference for laches committed by the workman. If adequate reasons are shown, the Government is bound to refer the dispute to the appropriate Court or Forum for adjudication. Even though, there is no limitation prescribed for reference of dispute to the Labour Court/Industrial Tribunal, even so, it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed, particularly, when disputes relate to discharge of workman. If sufficient materials are not put forth for the enormous delay, it would certainly be fatal. However, in view of the explanation offered by the workman, in the case on hand, as stated and discussed by us in the earlier paragraphs, we do not think that the delay in the case on hand has been so culpable as to disentitle him any relief. We are also satisfied that in view of the details furnished and the explanation offered, the workman cannot be blamed for the delay and he was all along hoping that one day his grievance would be considered by the Management or by the State Government.”

16. Learned counsel for the respondent has relied upon the judgment of the Supreme Court of India in a case reported in (2015) 15 SCC 1 between ***Prabhakar Vs. The Joint Director Sericulture Department & Anr.*** in Paragraph No.41 has clarified this:-

“We may hasten to clarify that in those cases where the Court finds that dispute still existed, though



raised belatedly, it is always permissible for the Court to take the aspect of delay into consideration and mould the relief. In such cases, it is still open for the Court to either grant reinstatement without back wages or lesser back wages or grant compensation instead of reinstatement. We are of the opinion that the law on this issue has to be applied in the aforesaid perspective in such matters.

17. Keeping in view the law laid down by the Hon'ble Apex Court and other judgment referred above and taking into consideration of the facts of the case, the relief awarded by the Labour Court to pay all the backwages required to be modified appropriately. According to the 2nd respondent/workman if at all the backwages are calculated right from the date of his dismissal until attaining the age of superannuation, the 2nd respondent is expected to get Rs. 29 Lakhs. However it is a case where the Labour Court has not totally exonerated the 2nd respondent from the misconduct while confirming the misconduct recorded by the Enquiry Officer, the Labour Court has only modified the punishment, therefore, considering the principle of “No Work No Pay”, full backwages should not have been ordered to be paid by the petitioner corporation.

18. During the course of submission, the learned counsel representing the 2nd respondent submitted that basing on the



circumstances, the 2nd respondent has no objection, in case if the backwages are restricted up to 50 per cent which is Rs.14.5 Lakhs.

However this Court is conscious of the fact that the 2nd respondent was irregular during the course of his service, therefore, this Court is of the opinion that even the 2nd respondent does not deserve for 50 per cent of backwages.

19. Considering the submissions made by both sides and taking into consideration the circumstances of the case. Since the 2nd respondent was being involved in the legal battle since the date of his dismissal from service for the last 25 years, this Court is of the opinion that grant of the backwages to the tune of 1/4th is sufficient to meet the ends of justice. The Petitioner has already deposited a sum of Rs.5 Lakhs out of which Rs.3 Lakhs has already been withdrawn by the 2nd respondent. The Petitioner, shall deposit balance of 1/4th of the backwages.

20. In view of the above this writ petition stands disposed of by directing the Petitioner Corporation to deposit 1/4th of the backwages from the date of dismissal to that of attaining the age of superannuation with continuity of service and all attendant benefits. The Petitioner Corporation is directed to deposit 1/4th of backwages minus 5 Lakh Rupees within a period of ten (10) weeks from the date of receipt of copy



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of this order. Further Rs.2,00,000/- which were deposited in ID.No.13 of 2014 shall be withdrawn by the 2nd respondent. There shall be no order as to costs.

05.04.2024

Speaking Order : Yes/No
Index Case : Yes/No
Neutral Citation : Yes/No

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To:

The Presiding Officer,
Labour Court,
Cuddalore.

DR.D.NAGARJUN , J.

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Pre-Delivery Order in

Writ Petition No.30999 of 2015

Order Pronounced On

05.04.2024