



W.P.No.8330 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	6/11/2023
Pronounced on	19/3/2024

C O R A M

The Hon'ble Dr.Justice **D.NAGARJUN**

Writ Petition No.8330 of 2013

a n d

M.P.No.1 of 2013 & W.M.P.No.23058 of 2019

The Management
State Express Transport Corporation
(Tamil Nadu Division 1) Ltd
rep. By its General Manager
Mr.R.Devaraj
Pallavan Salai
Chennai.

...

Petitioner

Vs

1. The Presiding Officer
Principal Labour Court
Chennai.

2. Vijaya Kumar

...

Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorari to call for the records in I.D.No.67 of 2009 dated 5/10/2012 on the file of the Principal Labour Court, Chennai and quash the same.



W.P.No.8330 of 2013

For petitioner

...

Mr.R.Kathiresan

For respondents

...

R.1 - Labour Court

Mr.S.Ravi
for R.2

O R D E R

This writ petition has been filed to quash the order dated 5/10/2012 passed in I.D.No.67 of 2009 on the file of the Principal Labour Court, Chennai.

2. Brief facts which are necessary for the disposal of this writ petition are as follows:-

The second respondent was employed as a Driver in the petitioner Corporation and he was on unauthorised leave from 22/3/2001 to 8/8/2001. Hence charges were framed. Detailed enquiry was conducted. Second respondent had participated in the enquiry and based on the findings of the Enquiry Officer, a second show cause notice was issued on 27/4/2002 seeking his explanation to the effect that why he should not be dismissed from service for his unauthorised absence from 22/3/2001. But the second respondent did not give any reply with acceptable grounds to reconsider the proposed punishment. Hence, he was dismissed from service on 20/6/2002. Being



W.P.No.8330 of 2013

aggrieved by the same, second respondent has filed I.D.No.67 of 2009. Vide, order, dated 5/10/2012, the Presiding Officer, Principal Labour Court, Chennai, directed the petitioner Management to reinstate the second respondent in service with 25% of the backwages, continuity of service and all other attendant benefits. Hence, the petitioner Management has come forward with the instant writ petition.

3. Heard Mr.K.Kathiresan, learned counsel for the petitioner and Mr.S.Ravi, learned counsel for the second respondent.

4. Learned counsel appearing for the petitioner submitted that the Medical Board cannot regularise the unauthorised absence as Medical Board is not the deciding body to regularise the authorised absence.

5. From the materials available on record, it would show that this writ petition was admitted on 1/4/2013 and interim stay was granted in M.P.No.1 of 2013 in W.P.No.8330 of 2013. The second respondent has filed a vacate stay petition in W.M.P.No. 23058 of 2019, wherein it is stated that even though interim stay was granted by this Court, petitioner Management has refused to provide employment to the second



W.P.No.8330 of 2013

respondent.

WEB COPY

6. Perused the materials available on record.

7. The short point that falls for consideration is whether the labour Court has properly analysed the enquiry against the second respondent while setting aside the orders of dismissing the second respondent on 17/6/2002.

8. On a perusal of the impugned order, it is clear that the Enquiry Officer has framed three charges, stating that the second respondent was unauthorisedly absent from 22/3/2001 on account of which, the work of the petitioner Corporation was dislocated and that the second respondent has violated the Rules. The labour Court has set aside the proceedings on the sole ground that the charge in respect of unauthorised absence was vague. According to the first respondent/labour Court, when the charge in respect of unauthorised absence of the second respondent itself is vague, Enquiry Officer should not have come to the conclusion that the second respondent was unauthorisedly absent.

9. According to the petitioner, second respondent was absent unauthorisedly for a period of 14 months from 22/3/2001. However, according



W.P.No.8330 of 2013

to second respondent, his absence was regularised as leave after he appeared before the Medical Board. According to the second respondent, since the Medical Board has regularised the leave with effect from 22/3/2001, until 8/8/2001, the petitioner should not have been found fault for his absence and charge in respect of his unauthorised absence will not sustain. If the submission of the second respondent is accepted his unauthorised absence was regularised on appearing before the Medical Board from 22/3/2001 to 8/8/2001, still there is some more period which was in respect of which the petitioner was absent, and that there was no explanation in respect of the said period of absence by the second respondent.

10. According to the labour Court, Enquiry Officer found that the petitioner was absent from 22/3/2001 to 8/8/2001. However, according to the second respondent, the period of absence was allegedly regularised from 22/3/2001 to 29/6/2001 thereby rest of the period from 30/6/2001 to 8/8/2001, has not been regularised.

11. Further, the second respondent has taken a plea that since his absence from 22/3/2001 to 29/6/2001 was regularised, charge of unauthorised absence is not proved. Merely because the petitioner had some medical problem



W.P.No.8330 of 2013

and got the medical certificate for his absence and that since the Medical Board has also approved his ailment and gave a certificate, still the second respondent is under the obligation to inform the petitioner Management about his absence. The second respondent is working in the State Express Transport Corporation which is meant for transporting the public from one place to other. If every person like the second respondent goes on medical leave without informing the Management for an indefinite period and comes back with a medical certificate, it causes lot of inconvenience to the petitioner Corporation. If at all the second respondent has got any medical problem, he is expected to intimate the petitioner Management about the ailment and he may likely to be absent from work, so that the petitioner Management will make alternative arrangements. Therefore, absenting for a longer period without intimating to the petitioner Management amounts to mis conduct.

12. The charge framed against the second respondent that he was unauthorisedly absent from 22/3/2001, cannot be found fault as the second respondent was admittedly absent from 22/3/2001. Though the period of unauthorised absentee is not clear in the charge it does not affect the very report of the Enquiry Officer.



W.P.No.8330 of 2013

13. Considering the above, the first respondent /labour Court has not properly appreciated the report of the Enquiry Officer and came to the incorrect conclusion and set aside the enquiry report and passed the impugned order.

14. In the result, this writ petition is allowed and the impugned order dated 5/10/2012 passed in I.D.No.67 of 2009 is set aside. No costs. Consequently, the connected Miscellaneous Petitions are closed.

19/3/2024

mvs.

Index: Yes/No

NCC: Yes/No

To

1. The Presiding Officer
Principal Labour Court
Chennai.

Dr.D.NAGARJUN,J

mvs.



WEB COPY



W.P.No.8330 of 2013

**Pre-delivery order made in
W.P.No.8330 of 2013**

19/3/2024