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W.P.No.15351 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2024

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THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.15351 of 2019

and

W.M.P.Nos.15336 of 2019, 23055 and 23056 of 2021

The Management

Tamil Nadu State Transport Corporation (Salem) Limited,

12, Ramakrishna Road,

Salem 636 007.

...Petitioner

-Vs-

Mr.K.Venkatachalam,

...workman

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records relating to the order dated 18.09.2018 passed by the Labour Court, Salem, in I.D.No.77 of 2014 and to quash the same.

For Petitioner : Mr.Rajeni Ramadass
for Mr.M.Aswin

For workman : Mr.D.Thangapandy
for Mr.K.V.Shanmuganathan



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ORDER

WEB COPY The writ petition is filed challenging the award dated 18.09.2018 in I.D.No.77 of 2014 passed by the Labour Court, Salem.

2. The case of the petitioner is that the workman was employed in the petitioner Corporation as Driver from 09.04.2009. The workman had been continuously absent without prior leave or intimation since 21.09.2012. The petitioner Corporation issued a charge memo on 01.11.2012, charging the workman with misconduct of unauthorized absence and irresponsible behaviour. The charge memo was received by the workman on 01.11.2012, but he did not reply to the same. Thereafter, the domestic inquiry was conducted on 13.12.2012, and the inquiry notice was also sent to the workman. He did not appear for the inquiry, and the inquiry was adjourned to 10.01.2013. The re-inquiry notice was sent on 15.12.2012. The workman appeared on 10.01.2013 and requested copies of all documents relied upon by the petitioner. The documents requested by the workman were furnished to him, and the inquiry proceedings were conducted as per the standing orders of the petitioner Corporation. The inquiry Officer submitted his inquiry report on 29.01.2013, holding that charges of misconduct against the workman were proved. The inquiry



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report was sent to the workman on 06.02.2013. Though the workman received the report on 06.02.2013, he did not reply to the same. Thereafter, the second show cause notice dated 25.02.2013 was issued to him calling for explanation on the proposed punishment. The workman received the second show cause notice on 02.03.2014, but he did not reply to the same. Therefore, the dismissal order terminating him from service was passed on 09.04.2013. Against the order of termination, the workman herein raised the above I.D.No.77 of 2014 before the Labour Court, Salem.

3. The case of the workman was that he was employed as a driver and drawing a salary of Rs.13,000/- per month. He was terminated from service because he was absent from duty on 09.04.2013. The workman contended that on an allegation of continuous absence and on the basis of a unilateral enquiry, he was dismissed from service vide order dated 09.04.2013. The workman further contended that because of his ill health, he had to undergo treatment and he informed the same to the petitioner Corporation through a leave application. Hence, there was no question of unauthorized absence.



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4. The Labour Court on an analysis of the materials placed before it, by the impugned Award dated 18.09.2018, set aside the order of termination dated 09.04.2013 and further directed the petitioner Corporation to reinstate the workman by treating his leave as medical leave from 21.09.2012 to 10.01.2013, and allowed the workman to continue his services along with backwages and other terminal benefits. Aggrieved by the Award passed by the Labour Court in I.D.No.77 of 2014 dated 09.04.2013, the petitioner Corporation has filed this writ petition.

5. Learned counsel for the petitioner submitted that there was no evidence on the side of the workman to show that the petitioner Corporation granted him leave. In the absence of evidence that the leave was sanctioned, it can only be construed as unauthorized absence. The counsel submitted that as the workman was dismissed after a fair and proper enquiry the Labour Court was not justified in interfering with the same. The learned counsel for the petitioner therefore submitted that termination was legal and justified.

6. Learned counsel for the workman submitted that the order of the Labour Court is based on proper appreciation of the facts and therefore, the



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same does not warrant any interference by this Court. The learned counsel for the workman further submitted that for the period of 58 days between 21.09.2012 and 17.11.2012, the workman produced medical certificate under Ex.P1 along with the leave application, and between 18.11.2012 and 08.01.2013, for the period of 52 days, he produced medical certificate under Ex.P-2 along with the leave application. Therefore, his absence was authorized one, and hence the award of the Labour Court in I.D.No.77 of 2014 dated 18.09.2018 cannot be faulted.

7. Heard the learned counsel for the petitioner and the learned counsel for the workman and perused the materials placed before this Court.

8. On consideration of the rival submissions, it is seen that the workman relied on Exs.P1 and P2, to show that he applied for leave and only on the basis of permission granted by the petitioner Corporation, he absented from work. Though the workman claimed that along with medical certificates under Exs.P1 and P2, he had sent the leave application, it is seen that Exs.P1 and P2 medical certificates were only marked, but the leave application was not marked. Merely on the basis of the medical



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certificates, it can not be concluded that the absence was authorized. The workman is bound to establish that the leave was sanctioned by the Petitioner Corporation. In the absence of any document, evidencing sanction of leave the only inference that can be drawn is that the absence of the workman for 110 days from 21.09.2012 to 08.01.2013 was unauthorized. In my view, the Labour Court wrongly cast the burden on the petitioner Corporation to produce the leave application of the workman. The Labour Court failed to note that the burden to prove that the leave was authorized was only on the respondent, I therefore find that the finding of the Labour Court on unauthorized absence cannot be sustained. Even the finding of the Labour Court that no opportunity of hearing was given to the respondent in enquiry proceedings is erroneous as it against the evidence on record.

9. In ***Delhi Transport Corporation Vs. Sardar Singh*** reported in ***2004 (4) LLN 1 (SC)***, the Hon'ble Supreme Court held that when an employee absents himself from duty, without sanctioned leave for a very long period, it *prima facies* shows his lack of interest in work. The period of absence can be looked into for concluding lack of interest in work. In the present case, the workman absented for a period of 110 days without



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sanctioned leave. In my view the absence for the long period of 110 days without leave sanction shows the lack of interest in work of the workman.

Moreover the workman was employed as a Driver and therefore continuous absence for 110 days would certainly impact the Corporation's services to the public. Hence, I find merit in the contention of the Petitioner that the Award of the Labour Court is unsustainable.

10. In the result, the writ petition stands allowed. The order passed by the Labour Court, Salem, in I.D.No.77 of 2014 dated 18.09.2018, is hereby set aside. No costs. Consequently, connected miscellaneous petitions are closed.

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cda

Index : Yes/No

Speaking / Non Speaking Order



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N.MALA. J.,

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