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W.P.No.15300 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.02.2024

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.15300 of 2019

and

WMP.15290 of 2019

The Management,
Tamil Nadu State Transport Corporation (Salem) Limited,
12, Ramakrishna Salai,
Salem-636 007.

...Petitioner

vs

J.Paulraj

....Respondent

Writ petition is 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 10.09.2018 passed by the Labour Court, Salem in I.D.No.31 of 2014 and to quash the same.

For Petitioner : Mr.M.Aswin

For Respondent : Mr.K.V.Shanmuganathan



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ORDER

Writ petition is filed challenging the order passed by the Labour Court, Salem dated 10.09.2018.

2. The respondent was employed as driver in the petitioner corporation since 22.02.2008. As the respondent was unauthorisedly absent from 22.05.2012, the petitioner corporation issued charge memo dated 20.06.2012 for misconduct of unauthorised absence and irresponsible behavior. The charge memo was sent to the respondent, but it was not received by him. Even the notice of enquiry dated 17.07.2012 was also returned as unserved. As the re-enquiry notice was also returned as unserved, the enquiry was conducted ex-parte. The enquiry officer submitted the enquiry report on 04.10.2012 holding that the charges against the respondent were proved. On vide communication dated 26.11.2012 the petitioner corporation sent the enquiry proceedings to the respondent calling for his explanation and the same was returned as



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unserved. The petitioner corporation on analysis of enquiry proceedings provisionally proposed to dismiss the respondent from service. The second show cause notice dated 03.01.2013 issued to the respondent was also returned and thereafter on 15.03.2013, the final order dismissing the respondent from service was passed. The respondent raised industrial dispute in I.D.No.31 of 2014 challenging the dismissal order. The Labour Court Salem allowed the I.D.No.31 of 2014. Aggrieved by the Award passed in the I.D. the petitioner corporation has filed the above writ petition.

3. The learned counsel for the petitioner submitted that the Labour Court even without considering the evidence filed by the petitioner, passed the Award directing the petitioner to reinstate the respondent with 50% backwages. The learned counsel submitted that the Labour Court failed to appreciate that respondent did not produce any medical certificate or discharge summary in support of his claim that he was hospitalised. The



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learned counsel further submitted that the Labour Court wrongly cast the burden on the petitioner corporation to establish that the respondent was unauthorisedly absent.

4. The learned counsel for the respondent on the other hand submitted that the Labour Court had rightly appreciated the evidence on record in proper perspective and therefore the same did not call for any interference by this Court. The learned counsel relying on the Judgment reported in *Manu/SC/0118/2012* submitted that a direction may be issued to the petitioner to reinstate the respondent without backwages.

5. I have heard both the learned counsels and I have perused the entire materials placed on record.

6. The absence of the respondent from 22.05.2012 onwards is not



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disputed. The question is whether the absence of the respondent from 22.05.2012 was authorised or not. The initial burden is on the respondent to prove that his leave was validly sanctioned by the petitioner corporation. The Labour Court in my view wrongly cast the burden on the petitioner corporation to prove that the respondents absence was unauthorised. As rightly contended by the learned counsel for the petitioner not a single document is filed by the respondent to show that he had applied for leave and the same was sanctioned by the petitioner. It is also pertinent to note that even while stating that the respondent sought permission both orally as well as by written application, the respondent has not given any date on which the permission was sought either orally or in writing. The Labour Court in my view erroneously drew an adverse inference against the petitioner corporation for not producing the register relating to oral permission. In my view the Labour Court failed to note that in the absence of any particulars as to the date on which the oral permission was sought no adverse inference could be drawn against the petitioner corporation for



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not producing the same. Even the copy of the written leave application was not produced by the respondent. In my view therefore once the respondent failed to establish that the absence was in pursuance of valid permission the leave could only be considered as unauthorised absence. Hence the finding of the Labour Court that misconduct of unauthorised absence was not proved cannot be sustained.

7. The learned counsel for the respondent relied on the Judgment of the Hon'ble Supreme Court reported in *Manu/SC/0118/2012* and Judgment of this Court reported in *Manu/TN/1227/2010* to contend that the petitioner should be directed to reinstate the respondent but without backwages. The facts of the present case are different from the facts of the case in the aforesaid Judgments and therefore the reliance placed on the aforesaid Judgments is misplaced. On the facts of this case it is clear that the respondent has failed to prove that his absence was in pursuance of sanctioned leave and hence I am of the considered view that the Award of



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the Labour Court cannot be sustained.

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For all the aforesaid reasons, the Award of the Labour Court dated 10.09.2018 is set aside. Accordingly writ petition is allowed. No costs. Consequently connected WMP is closed.

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation:Yes/No



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N.MALA,J.

dsn

To

1. The Management,
Tamil Nadu State Transport Corporation (Salem) Limited,
12, Ramakrishna Salai,
Salem-636 007.

2. The Labour Court,
Salem.

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