



W.P.No.15521 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Dated: 07.03.2024

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.15521 of 2019

and

WMP.No.15429 of 2019

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

...Petitioner

vs

C.Natarajan.

....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.145 of 2012 and to quash the same.

For Petitioner : Mr.R.Babu

For Respondent : No appearance

ORDER

Writ petition is filed challenging the Award dated 10.09.2018 passed by the Labour court in I.D.No.145 of 2012.



W.P.No.15521 of 2019

2. The respondent was employed as a Conductor in the petitioner corporation since 30.06.1986. As the respondent remained absent without prior intimation since 23.02.2011 the petitioner corporation issued charge memo dated 28.03.2011 charging the respondent with misconduct of irresponsible behavior for continuous absence from 23.02.2011 without prior permission. On 22.03.2011, the respondent submitted his explanation to the charge memo and as the explanation of the respondent was found to be unsatisfactory a domestic enquiry was conducted and the enquiry officer submitted its report on 29.10.2011 holding that the charges against the respondent were proved. On 08.11.2011 the respondent was called to submit his objections to the enquiry proceedings, but the respondent sent a reply on 15.11.2011 seeking VRS. Thereafter second show cause notice dated 24.12.2011 was sent to the respondent calling for his explanation on the proposed punishment of dismissal from service along with the details of punishment on his past record. Though the respondent sent a reply on 31.01.2011, the petitioner management not satisfied with the reply and



W.P.No.15521 of 2019

considering the past record of the respondent passed the dismissal order on 07.05.2012. Aggrieved by the dismissal order on 07.05.2012 the respondent raised the dispute in I.D.No.145 of 2012. The Labour Court passed the Award setting aside the order of dismissal and further directing the petitioner corporation to grant continuity of service to the respondent with 75% backwages and all retirement benefits. Aggrieved by the Award of the Labour Court the petitioner corporation has filed the above writ petition.

3. Though notice was served on the respondent in the writ petition, none appears for the respondent.

4. It is submitted by the learned counsel for the petitioner that the Labour Court failed to note that ample opportunity was given to the respondent in the enquiry proceedings, but he failed to utilise the same and therefore the Labour Court ought not to have interfered with the



W.P.No.15521 of 2019

findings of the enquiry officer's report. The learned counsel further submitted that in the dismissal order the past conduct of the respondent was clearly stated and considering the same the Labour Court ought to have desisted from interfering with the punishment imposed by the petitioner corporation. The learned counsel therefore submitted that the Award of the Labour Court deserved to be set aside.

5. I have heard the learned counsel and I have perused the materials placed on record.

6. It is seen that the Labour Court framed a preliminary issue regarding the fairness of the enquiry proceedings and found that the enquiry was not conducted in a fair and proper manner. As the enquiry was found to be improper and invalid, the Labour Court gave an opportunity to the petitioner management to lead evidence and prove the charges against the respondent. The petitioner management examined two



W.P.No.15521 of 2019

witnesses and marked 15 documents and the respondent examined two witnesses and marked 10 documents.

7. The Labour Court on consideration of the entire materials placed before it gave a factual finding that the charges against the respondent were not proved. The Labour Court on assessment of entire evidence held that there was no dispute that the respondent was absent during the subject periods. The Labour Court found that for the period of absence from 21.02.2011 to 24.03.2011, the petitioner management had accepted the medical leave and vide communication dated 28.03.2011 under Ex.M9 permitted the respondent to join duty. So also for the period from 25.03.2011 to 04.06.2011 vide communication dated 04.06.2011 under Ex.M12 the petitioner corporation again permitted the respondent to join duty. The Labour Court therefore found that having condoned the absence from 21.02.2011 to 24.03.2011 and from 25.03.2011 to 04.06.2011, the petitioner corporation erred in including the aforesaid periods in the



W.P.No.15521 of 2019

charge sheet dated 28.03.2011.

WEB COPY

8. The Labour Court also referring to the Court document Ex.C1 found fault with the petitioner corporation for not considering the respondent's request for alternative employment. As the Labour Court has rendered factual findings, on the basis of the evidence on record, that, the misconduct of unauthorised absence was not proved by the petitioner corporation. I do not propose to reappraise the factual findings of the Labour Court as no error apparent or perversity is made out by petitioner in the said findings.

9. I find absolutely no infirmity or illegality in the findings of the Labour Court and therefore the same is confirmed. The Labour Court on the conspectus of entire evidence on record directed the petitioner corporation to reinstate the respondent with 75% backwages, continuity of service, also to sanction VRS to the respondent within 2 months and



W.P.No.15521 of 2019

further consider the medical leave of 84.5 days as leave without wages. In my view the Labour Court ought not to have directed the petitioner corporation to grant VRS to the respondent and pay the consequent VRS benefits within 2 months. The Labour Court having passed an award for reinstatement with 75% backwages, continuity of service, ought not to have passed an order directing sanction of VRS.

The writ petition is accordingly allowed, setting aside the Award in so far as the direction to sanction VRS and the VRS benefits within 2 is concerned. With respect to the other aspects, the Award of the Labour Court is confirmed. No costs. Consequently, connected WMP is closed.

07.03.2024

dsn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation:Yes/No



WEB COPY



W.P.No.15521 of 2019

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

W.P.No.15521 of 2019

07.03.2024