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W.A.No.1901 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

W.A.No.1901 of 2024

K.Venkatachalam

...Appellant

Vs.
=

The Management,
Tamil Nadu State Transport
Corporation (Salem) Limited,
No.12, Ramakrishna Road,
Salem – 637 007.

...Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent Act, to
set aside the order dated 03.01.2024 made in W.P.No.15351 of 2019.

For Appellant : Mr.S.V.Navin Prabhu

For Respondent : Mr.M.Aswin
Standing Counsel



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JUDGMENT

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(Judgment of the Court was made by M.S.RAMESH, J.)

Heard Mr.S.Navin Prabhu, learned counsel for the appellant and Mr.M.Aswin, learned Standing Counsel, for the respondent.

2. On the ground that the appellant, who was employed as a Driver in the respondent-Management, had remained unauthorizedly absent since 21.09.2012, charges came to be levelled against him on 01.11.2012 and during the course of inquiry, the Inquiry Officer had held the charges to have been proved against him, through his inquiry report dated 29.01.2013. After issuing a second show cause notice, he was terminated from service on 09.04.2013. The order of termination was challenged before the Labour Court, Salem, in I.D.No.77 of 2014. The Labour Court had allowed the Industrial Dispute on 18.09.2018 and ordered the Management to reinstate the workman into service. In the award, the period of his absence was directed to be treated as 'no work no pay'. The Labour Court has also ordered the Management to regulate the said period of absence, as well as the period of inquiry between 21.09.2012 and 10.01.2013, as 'medical leave without pay'. However, for the period



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commencing from 11.01.2013, the Management was directed to pay full backwages to the workman, together with continuity of service. When the Management had challenged the award of the Labour Court before a learned Single Judge of this Court in W.P.No.15351 of 2019, the Writ Petition came to be allowed and the award of the Labour Court in I.D.No.77 of 2014, dated 18.09.2018 was set aside, through the order dated 03.01.2024. This order of the Writ Court is put under challenge in the present appeal.

3. The learned counsel for the appellant submitted that the charges levelled against the appellant cannot be sustained, since the appellant had submitted a leave application to the Management, prior to going on leave from 21.09.2012, to which the Management had not responded and therefore, his absence cannot be termed as unauthorized. In these circumstances, he would submit that the order of termination is disproportionate to the charges, which has not been considered by the learned Single Judge.

4. Per contra, the learned Standing Counsel appearing on behalf of the respondent-Management submitted that if at all the appellant claims



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that he had given a leave application, he ought to have substantiated the same before the Inquiry Officer and it is not now open to him to raise the plea. According to him, the unauthorized absence is a misconduct, which is viewed seriously by the Management and since the appellant was performing an essential duty under public utility service, the imposition of punishment of termination of service was quite proportionate to the levelled charges.

5. We have given our careful consideration to the submissions made by the respective counsels.

6. The Labour Court had analysed the procedure adopted by the Inquiry Officer in the domestic inquiry and by referring to the inquiry proceedings being filled up in a printed format and that the Inquiry Officer had already arrived at a conclusion before giving sufficient opportunities, had held that the inquiry itself was not held in a fair and proper manner and that it is in violation of the principles of natural justice.



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7. Furthermore, the Labour Court had taken into consideration that the Management had not denied the ground taken by the workman that they were maintaining a register of receipt of leave applications, which was not produced before the Labour Court and therefore, the Management, having failed to substantiate that they had not received the leave application from the workman, cannot now shift the burden of proof on the workman. It is on this ground that the Labour Court had ordered for reinstatement with backwages, together with continuity of service.

8. When the Labour Court had found that the domestic inquiry was not held in a fair and proper manner, the Management cannot take a stand before this Court that the workman had failed to substantiate his case before the Inquiry Officer. When the inquiry was not held in a fair and proper manner, the duty shifts on the Management to let in evidence before the Labour Court and produce necessary materials to disprove the workman's case. A specific stand was taken by the workman that the Management was maintaining a register of receipt of applications seeking for leave, which claim was not disputed by the Management. In this background, the stand taken by the workman, that he had given a leave application to the Management, gains significance and the burden of



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disproving such a stand, would be on the Management by producing the register of leave applications, which they had failed. Thus, there are no infirmities in the findings of the Labour Court in passing the award of reinstatement, which was based on the evidences available before it.

9. All these aspects were not brought to the notice of the learned Single Judge when the Writ Petition filed by the Management was allowed. Now that we are in conformity with the findings of the Labour Court, the consequential order of the learned Single Judge cannot be sustained.

10. This apart, while deciding a case of misconduct of unauthorized absence, it would also be relevant to consider the question as to whether the absence on the part of the workman was wilful or because of compelling circumstances. The Hon'ble Supreme Court, in the case of ***Krushnakant B.Parmar Vs. Union of India and Another*** reported in ***(2012) 3 SCC 178***, had held that when the absence is in compelling circumstances, the same may not be treated as wilful absence. The relevant portion of the decision reads as follows:-

“17. If the absence is the result of compelling



circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant.

18. In a departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct.”

11. As held in the above decision, when a charge of unauthorized absence from duty is levelled against a workman, the Disciplinary Authority is required to establish that such an absence was wilful and in the contrary, the same will not amount to a misconduct. In the instant case, the Management had failed to discredit the claim of the workman



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that he had given a leave application before absenting himself from work and thus, his absence from 21.09.2012 cannot be termed to be wilful and thus, the consequential charge of misconduct cannot be sustained.

12. Though we are inclined to accept the decision of the Labour Court, insofar as it orders for reinstatement with continuity of service, as well as for regulating the period of unauthorized absence and the subsequent period between 21.09.2012 and 10.01.2013 as medical leave without pay, we are not in agreement with the award of full backwages for the period commencing from 11.01.2013, during which period also, the appellant herein had not performed his ordinary duties in the post of a Driver. On the other hand, the backwages payable to the appellant would only commence from the date of the award i.e., from 18.09.2018.

13. In the result, the Writ Appeal stands partly allowed and the order of the learned Single Judge dated 03.01.2024 passed in W.P.No.15351 of 2019, is set aside. Consequently, the award of the Labour Court dated 18.09.2018 passed in I.D.No.77 of 2014, is modified and the respondent-Management shall forthwith reinstate the appellant herein back into service, if not already reinstated, with effect from the



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date of his termination, i.e. 09.04.2013, together with continuity of service, but without any backwages. The period of non-employment shall be regulated as 'medical leave without pay'. The appellant would also be entitled for payment of full backwages from the date of award i.e., from 18.09.2018 onwards. Such orders for reinstatement and backwages shall be passed by the respondent, atleast within a period of eight weeks from the date of receipt of a copy of this judgment. No costs.

[M.S.R., J] [C.K., J]
07.08.2024

Index:Yes
Neutral Citation:Yes
Speaking order
hvk

To

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Corporation (Salem) Limited,
No.12, Ramakrishna Road,
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