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W.A.No.2651 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **05.11.2024**

CORAM:

THE HONOURABLE MR.**JUSTICE R.SUBRAMANIAN**

AND

THE HONOURABLE MR.**JUSTICE C.KUMARAPPAN**

Writ Appeal No.2651 of 2024
and CMP No.19098 of 2024

The Management,
Rep. by its General Manager,
Tamil Nadu State Transport Corporation
(Villupuram) Ltd.,
Villupuram 605 602.

... Appellant

Vs.

1. Presiding Officer,
Labour Court,
Cuddalore.

2. C.Nadanam

.. Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, to set aside
the order dated 20.07.2023 made in W.P. No.17073 of 2015.

For Appellant : Mr.M.Aswin

Respondent : Mr. F.W.H.Pithason
for Mr.K.Arunagiri



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J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

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Challenge in this Appeal is to the order of the Writ Court affirming the award of the Labour Court made in ID No.33 of 2011, in and by which, the Labour Court modified the punishment of removal from service as stoppage of one increment with cumulative effect.

2. The respondent who is working as a Conductor with the appellant Management was charged for unauthorized absence for a period of about 40 days between 30.05.2007 and 10.07.2007. A charge memo was issued on 10.07.2007 and the Enquiry Officer found that the charges have been proved. The Enquiry Officer has also took into account the fact that the respondent workman was in the habit of unauthorisedly absenting himself and has been visited with punishments on earlier occasions. Taking into account the misconduct, the Corporation imposed a punishment of removal from service. This action of the Corporation was challenged before the Labour Court in ID No.33 of 2011.

3. The Labour Court found that the enquiry had been fair and



proper. It also concluded that there is no material that has been placed before him to come to a conclusion that the charges have not been proved and had held that the charges have been proved. The Labour Court, however, took note of the judgment of this Court in *Management Tamil Nadu State Transport Corporation vs. The Presiding Officer, Labour Court, Salem*, reported in CDJ 2012 MHC 5898 and the judgment in *Union of India vs. Registrar, Industrial Tribunal, Chennai*, reported in 2010 III LLJ 349 [Mad], to come to a conclusion that removal from service has been imposed as a punishment for a mere charge of unauthorized absence and the same is disproportionate.

4. The Hon'ble Supreme Court also in *Krishnakant B Parmar Vs. Union of India and another*, reported in CDJ 2012 SC 128, has held that unauthorized absence by itself will not invite a harsh punishment of removal from service. After referring to the above judgments, the Labour Court concluded that removal from service is disproportionate to the proved delinquency. Having held so, the Labour Court imposed a punishment of stoppage of increment with cumulative effect. The Writ Court also affirmed the said conclusion of the Labour Court.



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5. We have heard Mr.M.Aswin, learned counsel appearing for the appellant and Mr.F.W.H.Pithason, learned counsel appearing for M/s.K.Arunagiri for the second respondent.

6. While Mr.M.Aswin, learned counsel appearing for the appellant would vehemently contend that the Labour Court should have taken note of the earlier conduct of the workman, wherein he was found to have unauthorisedly absented himself twice and ought to have held that the punishment of removal from service is just and proper. The learned counsel would also point out that there are several delinquencies committed by the workman earlier for which he has been visited with several minor punishments. He would also point out that the workman is a habitual offender and has been continuously absenting himself without informing the Corporation.

7. Contending contra, Mr.F.W.H.Pithasan, learned counsel appearing the second respondent would submit that the delinquency that has been charged is only unauthorised absence and nothing else. The earlier absence was also for a period of few days and the Corporation has chosen to



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impose a lesser punishment. Now, the present enquiry is for absence for about 40 days and the Corporation has chosen to impose a capital punishment of removal from service. He would also submit that the Labour Court had after referring to the previous judgments of this Court and the Hon'ble Supreme Court come to the conclusion that the punishment is disproportionate to the proved delinquency.

8. We have considered the submissions of the learned counsel on either side.

9. While exercising jurisdiction under Article 226 of the Constitution of India, the job of this Court is limited to examining the correctness of the award. This Court cannot do a roving enquiry, re-appreciate evidence and find fault with the conclusions of the Labour Court. The scope of the enquiry under Article 226 of the Constitution of India is limited to the examination of the award of the Labour Court to find out whether there are any procedural irregularities or that the award can be termed as perverse. If the Writ Court is unable to find that the award is perverse or that there has been some procedural infirmity, interference of the award cannot be made. In the case on hand, the Writ Court has come to a



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conclusion that the award is just and proper and has agreed with the Labour Court in its conclusion that the punishment of removal from service for the proved delinquency is really disproportionate.

10. We do not think we can interfere with the said conclusion of the Writ Court as it has not been made out before us that the award of the Labour Court is perverse or that there are any procedural infirmities in the award.

11. In view of the above, we see no merit in the Appeal, the Writ Appeal fails and it is accordingly dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

(R.SUBRAMANIAN, J.) (C.KUMARAPPAN, J.)
05.11.2024

jv
Index: No
Internet: Yes
Speaking order
Neutral Citation: No

To

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The Presiding Officer,
Labour Court,
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(jv)

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