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W.P.No.4972 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE.N.MALA

W.P.No.4972 of 2019
and WMP.No.5677 of 2019

The Management,
Tamil Nadu State Transport Corporation Salem Limited,
12, Ramakrishna Road,
Salem – 7.

... Petitioner

Vs.

Tamilselvan

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the Order dated 04.01.2018 passed by the Labour Court, Salem in I.D.No.76 of 2014 and to quash the same.

For Petitioner : Mr.M.Aswin

For Respondent : Mr.K.V.Shanmuganathan

* * * * *

ORDER

This petition is filed to call for the records relating to the Order dated 04.01.2018 passed by the Labour Court, Salem in I.D.No.76 of 2014 and to quash the same.



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2.The Transport Corporation is the petitioner in the writ petition and the workman is the respondent. The respondent was employed as a Conductor in the petitioner Corporation at Erumapalayam – 2 Branch. The respondent was absenting from 2013 continuously without prior authorization. Because of the unauthorised absence of the respondent, the petitioner Corporation was put to loss and inconvenience and hence charge memo dated 19.01.2013, for the misconduct of absenting from work without prior notice or permission, acting irresponsibly and without any sense of duty and causing undue inconvenience to the petitioner Corporation along with show cause notice was issued. The respondent though received the show cause notice along with the charge memo did not file his explanation. Domestic enquiry was ordered and conducted on 08.03.2013, in which the respondent participated. The Enquiry Officer found that the charges against the respondent were proved. Thereafter, enquiry report was sent to the respondent calling for his explanation, but the respondent once again failed to reply to the enquiry report. Thereafter the second show cause notice was issued to the respondent on 06.05.2013 on the proposed punishment of dismissal from service. As the reply of the respondent was found unsatisfactory the final order of dismissal was passed on 09.07.2013, dismissing the respondent from service. Aggrieved by the dismissal order dated 09.07.2013, the respondent raised a dispute before the Labour Court.



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3.The Labour Court on an appreciation of the entire facts and evidence on record set aside the dismissal order directing the petitioner Corporation to reinstate the respondent in service with 25% backwages and continuity of service and attendant benefits and to treat the period from 02.01.2013 to 09.07.2013 as medical leave and the said period was to be considered as on work on no pay basis. Aggrieved by the award passed by the Labour Court, the petitioner filed the above writ petition.

4.The learned counsel for the petitioner submitted that the respondent failed to discharge the burden cast on him to prove the absence from 02.01.2013 till the date of charge memo i.e. 19.01.2013 was an authorised one. The learned counsel further submitted that the Labour Court merely relying on the permission granted by the petitioner to the respondent to join duty on his request erroneously concluded that the period of absence from 02.01.2013 to 09.07.2013, was condoned by the petitioner Corporation. The learned counsel further submitted that the respondent did not produce any medical certificate before the Enquiry Officer, but filed the same under Ex.P2 only before the Labour Court and relying on Ex.P2 the Labour Court erroneously rendered a finding that the absence was on medical grounds. The learned counsel therefore submitted that the finding of the Labour Court on



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unauthorised absence was perverse and hence deserved to be set aside.

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5.The learned counsel for the respondent on the other hand submitted that the Labour Court had rightly found that the charge memo was vague as the period of unauthorised absence was not clearly stated in the charge memo. The learned counsel further submitted that the finding of the Labour Court that as the petitioner permitted the respondent to join duty on 19.02.2013, the petitioner Corporation had condoned the unauthorised absence for the period from 02.01.2013 to 19.01.2013 was justified. According to the learned counsel the petitioner having condoned the absence upto 19.01.2013, ought to have issued fresh charge memo for the subsequent period. The learned counsel therefore submitted that there was no infirmity in the order passed by the Labour Court.

6.The learned counsel for the respondent relied on the following Judgment of the Hon'ble Supreme Court

*1.Union of India (UOI) Vs. Registrar, Industrial Tribunal and Ors. reported in MANU/TN/1227/2010;
and*

2.Krushnakant B. Parmar Vs. Union of India (UOI) and Ors. reported in MANU/SC/0118/2012.

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7.I have heard both the learned counsels and I have perused the



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materials on record.

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8.It is seen that the charge memo was issued for the period from 02.01.2013 to 22.04.2013. In the claim petition of the respondent before the Labour Court the reasons cited by him for absence was the treatment taken by him for heart ailment and spinal cord problem. Whereas in the medical certificate produced by the respondent before the Labour Court it was certified that the respondent was suffering from Hepatitis and Jaundice and was treated for the same from 02.01.2013 to 13.02.2013, (i.e.) for the aforementioned period. Further the Labour Court failed to note that the respondent stated that alongwith the letter dated 19.02.2013 he enclosed the medical certificate. If that was really so, the respondent ought to have produced the medical certificate in the enquiry proceedings. But the fact is that though the respondent participated in the enquiry proceedings, he did not produce the medical certificate before the enquiry officer. Hence a genuine doubt raises on the authenticity of the medical certificate. In view of the above the finding of the Labour Court that the respondent had established that the absence was authorised was against the evidence on record and therefore perverse. The Judgments relied on by the respondent are not applicable to the facts of the case.



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9. In the second show cause notice the petitioner Corporation mentioned about 24 past misconducts of the respondent, to which the respondent did not reply. Considering the past misconducts of the respondent, the petitioner Corporation imposed the highest punishment of dismissal from service. The petitioner lost faith in the respondent because of his past conduct and therefore the petitioner could not be blamed for imposing the punishment of dismissal. It is trite that the proportionality of punishment is the discretion of the Management. For all the above reasons, I find merit in the writ petition.

10. Accordingly, this writ petition is allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions stand closed.

19.03.2024

Index : Yes / No

Internet : Yes / No

Speaking order/Non-speaking order

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To

1. The Labour Court,
Salem.

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N.MALA, J.
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