



W.P.(MD) No.19355 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 19.03.2024

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THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD)No.19355 of 2021

M.Rathinam

... Petitioner

Vs.

The General Manager
Tamil Nadu State Transport Corporation(Kumbakonam) Ltd
Periyamilagupparai
Trichirappalli-1.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the rrecords connected with the final award passed in I.D.No.52 of 2018 dated 08.07.2021 on the file of the Labour Court, Tiruchirappalli and set aside the same and consequently direct the respondent to grant the petitioner continuity of service with back wages, promotion and all other attendant incidental monetary benefits.

For Petitioner : Mr.SP.Vijay Nivas

For Respondents : Mr.P.Balasubramanian, Standing counsel



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ORDER

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This Writ Petition has been filed seeking a Writ of Certiorari calling for the records relating to final award passed in I.D.No.52 of 2018 dated 08.07.2021 by the Labour Court Tiruchirapalli.

2. The brief facts that are relevant for disposal of Writ Petition are as under:

The petitioner herein was subjected to disciplinary proceedings on the ground of unauthorised absence during the period 30.07.2014 to 13.08.2014 i.e., for the period of 15 days and after completion of the disciplinary proceedings, the petitioner was imposed with a punishment of dismissal from service. Aggrieved by the said dismissal order dated 28.12.2015, the petitioner raised a dispute U/s.2(A)(2) of Industrial Disputes Act, 1947 and the same was taken on record as I.D.No.52 of 2018 by the learned Labour Court, Tiruchirappalli and the said I.D was dismissed by the learned Labour Court by an Award dated 08.07.2021. Aggrieved by the said final award, the petitioner filed the present Writ Petition.



3. The learned Labour Court having examined the matter in detail came to the conclusion that the respondent corporation has followed the due procedure and there are no technical laches that are established by the petitioner in the process of conducting the enquiry. Hence, the learned Lower Court came to the conclusion that the order of dismissal passed by the respondent corporation is confirmed by the learned Labour Court.

4. However, this Court would like to go into the merits of the present Writ Petition and to examine the proportionality of the punishment imposed on the petitioner. The learned Labour Court also examined the same aspect while taking note of the fact that the petitioner was punished 67 times on earlier occasions and out of them 38 punishments are for unauthorised absence of service, the Labour Court came to the conclusion as under:

“ 16. Therefore, the facts and the circumstances of this case reveals that at any cost, the conduct of the petitioner is nothing but, a chronic absenteeism and the same is a gross violation of discipline. Hence, the order of dismissal passed by the respondent cannot be termed as wholly unreasonable and shockingly disproportionate to the gravity of proved charges when looking into the past history of the



petitioner, where it is very apparent that it was not for the first time that the petitioner was found guilty of absenteeism but, on the contrary, there were 38 such earlier occasions, where the petitioner had remained absent without any prior permission or justifiable reason. Above all, the respondent corporation runs public service and such an act of chronic absenteeism without prior intimation and due permission of the respondent Corporation is bound to affect the public service of the respondent management. Therefore, this Court finds that the dismissal order dated 28.12.2015, issued by the respondent Corporation to the petitioner/workman as a punishment for his proved misconduct is found neither disproportionate nor there is any mitigating circumstances, which requires reduction of the punishment. Therefore, for the reasons stated supra, this Court holds that the dismissal order dated 28.12.2015 does not suffer any illegality and hence, the petitioner is not entitled to relief of reinstatement as prayed for and hence, this petition deserves to be dismissed. Thus points no.(i) to (iii) are answered accordingly.”

There cannot be any exception to the findings arrived by the learned Labour Court. But the question that arise for consideration is whether the respondent Corporation or the Labour Court are justified in taking into



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consideration the past conduct and the punishments that were imposed on the petitioner on earlier occasions without there being any charge to that effect in the present disciplinary proceedings. As already noted above, the only charge that is framed against the petitioner in the present disciplinary proceedings is unauthorised absence for a period of 15 days. There is no charge with reference to the previous punishments that were imposed against the petitioner and the past conduct of the petitioner. In the absence of any charge to that effect and without affording any opportunity to the petitioner to explain his past conduct taking such aspects into consideration while imposing punishment is in violation of the principles of natural justice. The Hon'ble Apex Court has considered these aspects time and again.

i) In ***State of Mysore Vs. K.Manche Gowda***, reported in ***AIR 1964 SC 506***, the Hon'ble Supreme Court has held as under:

“ 8. Before we close, it would be necessary to make one point clear. It is suggested that the past record of a Government servant, if it is intended to be relied upon for imposing a punishment, should be made a specific charge in the first stage of the enquiry itself and, if it is not so done, it cannot be relied upon after the enquiry is closed and the report is submitted to the



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authority entitled to impose the punishment. An enquiry against a Government servant is one continuous process, though for convenience it is done in two stages. The report submitted by the Enquiry Officer is only recommendatory in nature and the final authority which scrutinizes it and imposes punishment is the authority empowered to impose the same. Whether a particular person has a reasonable opportunity or not depends, to some extent, upon the nature of the subject matter of the enquiry. But it is not necessary in this case to decide whether such previous record can be made the subject matter of charge at the first stage of the enquiry. But, nothing in law prevents the punishing authority from taking that fact into consideration during the second stage of the enquiry, for essentially it, relates more to the domain of punishment rather than to that of guilt. But what is essential is that the Government servant shall be given a reasonable opportunity to know that fact and meet the same.”

ii) In *Mohd. Yunus Khan Vs. State of Uttar Pradesh and Ors*, reported in (2010) 10 SCC 539, the Hon'ble Supreme Court has held as under:

“ 37.In view of the above, we reach the following inescapable conclusions:



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XII. Past conduct of an employee should not generally be taken into account to substantiate the quantum of punishment without bringing it to the notice of the delinquent employee.”

iii) In *Indu Bhushan Dwivedi Vs. State of Jharkhand and another*, reported in (2010) 11 SCC 278, the Hon'ble Supreme Court has held as under:

“....

23. When it comes to taking of disciplinary action against a delinquent employee, the employer is not only required to make the employee aware of the specific imputations of misconduct but also disclose the material sought to be used against him and give him a reasonable opportunity of explaining his position or defending himself. If the employer uses some material adverse to the employee about which the latter is not given notice, the final decision gets vitiated on the ground of the violation of the rule of audi alteram partem. Even if there are no statutory rules which regulate holding of disciplinary enquiry against a delinquent employee, the employer is duty-bound to act in consonance with the rules of natural justice -



Managing Director, Uttar Pradesh Warehousing Corporation and another Vs. Vijay Narayan Bajpayee (1980) 3 SCC 459 ”

5. As could be seen from the charge memo dated 01.09.2014, the solitary charge made against the petitioner his unauthorised absence for a period of 15 days i.e., from 30.07.2014 to 13.08.2014. Treating the said charge as true, valid and sustainable whether the punishment of dismissal from service is proportionate to the gravity of the charge or not is the question that requires consideration by this Court. On the face of it, the punishment of dismissal from service for unauthorised absence for a period of 15 days is shockingly disproportionate. Even assuming that the petitioner was absent willfully for a period of 15 days in the light of catena of decisions of the Hon'ble Apex Court dealing with similar aspect of unauthorised absence, the order of dismissal from service cannot be sustained.

6. From the order of punishment passed by respondent corporation and impugned Award, it is evident that the order of dismissal is mostly guided by the past punishments that were imposed on the petitioner and the past



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conduct of the petitioner in a proceeding concerning the charge of unauthorised absence for a period of 15 days. The said ground which weighed with the respondent Corporation as well as the learned Labour Court in imposing the punishment of dismissal and confirming the same respectively of past punishments that are suffered by the petitioner, without putting the same to the petitioner, in the considered view of this Court such an action of the respondent corporation cannot be sustained.

7. However, in the facts and circumstances of case and also the fact that the petitioner is due to retire on attaining the age of superannuation shortly and to put an end to the litigation between the parties, this Court is of the considered view that this is not a fit case where the matter can be remanded back to the respondent Corporation for reconsideration of the matter afresh. On the other hand is of the considered view that it is a fit case where this Court can exercise its jurisdiction under Article 226 of the Constitution of India and appropriately modify the punishment.

8. Further, the learned Division Bench of this Court also while



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considering the case on similar facts and circumstances in W.A.No.2448 of 2011 by order dated 30.09.2013 has modified the order of punishment of removal from service to that of compulsory retirement from service.

9. This Court suggested modification of the punishment of dismissal from service to that of compulsory retirement with effect from the date of dismissal from service to the learned counsel for petitioner and learned counsel for the petitioner on instructions from the petitioner also reported no objection for such modification.

10. Accordingly, the order of dismissal from service imposed on the petitioner by order dated 28.12.2015 as confirmed by the learned Labour Court shall stand modified as the punishment of compulsory retirement with effect from the date of the order of dismissal.

11. Accordingly, the Writ Petition is disposed of by directing the respondent corporation to release all the benefits consequent upon his compulsory retirement with effect from 28.12.2015 as expeditiously as



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possible at any rate within a period of three months from the date of receipt

of a copy of this order. No costs.

19.03.2024

NCC : Yes/No

Index : Yes/No

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To

The General Manager

Tamil Nadu State Transport Corporation(Kumbakonam) Ltd

Periyamilagupparai

Trichirappalli-1.



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MUMMINENI SUDHEER KUMAR, J.

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