



W.P. No.9026/2012

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W.P.No.9026 of 2012

M.DHANDAPANI, J.

Today, this matter is listed under the caption “For Being Mentioned” at the instance of the learned counsel for the petitioner.

2. Learned counsel appearing for the petitioner submitted that, though he was present on 10.02.2025 and advanced his arguments effectively, his appearance was not marked in the order dated 10.02.2025 made in W.P.No.9026 of 2012. Hence, this Court may direct the Registry to carry out the necessary corrections in the order copy dated 10.02.2025 and re-issue fresh order copy.

3. Though the learned counsel for the petitioner appeared and made arguments, however, inadvertently, the appearance of the learned counsel for the petitioner was wrongly marked as Ms.Vijayalakshmi instead of Mr.V.Ajay Khose. Accordingly, the appearance of the learned counsel for the petitioner shall be marked in the order dated 10.02.2025.



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4. All the other observations and conditions made in the earlier order dated 10.02.2025 shall remain intact, except for the above said correction.

5. Registry is directed to carry out the necessary correction in respect of the appearance of the learned counsel for the petitioner in the above said order dated 10.02.2025 and issue a fresh copy of the order to the learned counsel for the parties.

17.03.2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 10.02.2025

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.9026 OF 2012

M.Dakshinamoorthy

.. Petitioner

- Vs -

1. The Management of Metropolitan
Transport Corporation (Chennai) Ltd.
Pallavan House
Anna Salai, Chennai 600 002.

2. Labour Court
II Additional Court
Chennai 600 104.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records pertaining to I.D. No.263/2007 dated 28.7.2010 passed by the 2nd respondent and quash the same and direct the 1st respondent to reinstate the petitioner as conductor in the Transport Corporation (Chennai).

For Petitioner : Mr. Ms.Vijayalakshmi

For Respondents : Mr. C.Gouthama Raj for R-1



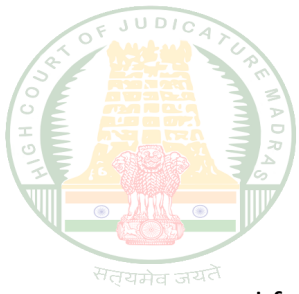
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ORDER

Aggrieved by the order of dismissal passed by the 1st respondent terminating the services of the petitioner, the industrial dispute raised by the petitioner u/s 2 –A (2) of the Industrial Disputes Act (for short ‘the Act’) in I.D. No.263/2007, before the 2nd respondent having been dismissed, the present writ petition has been filed.

2. The petitioner joined the services of the 1st respondent as Conductor on 11.9.1981 and during the year 1997, the petitioner was drawing a sum of Rs.7,000/- as monthly income. On 7.11.1997, when the petitioner, citing ill-health had asked leave of absence to the Supervisor, the petitioner was directed to attend work by rejecting his leave and when the petitioner reached the work place a bit belatedly, the work to be done by the petitioner was handed over to one Devaraj by the Controlling Officer and when the petitioner requested the Controlling Officer to permit the petitioner to take charge of his work, the Controlling Officer did not permit the petitioner and abused him using harsh words to which the petitioner submitted that he will make a complaint to the higher officials, as a counter blast to the same, the Controlling Officer gave a false

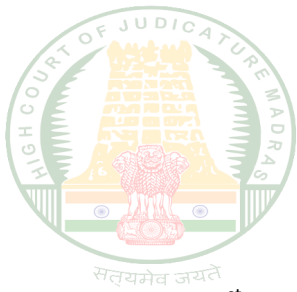


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and fabricated complaint as if the petitioner had abused and beat the Controlling Officer in filthy language to the higher authority based on which the 1st respondent temporarily suspended the petitioner from service on 7.11.1997. Thereafter, on 11.11.1997, a charge memo was issued to the petitioner to which the petitioner submitted his explanation on 25.11.1997.

3. Since the petitioner was unwell and due to the aforesaid happenings, the health of the petitioner further deteriorated which prompted the petitioner to go on medical leave. During the said pendency, on 20.11.1997, the temporary suspension of the petitioner was revoked and the petitioner was transferred to Madhavaram Depot. Since the petitioner was on leave, after obtaining fitness certificate, when the petitioner approached the officials on 16.8.1998 for the purpose of joining duty, he was not permitted to join duty. The 1st respondent, without following the proper procedure, conducted the enquiry against the petitioner and on 7.12.1999 enquiry report was submitted holding the charges proved and the petitioner was dismissed from service. In spite of the petitioner filing appeal and writing umpteen number of representations, there was no reply forthcoming and the dismissal of the petitioner being against the provisions of Section 25-F of the Act and is nothing but unfair labour practice practiced by the



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1st respondent, dispute was raised u/s 2-A (2) of the Act seeking reinstatement along with continuity of service, backwages and other attendant benefits.

4. Before the Tribunal, the petitioner examined two witnesses, including himself as P.W.s 1 and 2 and marked Exs.P-1 to P-24. On the side of the 1st respondent one witness was examined as D.W.1 and Exs.D-1 to D-16 were marked. On the basis of the oral and documentary evidence, the Tribunal held that the departmental proceedings was conducted following the principles of natural justice and opportunity was awarded to the petitioner and all the said facts have not been disputed by the petitioner and on the basis of the materials, the enquiry officer has submitted his report holding the charges proved on the basis of which the dismissal order has come to be passed and there being due compliance of all the procedures contemplated under the Act, the Tribunal concurred with the view arrived at by the 1st respondent and dismissed the dispute, which has resulted in the filing of the present petition.

5. Learned counsel appearing for the petitioner submitted that even without admitting the charges are held to be proved on the basis of the materials



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available on record, the punishment imposed on the petitioner is disproportionate to the charges framed against the petitioner.

6. It is the further submission of the learned counsel that the award has come to be passed without considering the counter case and the previous enmity between the petitioner and the Controlling Officer, who had given the complaint. It is the further submission of the learned counsel that though the charges framed and the complaint speak about alleged assault, however, no evidence has been tendered by the 1st respondent to prove the allegation of assault. Except for the complaint of the Controlling Officer, there is no iota of material which substantiates the details of assault given in the complaint. However, without appreciating the above materials, the 2nd respondent has passed the impugned award confirming the order of dismissal of the petitioner.

7. It is the further submission of the learned counsel that the award is passed based on no evidence and there is no material such as medical certificate or other materials to prove the allegation of assault. In fact, there is no material to show that on the particular day there was any altercation between the petitioner and the Controlling Officer. On mere vendetta the complaint has been



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lodged against the petitioner. However, all the above factors have been lost sight of by the enquiry officer and the appellate authority has not passed any order and without noticing the above, the Tribunal has confirmed the dismissal, which award is *per se* perverse, arbitrary and irrational and is liable to be set aside.

8. Per contra, learned counsel appearing for the 1st respondent submitted that the Tribunal has analysed all the evidence in proper perspective and having found that not only the petitioner has committed the delinquency, which has been exhibited in the report, but also having found out that before dismissing the petitioner, the mandatory provisions of the Act having been complied with, had confirmed the order of dismissal of the petitioner passed by the 1st respondent.

9. It is the further submission of the learned standing counsel that it is the consistent ratio laid down by the courts that insofar as punishment imposed in a departmental enquiry is concerned, the Courts shall not interfere with the same, unless the said punishment is perverse or based on no evidence and it is shocking the conscience of the courts. However, in the present case, after enquiry, the enquiry officer has held the charges proved based on which punishment has been imposed which is based on materials and, therefore, it is well within the power of



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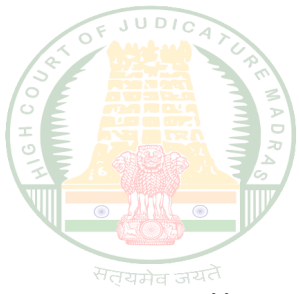
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the disciplinary authority to impose the punishment, which has since been approved and, therefore, no interference is warranted with the said punishment imposed on the petitioner.

10. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

11. The facts surrounding the enquiry proceedings and the outcome of the said enquiry proceedings are not in dispute. Equally, no dispute is raised with regard to the manner in which the enquiry has been conducted. The petitioner has not questioned the manner in which the enquiry has been conducted; rather, it is the case of the petitioner that a solitary incident in which the petitioner had questioned the act of the Controlling authority has resulted in a fabricated occurrence, leading to the complaint.

12. It is borne out by record as also accepted by the 1st respondent that barring this incident, there is no blemish in the record of the petitioner.



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However, for the solitary incident, the petitioner has been inflicted with the punishment of dismissal from service.

13. To substantiate the allegations levelled in the complaint, more particularly with respect to the petitioner using filthy language and also attacking the Controlling Authority by manhandling him, it could straightaway be held that there is no iota of evidence to substantiate the same. One witness has been examined on behalf of the 1st respondent, but the said witness has not spoken anything about the petitioner manhandling the controlling authority, nor there is any medical evidence in the form of documents or oral evidence of any medical practitioner to infer that a wordy quarrel between the petitioner and the controlling authority turned into the petitioner attacking the controlling authority.

14. In the course of day to-day work, there arise wordy quarrel between the superiors and subordinates and not for all such quarrels, the extreme punishment of dismissal is resorted to. Cases of this nature, which arise for the first time, which most often arise in the heat of the situation, requires to be handled with tact and a reprimand by the employer with a piece of advice to the



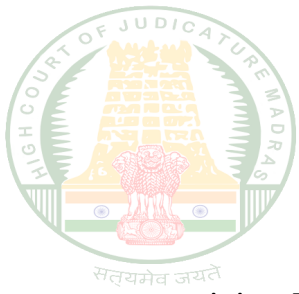
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subordinate is the order, which should be followed so as to instil confidence and a sense of humanity in the mind of the subordinate that the employer is interested in the welfare of the subordinates. The voice raised by the subordinates, out of sheer stress out of the employment to the superior, not in all cases and all occasions, require the stringent punishment of dismissal from service.

15. In the present case, it is the specific case of the petitioner that even when he was denied leave on medical grounds, he had attended duty but since duty was not given to him and as he sought to prevail upon the controlling authority to permit him attend to his duty, had led to the quarrel, which has been blown out of proportion. To the specific stand of the petitioner, there is no material placed by the 1st respondent to refute the same and to substantiate the stand of the 1st respondent that the act of the petitioner was of such a magnitude that the enquiry had led to the dismissal of the petitioner from service.

16. Further, it is borne out by records that the temporary suspension of the petitioner was withdrawn and he was transferred and upon the petitioner returning from his medical leave, when he tried to join, he was not allowed to



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join. Though it is the case of the 1st respondent that the enquiry contemplated had taken place, which prevented the petitioner from joining and upon being found guilty, he was dismissed from service, yet, there is no material based on which such an inference as to the petitioner committing the allegation has been drawn. Even if it is to be held that the petitioner has committed the allegation of insubordination, though without admitting that such an act had taken place, it is to be pointed out that it is the first time in the career of the petitioner, spanning over a decade and a half, in which such an allegation had entered into the service record of the petitioner. Such being the case, would the imposition of highest penalty of dismissal from service is proportional to the delinquency, alleged against the petitioner is the question that falls for consideration.

17. The precedents on the issue of interference with the punishment imposed has been oft considered by the Courts and it has been the consistent view of the Courts that it is always within the domain of the disciplinary authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere in



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the same in exercise of powers under Article 226. In **Prem Nath Bali – Vs - High**

Court of Delhi (2015 (16) SCC 415), the Supreme Court held as under :-

“20. It is a settled principle of law that once the charges leveled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority.”



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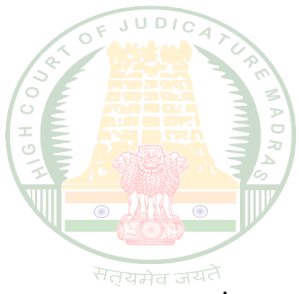


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(Emphasis Supplied)

18. From the ratio laid down by the Apex Court above, it is crystal clear that the power to interfere with the punishment should be exercised only if the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges and, thereby, shocking the conscience of the Court or if it is in contravention of the Rules.

19. In the present case, as aforesaid, the service record of the petitioner does not reveal the petitioner to be a chronic trouble maker. In fact, the whole of the order of the Tribunal does not deal with the service records of the petitioner and also the report of the enquiry officer also does not paint the petitioner to be a trouble maker. In fact, there is no material to suggest that the said incident had occurred and is proved through proper oral and documentary evidence. Moreso, when the incident had occurred in broad daylight, it is incumbent on the part of the 1st respondent to have proved the incident through proper oral and documentary evidence, which the 1st respondent has miserably failed to establish. The incident, even as per the report, is a solitary incident and that too



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the petitioner having come to office, being denied the leave on medical grounds, had entered into some verbal controversy with the controlling authority which has led to the complaint being lodged.

20. The petitioner had, even after the incident, had been on leave for a substantial period of time for which the necessary medical certificates have been submitted by the petitioner, which is evident from the documents filed before the Tribunal. The authenticity and veracity of the said documents is not questioned by the 1st respondent and such being the case, necessarily the inference should be positively on the side of the petitioner that on the fateful day, the medical ailment of the petitioner had made him elevate to an agitated state, thereby resulting in the verbal altercation with his superior authority. The solitary incident on the said date alone, as per the service records, necessarily does not require the imposition of the extreme punishment of dismissal from service, which fact has not been properly considered by the Tribunal while confirming the said punishment. Therefore, in the interest of justice and also to render substantial justice, this Court is of the considered view that the punishment requires interference at the hands of this Court.



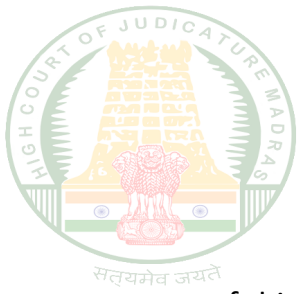
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21. Turning back to the claim of backwages and other attendant benefits, it is to be pointed out that the petitioner had not worked throughout the period and, therefore, any direction to the 1st respondent to pay backwages would necessarily work hardship to the 1st respondent as also would be against the principles of 'No work, No Pay'. However, when this Court had found that the punishment is wholly erroneous and perverse and an order of reinstatement has to be passed, the petitioner would be entitled to claim backwages, as he had not on his own volition refrained from attending work.

22. Therefore, keeping in mind that the petitioner had also, by his wordy altercation, contributed to this situation, this Court is of the considered view that to render substantial justice and at the same time maintaining the scales of justice, the petitioner could be ordered to be reinstated in service on payment of 25% of backwages with all other attendant benefits.

23. For the reasons aforesaid, the impugned order passed by the 2nd respondent in I.D. No.263/2007 dated 28.7.2010 is set aside and the writ petition is allowed by directing the 1st respondent to reinstate the petitioner in service with 25 % backwages and all other attendant benefits. It is brought to the notice



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of this Court that pending the writ petition, the petitioner has attained the age of superannuation. In such circumstances, the 1st respondent is directed to pay the 25% backwages along with all other attendant benefits to which the petitioner is otherwise entitled to within a period of four weeks from the date of receipt of a copy of this order. There shall be no order as to costs.

10.02.2025

Index : Yes / No

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To

The Presiding Officer
Labour Court
II Additional Court

Chennai 600 104.



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