



W.P.(MD) No.1244 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.03.2025

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) No.1244 of 2012

and

M.P.(MD) No.1 of 2013

E.Kishore

... Petitioner

Vs.

1.The Labour Court,
Tirunelveli.

2.The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Ranithottam, Madurai Division-3,
Nagercoil, Kanyakumari District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st Respondent relating to the order passed in I.D.No.42/2005 dated 03.10.2011 and quash the same and consequently direct the 2nd respondent herein to reinstate the petitioner with all backwages and continuity of service.

For Petitioner : Mr.A.Ragul



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For Respondents : Mr.K.Sathiyasingh
Standing Counsel – for R2
: Labour Court – R1

ORDER

This writ petition has been filed aggrieved by an award dated 03.10.2011 passed in I.D.No.42 of 2005 on the file of the learned Labour Court, Tirunelveli.

2.1. The brief facts that are relevant for the disposal of this writ petition are as under:

2.2. The petitioner herein was appointed as Conductor in the respondent-Corporation on 28.01.1988 and his services were regularised with effect from 01.01.1989. While he was working as such, the petitioner remained absent from his duties with effect from 14.09.1997 to 14.10.1997. However, on 19.09.1997, the petitioner submitted a leave application along with a medical certificate dated 18.09.1997 issued by a registered medical practitioner seeking leave. The said application submitted by the petitioner



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was forwarded to the Management of the respondent-Corporation by the Checking Inspector through his letter dated 22.09.1997 stating that the medical certificate that was obtained by the petitioner is from a Doctor, who was not approved by the respondent-Corporation. However, the submission of the medical certificate by the petitioner was not disputed. Irrespective of the said letter of the Checking Inspector dated 22.09.1997, the respondent-Corporation issued a charge memo dated 29.09.1997, in all framing four charges against the petitioner.

2.3. The first charge is that the petitioner absented from duty with effect from 14.09.1997 onwards without getting prior permission or without submitting a leave letter along with a valid medical certificate. The other three charges are consequential charges alleging that the petitioner has disrupted to the daily operations of the Transport Corporation, behaved irresponsibly and negligently in the performance of duties and committed misconduct under the Corporation Standing Order No.13(F)(L). Thus, the rest of the three charges are only consequential charges as a result of the alleged misconduct under Charge No.1.



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2.4. In response to the charge memo, the petitioner submitted his explanation dated 25.10.1997. The respondent-Corporation having not satisfied with the explanation offered by the petitioner, conducted domestic enquiry on 11.11.1997 and thereafter, the Enquiry Officer submitted his report holding that the petitioner has admitted the absence from duty and therefore, the charges are proved against the petitioner. It was thereafter the petitioner was afforded further opportunity on the report of the Enquiry Officer and on submission of further representation, the respondent-Corporation passed an order dated 21.02.1998 imposing the punishment of dismissal from service. It was thereafter, the petitioner kept quiet for more than five years without any contest against the order of dismissal. However, it was only on 18.05.2004, the petitioner approached the Assistant Commissioner of Labour (C), Nagercoil for conciliation and on submission of a failure report dated 27.08.2004, the petitioner filed I.D.No.42 of 2005 before the learned Labour Court, Tirunelveli.

2.5. The learned Labour Court after conducting a detailed enquiry, came to the conclusion that the charges were held proved against the



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petitioner and also taking into consideration the fact that the petitioner was imposed with punishment on 25 occasions during his service from the year 1989 to 1997, refused to interfere with the order of dismissal and also came to the conclusion that the punishment of dismissal from service is commensurate with the charges levelled against the petitioner by passing the award dated 03.10.2011. It is aggrieved by the said award, the petitioner approached this Court by filing the present writ petition.

3. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent-Corporation and also perused the entire material available on record.

4. From the perusal of the order of dismissal and the impugned award, it is clear that the petitioner had admitted about his absence from duty with effect from 14.09.1997. The petitioner never disputed his absence. The same was taken as admission of the charge by the Enquiry Officer, the disciplinary authority as well as the learned Labour Court and it has been concluded that all the charges levelled against the petitioner are proved. But



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the fact remains that the petitioner on receipt of the report of the Enquiry Officer holding that the petitioner has admitted about the charges, submitted an explanation stating that the petitioner never admitted the charge, but only admitted his absence from duty due to the reasons beyond his control by submitting his explanation dated 08.01.1998, which was also marked as Ex.M8 before the learned Labour Court. In spite of the petitioner submitting such an explanation, the disciplinary authority without considering the said explanation, proceeded to conclude that the petitioner has admitted the charges levelled against him and then proceeded to impose the punishment of dismissal from service.

5. While passing the order of dismissal, the respondent-Corporation has taken into consideration the past record of the petitioner. However, there is no charge that is framed in the charge memo about the past conduct of the petitioner, but the past conduct of the petitioner was taken into consideration while imposing the punishment of dismissal from service, that too without affording any opportunity to the petitioner. The learned Labour Court also proceeded on the premise that the petitioner has admitted the charges levelled



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against him and also considered the past conduct of the petitioner and confirmed the order of dismissal passed by the respondent-Corporation.

6. By now, it is well settled that either absence from duty or other unauthorised absence from duty does not amount to misconduct, if such absence is for the reasons beyond the control of the delinquent, such as sick, illness, accident etc. Unless it is established against the delinquent that the absence is willfull and intentional, such absence cannot be said to be misconduct warranting imposition of punishment of dismissal or removal from service. It is also by now well settled that mere unauthorised absence for a short span of time shall not result in imposition of a capital punishment, like dismissal or removal from service. The Hon'ble Supreme Court in catena of judgments held that the imposition of capital punishment for the alleged misconduct on the ground of unauthorised absence is shockingly disproportionate.

7. In the instant case, admittedly, there is no dispute that the petitioner absented from duty with effect from 14.09.1997 and there was no



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prior intimation or prior leave application submitted by the petitioner.

However, it is on record that the petitioner has submitted a leave application on 19.09.1997, along with a medical certificate issued by a registered medical practitioner to the concerned authority and the same was forwarded to the Management through letter dated 22.09.1997, that is much prior to the framing of charges against the petitioner through charge memo dated 29.09.1997. If that be the case and the petitioner had really suffered from illness and could not attend to his duties with effect from 14.09.1997, such absence cannot be said to be an action amounting to misconduct on the part of the petitioner.

8. Though the petitioner has taken a specific stand before the Enquiry Officer as well as the respondent-Corporation stating that his absence in question is only because of the illness suffered by him, the same was not at all taken into consideration and the entire defence of the petitioner was discarded only on the ground that the medical certificate that is produced by the petitioner was from a registered medical practitioner not approved by the respondent-Corporation. But the illness suffered by the petitioner was



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never ever suspected. Under those circumstances, the action of the Enquiry Officer as well as the respondent-Corporation in concluding the charges levelled against the petitioner are proved, without considering the stand of the petitioner about the reasons for his absence, is without proper application of mind and without appreciation of the stand of the petitioner. In the absence of any finding recorded by the Enquiry Officer or the disciplinary authority holding that the absence of the petitioner is wilful and intentional, the conclusions arrived at by the said authorities holding that all the charges levelled against the petitioner are proved is totally arbitrary and perverse. Admittedly, the defence of the petitioner was not at all considered, except concluding that the petitioner has admitted the charges on the ground that the petitioner has admitted about his absence from duty.

9. Mere absence or unauthorised absence from duty shall not result in imposing of a capital punishment like one on hand. In spite of the petitioner bringing all these facts to the notice of the learned Labour Court duly marking the acknowledgment for the submission of leave application on 19.09.1997, the learned Labour Court fell in error in going in the same line in



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which the respondent-Corporation had proceeded resulting in dismissal of the industrial dispute raised by the petitioner. Further, the learned Labour Court also gravely erred in concluding that the punishment of dismissal from service is proportionate to the charges levelled against the petitioner and also taking into consideration the past conduct of the petitioner in suffering punishment on 25 occasions. The learned Labour Court merely gone by the number of punishments suffered by the petitioner while he was in service and failed to examine Ex.M8 in detail and the nature of punishment suffered by the petitioner over a period of one decade.

10. A perusal of Ex.M8 would disclose that the majority of the punishment that are suffered by the petitioner are of trivial in nature, especially not carrying the licence which he supposed to carry while discharging the duties, which is the charge on which the petitioner was subjected to minor penalty on number of occasions and there is no major misconduct out of any of the 25 incidents where the petitioner was subjected to punishment. Thus, this Court has no hesitation to conclude that the punishment of dismissal from service for the alleged misconduct of



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unauthorised absence from 14.09.1997 till 14.10.1997 is grossly and shockingly disproportionate. The charges 2 to 4 are only consequential charges basing upon Charge No.1 of unauthorised absence. Even if Charge No.1 is held to have been proved and in the absence of any charge of willfull absence or establishing such willfull absence, the punishment of dismissal from service is bound to be declared as shockingly disproportionate. But the learned Labour Court gravely erred in holding that the punishment of dismissal from service is not disproportionate.

11. In this connection, it would be relevant to refer to the decision of the Hon'ble Apex Court in the case of ***Krishnakant B. Parmar vs. Union of India and Another*** reported in ***(2012) 3 SCC 178***, wherein it has been held as under:

“16. In the case of the appellant referring to unauthorised absence the disciplinary authority alleged that he failed to maintain devotion to duty and his behaviour was unbecoming of a government servant. The question whether “unauthorised absence from duty” amounts to failure of devotion to duty or behaviour



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unbecoming of a government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.

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.

19. In the present case the inquiry officer on appreciation of evidence though held that the appellant was unauthorisedly absent from duty but failed to hold



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that the absence was wilful; the disciplinary authority as also the appellate authority, failed to appreciate the same and wrongly held the appellant guilty.”

12. Be that as it may, the petitioner was dismissed from service by order dated 21.02.1998, but the petitioner did not choose to raise a little finger against the said punishment till 18.05.2004, i.e., for more than 5 years and it was only on 18.05.2004, the petitioner approached the Conciliation Officer and thereafter, filed the industrial dispute in question. Thus, there is a delay of more than five years on the part of the petitioner and no explanation is offered by the petitioner for such abnormal delay in raising the industrial dispute. Thus, the conduct of the petitioner itself suggests that the petitioner is not interested to work in the respondent-Corporation till 2004. The petitioner failed to report duty after 14.10.1997, that is after the applied leave period expired also, till the date of dismissal from service. At no point of time, the petitioner reported back to duty, but chosen to continue to remain absent from duty, though participated in the domestic enquiry. Further, the present writ petition, which was filed in the year 2012 came to be dismissed



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for non-prosecution by order dated 08.03.2021, but the restoration application was filed only on 20.01.2023 and the writ petition was restored by order dated 05.03.2025. Thus, there is again delay on the part of the petitioner while filing restoration application.

13. During the pendency of the writ petition, the petitioner has already attained the age of superannuation during the year 2017 and the petitioner is now aged 64 years. In view of the same, the question of ordering reinstatement of the petitioner into service does not arise. No doubt, the petitioner has filed an additional affidavit offering to give up his claim for backwages from the date of dismissal till the date of attaining the age of superannuation, that is, till 31.05.2017 and requested for payment of employer contribution of provident fund alone to enable him to draw pension.

14. This Court having come to the conclusion that the punishment of dismissal from service is shockingly disproportionate to the charges levelled against the petitioner, is inclined to pass appropriate orders in the facts and circumstances of the case. The service of the petitioner was



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regularised with effect from 01.01.1989 and the petitioner was removed from service with effect from 21.02.1998. Thus, the petitioner has completed little short of ten years of service. Had the petitioner continued for 10 years minimum, he would have become eligible for drawing pension proportionate to the service rendered by the petitioner. As the petitioner has already attained the age of superannuation, the question of reinstatement into service does not arise.

15. As already noted above, the petitioner has rendered little less than 10 years of service and is out of service for about 19 years till he attained the age of superannuation. Out of the 19 years, there is initial delay of five years in raising the dispute and thereafter, about three years delay in seeking restoration of the writ petition, which was dismissed for default. Thus, eight years delay attributable to the petitioner. The rest of the period is only eleven years and the respondent-Corporation cannot be made responsible for the said delay of eleven years. The respondent-Corporation is a public Corporation and considering the abnormal delay on the part of the petitioner, in the considered view of this Court, it would not be appropriate to



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make the respondent-Corporation liable to pay either backwages or employer's contribution towards provident fund for the entire period. So also, the petitioner who had rendered only less than ten years of service cannot be allowed to have undue advantage especially in the context of abnormal delays on his part in contesting the order of dismissal from service.

16. In the light of the above, this Court having taken into consideration the over all facts and circumstances of the case, is of the considered view that the learned Labour Court in all fairness ought to have concluded that the punishment of dismissal from service is shockingly disproportionate to the charges levelled against the petitioner and ought to have passed appropriate orders in exercise of its powers under Section 11A of the Industrial Disputes Act, 1947. But in view of the fact that the petitioner has already attained the age of superannuation on 31.05.2017, this Court is not inclined to grant the relief of reinstatement to the petitioner, but instead is of the considered view that the order of dismissal from service should be modified to that of compulsory retirement while directing the respondent-Corporation to treat the petitioner as having completed 10 years of service



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and pay the balance contributions towards employer's provident fund if any, that is from 21.02.1998 to 01.01.1999 and process the pension papers of the petitioner for payment of pension for the minimum ten years of service and pay the pension and pension arrears with effect from 31.05.2017 onwards together with arrears up to date. The respondent-Corporation shall complete the entire exercise as above within two months from the date of receipt of a copy of this order.

17. Accordingly, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

18.03.2025

NCC : Yes/No
Index : Yes/No
Internet : Yes

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MUMMINENI SUDHEER KUMAR, J.

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To

1.The Labour Court,
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2.The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Ranithottam, Madurai Division-3,
Nagercoil, Kanyakumari District.

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