



W.P.(MD) Nos.17095 of 2018 & 12962 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.(MD) Nos.17095 of 2018 & 12962 of 2019

and

W.M.P.(MD) Nos.15048 of 2018, 9656 of 2019 & 25752 of 2024

W.P.(MD) No.17095 of 2018:

P.Stalin

... Petitioner

-VS-

The Management of
Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
rep.by its General Manager
Pudukkottai Region
51/1, Pillaithanneerpanthal
Thirumayam Road
Pudukkottai-622 001

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus directing the respondent to reinstate the petitioner in service at the respondent Corporation with continuity of service and backwages payable to him with effect from 12.06.2013 with all other attendant benefits in the light of the order passed by the Special Deputy Commissioner



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of Labour, Chennai, dated 12.09.2017, passed in A.P.No.188 of 2013, in rejecting the petition for approval of the order of dismissal from service filed by the respondent under Section 33(2)(b) of the Industrial Disputes Act, 1947.

For Petitioner : Mr.A.Rahul

For Respondent : Mr.S.C.Herold Singh

W.P.(MD) No.12962 of 2019:

The Management
Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Pudukkottai Region
51/1, Pillai Thanneer Pandal
Thirumayam Road
Pudukkottai-622 001

... Petitioner

-vs-

P.Stalin

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records relating to the order passed by the Special Deputy Commissioner of Labour, Chennai, in A.P.No.188 of 2013, dated 12.09.2017, quash the same.

For Petitioner : Mr.S.C.Herold Singh

For Respondent : Mr.A.Rahul



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COMMON ORDER

The brief facts that are relevant for the disposal of these writ petitions are as under:

2. For the sake of convenience, the facts in W.P.(MD) No.17095 of 2018 are considered.

2.1. The petitioner herein was appointed as Driver in the year 2000 in the respondent – Transport Corporation. While he was working as Driver, he was subjected to disciplinary proceedings by issuing a charge memo dated 29.06.2011 on the alleged misconduct of unauthorized absence from duty from 21.04.2011 to 07.09.2011. It was thereafter, the respondent – Transport Corporation conducted an enquiry into the matter and finally passed an order dated 12.06.2013 dismissing the petitioner from service.

2.2. Simultaneously, while passing the said order, the respondent – Transport Corporation submitted an application in A.P.No.188 of 2013, under Section 33(2)(b) of the Industrial Disputes Act, 1947 (in short, “the Act, 1947”) before the authority



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concerned i.e., Special Deputy Commissioner of Labour, Chennai, seeking approval for dismissal of the petitioner from service and the said application was rejected by the authority concerned by passing an order dated 12.09.2017. It is aggrieved by the said order dated 12.09.2017, the respondent – Transport Corporation filed W.P.(MD) No.12962 of 2019 and whereas the petitioner herein filed W.P.(MD) No.17095 of 2019 seeking implementation of the said order dated 12.09.2017.

2.3. During the pendency of the present writ petitions, the petitioner herein was reinstated into service on 20.11.2024 and accordingly, the petitioner has been working in the respondent – Transport Corporation. Further, it is also brought to the notice of this Court that the petitioner was reinstated into service as Helper, but not as Driver, consequent upon the ill health suffered by him by duly providing him an alternative employment in terms of the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.



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3. The relief sought in W.P.(MD) No.17095 of 2018 can be granted only in case if the writ petition in W.P.(MD) No.12962 of 2019 is dismissed and in case if the said W.P.(MD) No.12962 of 2019 is allowed, the question of granting any relief in W.P.(MD) No.17095 of 2018 does not arise. Hence, it is necessary to decide W.P.(MD) No.12962 of 2018 first.

4. Heard Mr.A.Rahul, learned counsel for the petitioner Mr.S.C.Herold Singh, learned counsel appearing for the respondent – Transport Corporation.

5. Under the impugned order, the authority concerned has come to the conclusion that the respondent – Transport Corporation has conducted an enquiry by following due process of law and also came to the conclusion that the findings arrived at by the respondent – Transport Corporation in holding the charge levelled against the petitioner is proved is correct. However, the authority concerned interfered with the punishment of dismissal from service only on the ground that the said punishment is shockingly disproportionate to the gravity of the charge levelled against the petitioner and therefore, refused to grant approval for dismissal of the petitioner from service.



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6. Mr.S.C.Herold Singh, learned counsel appearing for the respondent – Transport Corporation strenuously contended that the authority concerned, while considering the application submitted by the respondent – Transport Corporation under Section 33(2)(b) of the Act, 1947, has no jurisdiction or authority to go into the aspect of proportionality of the punishment sought to be imposed on the workman. When the said authority concerned has, once, come to the conclusion that the respondent – Transport Corporation has followed the procedures as contemplated under law and arrived at the conclusion that the charge levelled against the petitioner is proved, it is bound to grant approval for dismissal of the petitioner from service. Further, he also contended that the power, conferred under Section 11A of the Act, 1947 on the Labour Court, is not available to the authority concerned, while considering the application under Section 33(2)(b) of the Act, 1947, and therefore, the impugned order rejecting the approval petition, after having concluded that the charge levelled against the petitioner is established is totally without jurisdiction.

7. On the other hand, Mr.A.Rahul, learned counsel appearing for the petitioner, submitted that the authority concerned, while examining the



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application submitted under Section 33(2)(b) of the Act, 1947, has got every power to go into the aspect of proportionality of the punishment sought to be imposed, in case if the said authority comes to the conclusion that there is an unfair labour practice on the part of the employer and the punishment sought to be imposed is intended to victimize the employee.

8. This Court has carefully considered the submissions made on either side and also perused the materials available on record.

9. The only misconduct, levelled against the petitioner, is the unauthorized absence from 21.04.2011 to 07.09.2011. It is only on the charge of unauthorized absence for the said period, the petitioner is sought to be dismissed from service. It is now settled legal position that mere unauthorized absence from duty would not result in imposing a punishment of dismissal from service. It is only on establishing that such unauthorized absence is willful and an unreasonable explanation is offered, then such unauthorized absence would amount to a misconduct warranting initiation of disciplinary proceedings for imposing a major penalty. But, in the instant case, it is not the case of the respondent – Transport Corporation that the unauthorized absence of the petitioner is willful amounting to misconduct.



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Admittedly, the petitioner herein suffered a brain stroke resulting in paralysing a portion of his body. As it is a settled legal position that mere unauthorized absence shall not result in imposing a major punishment of dismissal or removal from service, this Court is inclined to examine the matter in detail.

10. The only contention raised before this Court by the learned counsel appearing for the respondent – Transport Corporation is that the authority concerned, while considering the application submitted by the employer under Section 33(2)(b) of the Act, 1947, has no jurisdiction to go into the aspect of the proportionality of the punishment sought to be imposed on the employee.

11. This Court is unable to accept the said contention in the light of the law laid down by the Honourable Apex Court in the case of **Lalla Ram vs. Management of D.C.M.Chemical Works Ltd., and another**, reported in **AIR 1978 SC 1004**, wherein the Honourable Apex Court, after having examined various cases, came to the conclusion that in case if the authority concerned, while considering the application under Section 33(2)(b) of the Act, 1947, comes to the conclusion that there is victimisation of the employee and



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unfair labour practice on the part of the employer while passing an order of dismissal or removal of the employee from service, it can always interfere with the punishment sought to be imposed while exercising the power under Section 33(2)(b) of the Act, 1948. As the said decision is relied upon by the learned counsel on either side and it is a settled legal position that mere unauthorized absence would not amount to a misconduct, this Court is unable to accept the contention of the learned counsel appearing for the respondent – Transport Corporation that the authority concerned, while considering the application under Section 33(2)(b) of the Act, 1947, cannot go into the aspect of proportionality of the punishment sought to be imposed on the employee. In the light of the decision in the case of **Lalla Ram** (cited supra), it cannot be said that the authority concerned, under Section 33(2)(b) of the Act, 1947, lacks jurisdiction to go into the aspect of proportionality of the punishment sought to be imposed on the delinquent employee. In the light of the above, this Court does not find any merit in the contention raised by the learned counsel appearing for the respondent – Transport Corporation.

12. As this Court observed above, mere unauthorized absence from duty shall not result in dismissal or removal of an employee from service, as the same was found fault by the Honourable Apex Court in catena of



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decisions and appropriate orders have been passed setting aside the orders of dismissal or removal of an employee from service.

13. Further, it is to be noted that the impugned order was passed on 12.09.2017 and whereas, the respondent – Transport Corporation filed W.P.(MD) No.12962 of 2019 challenging the impugned order only on 06.06.2019 i.e., after a lapse of 1 ½ years, that too after the petitioner approached this Court by filing W.P.(MD) No.17095 of 2018 seeking a direction to the respondent – Transport Corporation to implement the impugned order dated 12.09.2017. Thus, there is no *bona fide* on the part of the respondent – Transport Corporation in filing the writ petition in W.P.(MD) No.12962 of 2019 and the same is also liable to be dismissed on the ground of laches.

14. As noted above, since the petitioner herein is already reinstated into service, practically the relief sought in W.P.(MD) No.17095 of 2018 has now become infructuous, except to the extent of the other consequential reliefs.



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15. Taking into consideration the overall facts and circumstances of the case and also the fact that the petitioner herein has suffered a brain stroke and paralyse, this Court is inclined to put quietus to the issue once for all by passing appropriate orders in W.P.(MD) No.17095 of 2018 by taking into consideration the concession made by the learned counsel for the petitioner stating that the petitioner would not insist for payment of backwages for the period from 12.06.2013 till 20.11.2024.

16. In the light of the above,

- (i) W.P.(MD) No.12962 of 2019 is dismissed.
- (ii) W.P.(MD) No.17095 of 2018 is disposed of by directing the respondent – Transport Corporation to treat the petitioner as if continued in service from 12.06.2013 when he was dismissed from service till 20.11.2024 when he was reinstated into service, notwithstanding the order of dismissal dated 12.06.2013 and to treat the said period as duty period for notional pay fixation and other benefits. However, the petitioner shall not be entitled for any backwages for the said period,



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but the respondent – Transport Corporation shall pay all the contributions payable by the workmen as well as Transport Corporation for the entire period from 12.06.2013 to 20.11.2024.

- (iii) On refixation of pay, the petitioner shall be paid refixed salary from 20.11.2024, for which he is otherwise entitled to.
- (iv) The respondent – Transport Corporation is directed to pass appropriate consequential orders within a period of six weeks from the date of receipt of a copy of this order.
- (v) No costs. Consequently, connected miscellaneous petitions are closed.

17.03.2025

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

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