

(2000) 02 MAD CK 0077

In the Madras High Court

Case No : Writ Petition No. 15410 of 1992

Anna Transport Corporation Ltd.

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

Date of Decision : 01-02-2000

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (1999) 82 FLR 765 : (2000) 2 LLJ 385 : (2000) 1 MLJ 664

Hon'ble Judges : R. Balasubramanian, J

Bench : Single Bench

Advocate : Shanmuga Kailash, for the Appellant; S. Gopinathan and Sivashanmugham, for the Respondent

Final Decision : Allowed

Judgement

R. Balasubramanian, J.—The second respondent joined duty as a conductor in the petitioner-Corporation on January 10, 1976. From January 11, 1976 to January 18, 1976; from January 19, 1976 to February 7, 1976; and from February 8, 1976 to March 18, 1976 he was on leave with permission. From March 19, 1976 to September 26, 1976, on which date a chargememo was issued to the second respondent, he unauthorisedly absented himself, is the case of the writ-petitioner. On that basis a domestic inquiry was conducted and the enquiry officer gave his report on December 3, 1976, finding the second respondent guilty of all the charges levelled against him. Accepting the report of the enquiry officer, the disciplinary authority passed an order, dated January 22, 1977. The said order reads as follows: ;

"As per the regulations of the Transport Corporation, the second respondent is deemed to have left the services of his own with effect from March 19, 1976."

This order is taken as a dispute before the Labour Court in I.D. No. 120 of 1986. The Labour Court by award, dated December 27, 1991, directed the reinstatement of the second 1 respondent with continuity in service but without

back-wages. This award of the Labour Court is being questioned in this writ petition by the Management.

2. Heard Ms. Shanmuga Kailash, learned counsel appearing for the writ-petitioner, Sri S. Gopinathan, learned Government Advocate appearing for the first respondent, as well as Sri Sivashanmugham, learned counsel appearing for the second respondent. The facts as noticed in the earlier portion of this judgment about the absence of the second respondent from service are not disputed. To the charges levelled against him, the second respondent admitted his guilt in the domestic enquiry. The Labour Court also found that the enquiry was conducted in a fair and proper manner; the materials available on record establish the charges levelled against him and the conclusion arrived at is also correct. However the Labour Court after taking into account the following facts namely, the second respondent was shown to be continuously ailing; he has a large family to support and that in this erstwhile employment he has not come to any adverse notice, was inclined to grant the relief of reinstatement with continuity in service but without back-wages. The second respondent accepted the award.

3. The learned counsel appearing for the writ-petitioner contended that the Labour Court having found that there is no flaw in the domestic enquiry conducted; it was conducted in a fair and proper manner and that the materials available on record establish the charges levelled against the second respondent, it ought not to have exercised the discretion vested in it so lightly as had been done in this case. The learned counsel for the writ-petitioner would add that though normally this Court would not interfere with the discretionary relief granted by the Labour Court u/s 11-A of the Industrial Disputes Act, yet if it is shown that the discretion had been improperly exercised without any material to support it, then this Court should not hesitate to interfere with the same. The learned counsel for the second respondent would contend that regulations 8(3) and 19(i)(f) of the Regulations operate totally in two different spheres and each being an independent charge/misconduct by itself. Though the second respondent was called upon to answer the misconduct falling under 19(i)(f) of the Regulations, yet he was punished for the misconduct falling under 8(3) of the Regulations, which case he was not called upon to meet. Therefore when an order is passed terminating the services of the second respondent for the misconduct covered under 19(i)(f) of the Regulations, which amounts to a punishment, the Labour Court would be justified in going into the quantum of punishment awarded and in so doing, if it exercises the discretion in favour of the workman u/s 11-A of the Industrial Disputes Act, this Court would not interfere with such a relief. The learned counsel for the second respondent would add that, on the facts and circumstances of this case the Labour Court had correctly exercised that discretion.

4. In the light of the arguments advanced by the learned counsel on either side, I perused the order under challenge as well as the other connected material

papers.

The misconduct under Regulation 8(3) reads as follows:

"If any workman remains absent without leave or permission for more than eight consecutive days, he shall be deemed to have left the employment unless he gives satisfactory explanation for such absence in which case the period of absence shall be treated as leave without wages:

Provided that the absence of a workman due to (a) strike of workmen in the establishment shall not be regarded as absence for purposes of this Standing Order.

In case the workman has to leave the employment in the circumstances specified in this Standing Order, he shall be entitled to be kept on the "Badli" list."

The misconduct falling under 19(i)(f) reads as follows:

"Habitual absence without leave or absence without leave for more than ten consecutive days."

The misconduct under 19(i)(f) would cover a case of habitual absence without leave or absence without leave on more than one occasion. It also covers the absence of a workman without leave for more than 10 consecutive days. When compared to this, the misconduct falling under 8(3) of the Regulations would cover a case of a workman remaining absent without leave or without permission for more than eight consecutive days and if it is so established, then the workman is deemed to have left the employment. Of course this is subject to the workman giving a satisfactory explanation for such absence and if such satisfactory explanation comes on record, then this period of absence shall be treated as leave without wages. In the context of the misconduct referred to above, I perused the chargememo. It refers to the absence of the second respondent from January 11, 1976 to January 18, 1976; from January 19, 1976 to February 7, 1976 and from February 8, 1976 to March 18, 1976. It is recorded therein that the absence of the second respondent as referred to above, is supported by three different leave letters. The chargememo proceeds to state further that from March 19, 1976 onwards without any prior intimation, the second respondent continued to absent himself. In fact it also records that only for the absence from January 11, 1976 to March 18, 1976, his absence was with prior intimation and thereafter there was no intimation at all.

5. On the above broadly stated facts, four charges were framed against the second respondent.

Charge No. 1: Without prior intimation and permission the second respondent continued to absent himself from duty (this falls under 8(3) of the Regulations).

Charge No. 2: On account of his absence alternate arrangements have to be made causing inconvenience to the management.

Charge No. 3: Acting in irresponsible manner.

Charge No. 4: Violating the regulations, in particular 19(i)(f).

Therefore the chargememo definitely contains the necessary facts with reference to charge Nos. 1 and 4 referred to above. The second respondent submitted his explanation to the chargememo. The management after considering his explanation and finding it not satisfactory, had passed the order, dated January 22, 1977, which had been taken before the Labour Court as referred to above. After noticing the above facts, the management had concluded that the charges levelled against the second respondent had been proved; since without prior intimation and permission he continued to absent himself, his explanation for such absence was not satisfactory and therefore the second respondent is deemed to have left the employment on his own with effect from March 19, 1976. It is therefore clear that the order under challenge before the Labour Court was only on the basis of the misconduct on the part of the second respondent falling under 8(3) of the Regulations.

6. As already noticed, the Labour Court also found that the charges levelled against the second respondent, for which a domestic enquiry was also conducted, stand fully established. However the Labour Court proceeded to grant the relief to the second respondent only on a sympathetic ground in the manner referred to above. In this context the learned counsel for the writ-petitioner brought to my notice a judgment of this court in a case reported in *Anna Transport Corporation Ltd. Vs. Presiding Officer, Labour Court and Another*, . That was also a case where the workman unauthorisedly absented himself for a long number of days. Of course such unauthorised absence was preceded by several unauthorised absences, for which the workman was punished. On those facts a learned Judge of this Court was of the opinion that the Labour Court would have no jurisdiction to show any sympathy, for such a workman, who is guilty of unauthorised absence. Relying upon this judgment the learned Council for the petitioner would contend that the award of the Labour Court directing reinstatement solely on the ground of sympathy, is unwarranted and therefore it should be interfered with. The learned counsel for the second respondent tried to distinguish the present case on facts stating that the unauthorised absence, which led to the dismissal in the reported case was preceded at least by two punishments for a similar misconduct and that judgment may not be of any use to decline the relief to the second respondent in this case. I am afraid I cannot agree with the learned counsel for the second respondent. The learned Judge in the decided case has held that the workman, who is guilty of unauthorised absence, should not be shown any leniency, especially when he continues to absent himself and for a long period. In this case also the second respondent joined the services of the petitioner-Corporation only on January 10, 1976 and from January 11, 1976 he continued to absent himself up to September 26, 1976 though his absence up to March 18, 1976 was covered by three different leave letters. According to me the second respondent in this case also stands on the

same footing as that of the workmen involved in the decided case referred to above except the fact that in the decided case the workman had suffered some punishments, whereas on the other hand, he had not suffered any punishment. That by itself would not in any way improve the situation in favour of the second respondent in the present case. In fact two Division Benches of this Court in the judgments reported in Dharmapuri District Co-operative Sugar Mills Vs. The Presiding Officer, Labour Court, Vellore and another, and Govindarajulu v. K.P.V. Shaik Mohammed Rowther and Co. (Private) Ltd. 1997 I LLN 388, held that though the Labour Court would be justified in taking into account the various considerations based on humane approach while awarding punishment, yet it would depend upon the facts and circumstances of each case.

7. On the facts noticed above, I am of the firm opinion that the second respondent is not entitled to any lenient treatment in awarding the punishment and the Labour Court had exercised the discretion vested in it in an improper and capricious manner by extending the relief to the second respondent, to which he is not entitled to, on the facts pleaded and established. Accordingly this writ petition is allowed and the award of the Labour Court is quashed. No costs.