

**(2012) 10 MAD CK 0029**  
**In the Madras High Court**  
**Case No : Writ Petition No. 40143 of 2002**

K. Molaiappan

APPELLANT

Vs

Divisional Manager, Tamil Nadu Minerals Ltd., and Others

RESPONDENT

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**Date of Decision :** 05-10-2012

**Acts Referred:**

**Citation :** (2013) 136 FLR 995 : (2012) 4 LLJ 854 : (2013) 1 LLN 554 : (2013) LLR 127

**Hon'ble Judges :** T. Raja, J

**Bench :** Single Bench

**Advocate :** P. Mani, for the Appellant; Ramiah, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

T. Raja, J.—The petitioner seeks for issuance of writ of certiorarified mandamus to quash the order passed by the first respondent-the

Divisional Manager, Tamil Nadu Minerals Limited, Salem, in Ref. Na.Ka. No. 5876/E2/97, dated April 28, 1998, the second respondent-the

Chairman and Managing Director, Tamil Nadu Minerals Limited, Chennai, in Ref. Na.Ka. No. 28121/I.R1/97, dated July 14, 1998, and the

award passed by the third respondent-the Presiding Officer, the Central Government Industrial-cum-Labour Court, Chennai, in I.D. No.

170/2001, dated November 28, 2001, by calling for the records connected thereto and consequently to direct the first respondent to reinstate the

petitioner in service with backwages, continuity of service and other attendant benefits. The petitioner joined the service of the Tamil Nadu

Minerals Limited at Mettur Dam as an unskilled labourer on May 30, 1990. Thereafter, the petitioner was allotted the work of watchman duty

from the date of his joining. While he was working as watchman, he was placed under suspension in connection with the theft of the Divisional Office Jeep during the night shift of the petitioner on December 10, 1997. Subsequently, he was issued with a charge memo dated January 6, 1998. On receipt of the charge memo, the petitioner has also submitted his explanations. Since the explanations submitted by the petitioner were not satisfactory, a departmental enquiry was conducted by the respondent management. But, the petitioner did not attend the enquiry. Therefore, the management issued another notice to the petitioner to participate in the enquiry and on the receipt of the third notice, the petitioner participated in the enquiry, whereby he was given full opportunity to cross examine the management witnesses and put-forth his case. Upon considering the case of the both sides, the enquiry officer submitted his report holding that the charges levelled against the petitioner were proved. Aggrieved by the same, the petitioner raised an Industrial Dispute before the Labour Court in I.D. No. 170/2001. The Labour Court, after considering the claim of both sides, dismissed the Industrial Dispute raised by the petitioner holding that he had caused theft of vehicle belonging to the respondent management by sleeping during duty hours as a night watchman. As against the same, the present writ petition has been filed with the aforesaid prayer.

2. Learned counsel appearing for the petitioner submitted that the Labour Court ought to have considered 17 years of unblemished service rendered by the petitioner and the present incident being first incident, the Labour Court ought to have imposed minor punishment, particularly when the stolen jeep was recovered and thereby no loss has been caused to the company. Further, it was contended that at the time of incident, the petitioner was aged about 54 years and he was due to retire on June 30, 2006 and the jeep belonging to the respondent/management was stolen, since it was parked outside the compound wall of the Divisional Office. But, without considering these aspects, the respondents wrongly passed the punishment of dismissal from service, as it is disproportionate to the misconduct committed by the petitioner. Therefore, he sought for setting aside the impugned orders passed by the respondents.

3. Per contra, learned counsel appearing for the respondents 1 and 2 submitted

that the petitioner himself admitted, vide his letter dated January 7, 1998, which was marked as Exhibit M4, that the said stolen jeep had been parked in front of the compound wall when his shift duty commenced on December 10, 1997. Further, it was admitted that he unloaded the materials from the said jeep and locked the same and kept its key in the office. For the said misconduct, which is considered to be a major misconduct, under Clause 31 of the Standing Orders, the punishment imposed by the respondent/management as dismissal from service is proportionate to the gravity of the misconduct committed by the petitioner and on that basis, he prayed for dismissal of the writ petition.

4. Heard the learned counsel appearing on either side and perused the materials available on record. It is an admitted fact that the petitioner was placed under suspension in connection with the theft of the Divisional office Jeep during the night shift of the petitioner on December 10, 1997.

Further, the petitioner had also admitted vide his letter dated January 7, 1998 that the Jeep bearing Registration No. TN-07-X-0849 was parked

in front of the compound wall when his shift commenced on December 10, 1997 and also admitted that he slept during the shift hours. Since the

petitioner was a watchman employed by the respondents 1 and 2 company to safe-guard the premises and the property of the company, any

proved charge of negligence on his part to discharge his official duty would definitely amount to a serious misconduct in accordance with the

Clause 31 of the Standing Orders applicable to his service. Once it has been accepted that the theft had taken place during the duty hours of the

petitioner, it is not necessary for the management to further prove by direct evidence that the petitioner was negligent or carelessness in performing

his duty. To substantiate his claim, the petitioner has not shown either by oral or documentary evidence that there was no negligence or

carelessness on his part either before the trial Court or before this Court. Therefore, unless, it is shown that it is a case of no evidence or that the

findings of the enquiry officer or the Labour Court are perverse, this Court would refrain from interfering with such findings, especially when the

petitioner himself admitted that the said Jeep was stolen during his duty hours. In such view of the matter, there is nothing shown by the petitioner

before this Court to set aside the orders passed by the respondents. Hence, the

writ petition stands dismissed. No Costs.