
(2010) 04 MAD CK 0258

In the Madras High Court

Case No : Writ Petition No. 14652 of 2005

Metropolitan Transport Corporation Limited

APPELLANT

Vs

The Presiding Officer I Additional Labour Court and Others

RESPONDENT

Date of Decision : 21-04-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 2A(1)

Citation : (2010) 04 MAD CK 0258

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : T. Chandrasekaran, for the Appellant; R. Karunakaran, for R-3 to R-7, for the Respondent

Judgement

T. Raja, J.—The petitioner has challenged the award passed by the Labour Court, wherein the Labour Court on 22.09.2004 in I.D. No. 22 of 1999 ordering reinstatement of the workman/2nd respondent with continuity of service with 50% of the back wages and 50% of all other attendant benefits.

2. The charges levelled against the 2nd respondent was that he remained absent from duty from 11.01.1995, but a charge memo dated 15.02.1995 was issued to the 2nd respondent for his unauthorized absence, which amounted to misconduct under Clause 16(b) and 16(g) of the Model Standing. Finally the domestic enquiry was conducted by the respondent and submitted in its report holding the charges remained only for absent from duty from 11.01.1995 was found proved. Subsequently, on the basis of the enquiry report, the disciplinary authority passed an order of removal from service. When the Industrial Dispute was raised before the Labour Court, the Labour Court by taking into account the nature of the charge by setting aside the order of removal of the petitioner from service, modified the same to reinstatement with continuity of service with 50% of the back wages, holding that the punishment imposed by the disciplinary authority was not proportionate to the nature of charges proved against the 2nd respondent. Aggrieved by the said Award passed by the Labour Court, the

present Writ Petition has been filed.

3. Learned Counsel appearing for the petitioner would contend that the 2nd respondent absented himself from duty without prior intimation or any prior sanction of leave from 11.01.1995. The 2nd respondent being conductor, absented without prior permission, caused dislocation to the public passengers. The Branch Manager of Vyasarpadi Depot of petitioner Corporation forwarded a report for taking necessary disciplinary action for his unauthorized absence. Based on the report, a charge memo dated 15.02.1995 was issued calling upon him to submit his explanation, but, unfortunately, no explanation was submitted for the charge memo. In order to give more opportunity, domestic enquiry was conducted. During the enquiry, all the reasonable opportunities were given to the 2nd respondent and after fully participating the enquiry, the enquiry officer submitted his findings holding that the 2nd respondent was found guilty of all the charges levelled against him. Based on the findings of the enquiry officer, second show cause notice dated 03.11.1995 was issued to the 2nd respondent. In the meanwhile, the 2nd respondent transferred to Ennore Depot of petitioner Corporation without prejudice to the disciplinary action already initiated against him. Again, the 2nd respondent had not reported for duty at Ennore Depot, but, submitted his explanation dated 08.04.1996 for the second show cause notice, the same was not found satisfactory. Further, after seeing his past record of service, it was found that he was punished for 12 times and various punishment also imposed on him for the similar misconduct on his transfer to Ennore Depot from Vyasarpadi Depot. The disciplinary authority imposed the punishment of dismissal from service and thereby, he was removed from service by order dated 16.05.1996. As against that, an appeal was filed and the same was also rejected by an order dated 29.03.1996. Therefore, it was further contended that the Labour Court ought not to have granted order of reinstatement by interfering with the findings of the enquiry officer as found affirmed by the Disciplinary Authority and also reaffirmed by the Appellate Authority.

4. Per contra, learned Counsel appearing for the 2nd respondent submits that the charges levelled against the 2nd respondent/Conductor were false in as much as the 2nd respondent had furnished enough documents to prove that he was suffering from illness and the same was not considered by the petitioner Management. Therefore, the order of dismissal passed by the petitioner Management, rightly interfered with by the Labour Court, by exercise of Power u/s (1) of Section 2A of the I.D. Act, 1947 on the ground that the punishment of removal inflicted by the petitioner Management was not commensurate to the nature of the charges levelled against the 2nd respondent. On that basis, learned Counsel appearing for the 2nd respondent pleaded to this Court to affirm the award passed by the labour Court.

5. Heard the learned Counsel appearing on either side and perused the materials available on record.

6. The 2nd respondent, while working as a Conductor in the petitioner

Management, remained absent for duty from 11.01.1995 without prior permission obtained from the competent officer in the Transport Corporation. In view of the fact that his sudden and frequent absence caused dislocation of work, as well as great inconvenience to the travelling public which is also a serious misconduct the Branch Manager of Vyasarpadi Depot of the petitioner Corporation forwarded the report for taking necessary disciplinary action for the 2nd respondent's unauthorized absence. Based on the report, a charge memo dated 15.02.1995 was issued to the 2nd respondent asking him to show cause as to why the action should not be taken. But, unfortunately, the 2nd respondent had not submitted his explanation for the said charge memo. Again, the petitioner Corporation in order to give more opportunity, ordered for domestic enquiry against the 2nd respondent. During the time of enquiry, all the reasonable opportunities were given to the delinquent conductor/2nd respondent herein and he also took part in the enquiry and the enquiry officer, after conducting a fair and proper enquiry by applying the principles of natural justice, gave his findings holding that the 2nd respondent was found guilty of all the charges levelled against him. Based on the findings of the enquiry officer, second show cause notice dated 03.11.1995 was issued to the 2nd respondent. In the meanwhile, he was also transferred to Ennore Depot of petitioner Corporation without prejudice to the disciplinary action already initiated against him. But, once again, the 2nd respondent has not reported for duty at Ennore Depot and has submitted his explanation for the 2nd show cause notice. But the same being not satisfactory, the disciplinary authority, after perusing the 2nd respondent's service of past records, which showed that during his service, he was punished for about 12 times and various punishments were also imposed on him for the similar misconduct on his transfer to Ennore Depot from Vyasarpadi Depot. Therefore, considering all the facts and circumstances of the case borne on service record, the disciplinary authority came to the conclusion that the Conductor/2nd respondent's recalcitrant attitude of not mending himself in spite of the fact that he was earlier given minor punishments for his misconducts committed by him, finally, passed an order of dismissal from service and thereby, he was removed from the roll of the Transport Corporation vide proceedings dated 16.05.1996. Aggrieved by the order of removal, the 2nd respondent had also preferred an appeal to the Appellate Authority, but, his appeal was also rejected by order dated 23.08.1996.

7. When the labour Court, while considering the case of the 2nd respondent/Conductor, had an occasion to consider the several punishments suffered by the 2nd respondent for the similar nature of misconduct, ought not to have shown indulgence to the chronic unauthorized absentee. Apart from the several punishments suffered, Ex.M.10 document also proved that the Conductor/2nd respondent himself as W.W.1 has admitted that he was unauthorisedly absented only 4 or 5 times. With all these acceptable evidence, the labour Court ought not to have disturbed the order of dismissal from service. That apart, the labour Court has also held that the 2nd respondent is entitled to reinstatement with

continuity of service with 50% backwages and 50% of all other attendance benefits.

8. In my considered view by taking into account the fact that the 2nd respondent was unable to attend the duty from 11.01.1995 without prior permission, does not deserve either 50% of backwages or 50% of all other attendant benefits. Therefore, while modifying the award passed by the labour Court, it is made clear that the 2nd respondent is entitled only for reinstatement without continuity of service, without backwages and without any attendant benefits. Accordingly, the writ petition is disposed of with the above modifications.