

**(2012) 11 MAD CK 0039**

**In the Madras High Court**

**Case No : Writ Petition (MD) No. 2517 of 2008**

P. Jagadeesh

APPELLANT

Vs

Presiding Officer, Labour Court and Another

RESPONDENT

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**Date of Decision : 27-11-2012**

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 11A

**Citation : (2013) 2 LLJ 216**

**Hon'ble Judges : K. Ravichandrababu, J**

**Bench : Single Bench**

**Advocate : G. Purushothaman, for the Appellant; M. Prakash, for the Respondent**

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**Judgement**

K. Ravichandrababu, J.—The petitioner challenged the award of the Labour Court passed in I.D. No. 104 of 2001, dated 18.5.2005, in

so far as the portion of ordering a compensation of Rs. 50,000/- in lieu of retirement benefits alone and consequently, seeking for a direction to the

2nd respondent to pay all the back wages from the date of dismissal, till the date of superannuation and other consequential and retirement

benefits. The case of the petitioner is that he was appointed as a "Conductor" in the 2nd respondent Corporation with effect from 25.7.1978.

While he was on duty from 11.8.1997 to 15.8.1997, he had sustained injuries on his right leg, which caused intolerable pain on his right leg.

Therefore, he submitted medical leave application from 18.8.1997 onwards. But without considering the said application, the 2nd respondent

Management issued a show cause notice on 29.8.1997 as if, the petitioner was unauthorisedly absent for 11 days. Though, the petitioner submitted

his explanation on 18.9.1997, the Management ordered for a domestic enquiry and thereafter, an order of dismissal from service came to be

passed by the Management on 4.4.1998. As the conciliation proceedings ended in failure, the petitioner preferred I.D. No. 104 of 2001 before

the Labour Court, challenging the order of dismissal. The Labour Court by its award, dated 18.4.2005 held that the charges against the petitioner

were proved and however, while considering the question as to whether the punishment imposed on the petitioner is too harsh and grossly

disproportionate to the nature of the misconduct, it had awarded a sum of Rs. 50,000/- as compensation, in the place of the order of dismissal.

Challenging the said award passed by the Labour Court, the present writ petition is filed before this Court.

2. The 2nd respondent filed a counter affidavit and supported the award passed by the Labour Court. The learned counsel for the 2nd respondent

has also submitted that the said of Rs. 50,000/- had already been paid to the petitioner.

3. The learned counsel appearing for the petitioner submitted that when the Labour Court had exercised its power u/s 11A of the Industrial

Dispute Act, and came to the conclusion that the Management was not justified in imposing punishment of dismissal at the fag end of the service of

the petitioner, ought not to have awarded compensation of Rs. 50,000/- alone, without allowing the petitioner to have the benefit of continuity of

service so as to enable to get his retirement benefits.

4. The learned counsel for the petitioner has also pointed out that the Labour Court has specifically observed at paragraph 10 of its award that

withholding of back wages from the date of dismissal would have been reasonable punishment.

5. Heard the learned counsels appearing for the respective parties.

6. No doubt, in this case, the petitioner had absented for 11 days, which is said to be an unauthorized absent. In the enquiry conducted by the

Management, charges levelled against the petitioner were found proved. Thereafter, the order of dismissal came to be passed by the Management.

When the same was challenged before the Tribunal by the petitioner, the charges were once again found proved by the Tribunal by answering the

first issue in favour of the Management. But however, while considering the second issue with regard to the dis-proportionality of punishment

imposed on the petitioner, the Labour Court has found that there are no serious

misconducts in the petitioner's past service.

7. The Labour Court has also noted that the petitioner, in his explanation under Exhibit M-3, dated 18.9.1997 has stated that he was unwell and

hence, he could not attend the duty with effect from 18.8.1997 and also a medical certificate was produced by the petitioner. After pointing out all

these facts and circumstances, the Labour Court had come to the conclusion that the Management was not justified in imposing the punishment of

dismissal at the fag end of the service of the petitioner, while he had put in number of years of service without any serious misconduct.

8. The Labour Court also observed that the petitioner could have continued in service till December 2004, if the order of dismissal was not

passed. Consequently, it had found that withholding of back wages from the date of dismissal would have been a reasonable punishment. After

observing so, and finding that the reasonable punishment could be withholding of back wages alone, the Labour Court instead of imposing such

punishment on the petitioner, had awarded only a sum of Rs. 50,000/- as compensation only on the reason that the petitioner had attained the age

of superannuation in the meantime.

9. It is the categorical finding of the Labour Court that the punishment of dismissal from service is too harsh and grossly disproportionate to the

nature of misconduct. Therefore, the very reading of the findings rendered in paragraph 10 amply prove that the punishment, which was

reasonable, according to the Labour Court is only withholding of the back wages from the date of dismissal. But, having come to such conclusion,

the Labour Court had awarded compensation of Rs. 50,000/- only by taking note of the fact that the petitioner attained the age of superannuation

in the mean time.

10. In my considered view, the approach of the Labour Court in awarding the compensation of Rs. 50,000/- only to the petitioner is not correct.

When the Labour Court had exercised its power under 11-A of the Act, as to whether the punishment imposed on the petitioner is grossly

disproportionate or too harsh to the nature of misconduct, and also came to the conclusion that it is too harsh and disproportionate, by specifically

holding that reasonable punishment would be only withholding of back wages, absolutely, there is no justifiable reason for not awarding such

punishment.

11. It is submitted by the learned counsel appearing for the petitioner that though, the petitioner has submitted a leave application before the

authorities, the same was not considered and his leave was treated as unauthorized one. As the same has been found proved by the Labour Court

also, he seeks only a reasonable punishment, namely continuity of service without back wages, as has been found by the very Labour Court itself.

12. Considering all these facts and circumstances as well as the submissions made by the respective counsels and in view of the specific

observation and the finding made in paragraph 10 by the Labour Court. I set aside the order of the Labour Court in awarding the compensation of

Rs. 50,000/- to the petitioner and modifying the award by imposing the punishment of withholding of back wages from the date of dismissal, till the

date of retirement only. In other aspects, the petitioner is entitled to get the continuity of service so as to enable him to get the retirement benefits at

the hands of the respondents Management.

13. As it is stated that the amount of Rs. 50,000/- has already been paid to the petitioner, it is for the Management to work out the retirement

benefits payable to the petitioner and thereafter, to give credit to the amount of Rs. 50,000/- paid to the petitioner already and pass orders

thereon, within a period of eight weeks from the date of receipt of a copy of this order. The writ petition is ordered accordingly. No costs.