
(2016) 09 MAD CK 0051

In the Madras High Court

Case No : W.A. (SR) No. 59383 of 2016 and C.M.P. No. 13898 of 2016

R. Krishnan

APPELLANT

Vs

Presiding Officer, Labour Court

RESPONDENT

Date of Decision : 15-09-2016

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2016) 4 LLJ 679

Hon'ble Judges : Mr. Huluvadi G. Ramesh and Mr. S. Vaidyanathan, JJ.

Bench : Division Bench

Advocate : Mr. R. Jaikumar, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Mr. Huluvadi G. Ramesh, J. - This writ appeal is arising out of the order dated 30.08.2011 made in W.P. No.32530 of 2004, wherein, the learned single Judge has dismissed the writ petition and thereby confirmed the award of the first respondent - Labour Court in dismissing the appellant - workman from service.

2. The facts leading to the filing of this writ appeal are as follows:

The appellant joined as a conductor on 11.03.1990 in Thiruvallur Transport Corporation. Subsequently, at his request, he was transferred to the second respondent Transport Corporation on 01.04.1996. While so, he was issued with a charge memo dated 05.06.1998 for his unauthorized absence from 21.05.1998. Thereafter, an enquiry was conducted and the Enquiry Officer submitted his report dated 30.10.1998 holding that he was found guilty of unauthorized absence from 21.05.1998. In the mean while, the appellant reported for duty on 01.09.1998 with fitness certificate, whereas, the second respondent has refused to accept the same on the ground that the disciplinary authority had initiated action against him. However, after some times, accepting his joining report, he was referred to the Medical Board for examination. Based on the report of the Medical Board dated 12.10.1998 that he was fit to join duty, the appellant was

allowed to join duty on 15.10.1998. While so, based on the Enquiry Officer's report, he was issued with a second show cause notice dated 20.11.1998 with regard to the proposed punishment of termination imposed on him and he was asked to submit his explanation. Accordingly, he submitted his explanation on 29.12.1998. Without considering the same, the second respondent dismissed him from service by an order dated 25.02.1999, against which, the appellant preferred an appeal on 25.03.1999 to the second respondent. The said appeal was dismissed on 26.04.1999 by confirming the punishment of dismissal of the appellant from service. Challenging the same, the appellant filed an Industrial Dispute in I.D. No. 369 of 1999 before the first respondent - Labour Court, which, on analysis of the entire oral and documentary evidence adduced on both sides, dismissed the Industrial Dispute, against which, the appellant preferred a writ petition in W.P. No. 32530 of 2004, which was also dismissed by the learned Single Judge, by the impugned order dated 30.08.2011. Hence, this writ appeal by the workman.

3. It is sought to be argued by the learned counsel for the appellant that the appellant went on leave for taking treatment for his persisting spinal cord problem, due to an accident occurred, while he was working in Thiruvallur Transport Corporation. Due to inadvertence, his family members failed to send the medical certificate to the second respondent and they kept it along with the medical prescriptions. However, without considering the appellant's ill health, the second respondent has imposed the capital punishment of dismissal from service on the appellant.

4. We have considered the submissions made by the learned counsel for the appellant and also perused the materials placed before us.

5. The appellant has filed the present writ appeal with a delay of more than 5 years. It is stated in the condonation of delay petition that the appellant is the sole bread winner of his family. Because of his dismissal from service, he was depressed and he has no other source of income to mobilise the fund in order to file an appeal in time. It is further stated therein that the delay has occurred, in the process of getting free legal aid. However, we are of the view that the appellant has not assigned sufficient reasons for condoning such a long delay in filing the appeal.

6. Even otherwise, the perusal of the order impugned herein would reveal that taking note of the past conduct of the appellant that he was in habitual absenteeism from his duty and thereby, he caused loss to the Exchequer of the Transport Corporation, the learned single Judge dismissed the writ petition filed by the appellant and confirmed the award of the Labour Court in dismissing the appellant from service. While doing so, it has been observed as follows:

"The learned counsel appearing for the petitioner contended that the petitioner has been imposed with the capital punishment of dismissal from service for his unauthorized absenteeism. The facts of the case is completely different and in as

much as the records show that the petitioner has made bad history by frequently making unauthorized absence without prior permission and thereby the respondent corporation was unable to run the buses to the respective routes by making temporary appointment from other casual drivers on some of the occasion due to sudden absence of the petitioner from duty. So, the respondent Corporation was not even able to run the buses and hence this has caused much inconvenience to the general public. Therefore, as mentioned earlier, he had on four occasion suffered punishments i.e., on the first occasion, postponement of increment for a period of two years; on the second occasion, postponement of increment for one year; on the third and fourth occasions, he had suffered with punishments of postponement of increment for one year with cumulative effect. Therefore, on perusal of the previous history of the petitioner, this Court is of the view, the petitioner can not be shown any sympathetic consideration to interfere with the impugned award of punishment. When the Labour Court had rightly held that the punishment imposed against the petitioner is not disproportionate to the proved charges, this Court sitting under Article 226 of the Constitution of India, cannot interfere with the impugned award passed by the Labour Court."

The aforesaid view of the learned single Judge, in our considered opinion, is perfectly correct and the same does not call for any interference by this Court.

7. Though the learned counsel for the appellant would appeal to this Court to relinquish the back wages for the delay period, in the event of the appellant being succeeded in this appeal, we do not find any merit in this case, as there is no ground made out by the appellant at least for condoning the delay in filing the appeal.

8. Resultantly, the writ appeal SR and the petition seeking delay condonation are dismissed. No costs.