
(2014) 12 MAD CK 0385

In the Madras High Court

Case No : Writ Petition No. 23175 of 2012 and M.P. No. 1 of 2012

The Managing Director, Tamil Nadu State Transport Corporation Ltd.

APPELLANT

Vs

V. Radhakrishnan

RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 17B, 18(1), 2A(2)

Citation : (2014) 12 MAD CK 0385

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Judgement

C.S. Karnan, J.—The petitioner / respondent / Transport Corporation has filed the above writ petition against the order passed in I.D.No. 31 of 2007, on the file of Labour Court, Cuddalore.

The short facts of the case before the Labour Court are as follows:-

2. The petitioner / Radhakrishnan was working as a Conductor in Chola Roadways Corporation, Kumbakonam Branch in the year 1986. Now, the said Corporation is renamed as Tamil Nadu State Transport Corporation, Kumbakonam Division - I. The petitioner was removed from service on 25. 11.1995 due to medical grounds and thereafter he was offered employment once again at the same Branch since 24.05.1996. On 18. 02.1997, he was transferred to Chidambaram, without assigning any reason. The petitioner was suffering from Urinal stone problem, which was informed to the Depot Manager of Chidambaram Branch, through leave letter supported with medical documents. It was accepted and medical leave was also granted to him. After medical leave, the petitioner / Radhakrishnan joined duty and was reporting to work sincerely. But, after 23.07.1999, he was denied duty for the period of 23 days for which, no reason was given and no justification was done. He was allowed to resume work after 15th August 1999 and suddenly he was issued with termination order by the Management on 23.09.1999 stating that the petitioner / Radhakrishnan

was irregular to work. The General Manager relied on the enquiry report furnished by the Enquiry Officer, which was conducted unfairly thereby violating the principles of natural justice. The petitioner was not at all given an opportunity to make his representation to defend the case in the enquiry and his plea of ill health was not at all considered. The petitioner made several representations to the Corporation to reinstate him. Since there was no response on the side of the Corporation, the petitioner sent a grievance petition to the Chief Minister's Cell for which the Corporation made a reply to the Chief Minister's Cell with a copy to the petitioner dated 09.06.2004 stating that he cannot be reinstated. The petitioner issued a lawyer's notice to the Corporation on 12.07.2004 stating the above facts and claimed employment with back wages. The Corporation did not give any reply. The petitioner filed an Industrial Dispute Petition before the Labour Officer, at Thanjavur for conciliation. But, the Corporation denied the employment for the petitioner. The Labour Officer sent a failure report on 02.02.2006. Hence, the petitioner filed the Industrial Dispute petition in I.D.No. 31 of 2007 before the Labour Court, Cuddalore to reinstate him with continuity of service and with back wages .

3. The respondent / Transport Corporation has filed a counter statement in I.D.No. 31 of 200 and resisted the same. It was stated that the petitioner / V.Radhakrishnan was working as conductor in the Corporation from the year 1986. Since the petitioner was absent continuously for long periods, he was terminated from service on 30.01.1995. Then, the petitioner joined duty as temporary conductor on 24.05.1996. Again, the petitioner was absent without any intimation and the petitioner was punished several times. The petitioner was absent for 18 days in April 1998, 14 days in May 1998, 8 days in June 1998, and 6 days in July 1998 without any intimation, leave letter and permission. Hence, a charge memo was issued to the petitioner on 06. 05.1998. The petitioner did not submit any explanation. Therefore, the Corporation ordered to conduct a Domestic Enquiry. Domestic enquiry was conducted on 24.07.1998 and the petitioner admitted the charges. Sufficient opportunity was given to the petitioner to produce evidence and documents. But, the petitioner stated that no evidence and no documents are available with him. The petitioner also gave a statement. The Domestic Enquiry officer filed his report stating that the charges against the petitioner were proved. The Domestic Enquiry was held in a fair and proper manner. Then show cause notice was sent to the petitioner. The petitioner also gave an explanation. On considering Domestic Enquiry report and the past records of the petitioner, the Corporation passed dismissal order dated 23.09.1999. The petitioner also filed Industrial Dispute Petition before the Labour Officer, Thanjavur. He also filed his failure report dated 02.02.2006 and the Industrial Dispute Petition was filed after three days from the date of dismissal. Hence, the Corporation prayed before the Labour Court to dismiss the Industrial Dispute Petition.

4. The Labour Court had framed an issue and on recording the oral evidence of both parties and perusal of the exhibits marked by both parties, was pleased to

allow the Industrial Dispute Petition in part and observed that the employee / V.Radhakrishnan is entitled for reinstatement with continuity of service only and further observed that the employee / V.Radhakrishnan is not entitled for back-wages and other attendant benefits.

5. Aggrieved by the above said order, the respondent / Transport Corporation has filed the above writ petition.

6. The petitioner herein / Transport Corporation in their affidavit has stated as follows:-

The petitioner submits that the first respondent / employee joined as a Conductor in the petitioner-Management in the year 1986. Since the first respondent was continuously absent for a long period, the first respondent was terminated from service on 30.01.1995. Even thereafter, the first respondent joined as a temporary conductor on 24.05.1996 under 18(1) Settlement of the Industrial Disputes Act, 1947. Even thereafter, the first respondent was a chronic and habitual absentee and he suffered various punishments for the above said misconduct. The first respondent was unauthorizedly absent for a long period of 18 days in April 1998, 14 days in May 1998, 8 days in June 1998, 6 days in July 1998 without any intimation or with proper leave applications. For the above said misconduct, charge memo was issued on 06.05.1998 and the first respondent did not submit any explanation to the charges. Thereafter, domestic enquiry was conducted against the first respondent. The first respondent participated in the enquiry on 24.07.1998 and admitted the charges. The first respondent discarded the opportunity for examination of witnesses and production of documents by admitting the guilt. The Domestic Enquiry Officer gave his findings vide his report dated 27.07.1998 concluding that the charges were proved. Pursuant to the same, a second show cause notice dated 01.10.1998 was issued to the first respondent.

7. The petitioner / Transport Corporation further submits that an explanation was offered by the first respondent and since the explanation was not satisfactory, the first respondent was dismissed from service on 23. 09.1999. Thereafter, the first respondent raised an Industrial Dispute before the Labour Court, Cuddalore in I.D.No. 31 of 2007 as under Section 2A(2) of the Industrial Disputes Act, 1947 seeking for reinstatement with continuity of service with back wages and other attendant benefits. The petitioner refuted the contentions of the first respondent-workman as false and the charges were proved beyond any suspicion. The petitioner raised the contentions that there was an admission of guilt and there was no grounds for the Labour Court to interfere with the punishments. Thereafter, on production of the documents on either side, the Labour Court, by concluding that the enquiry was conducted in a fair and proper manner, proceeded with the charges and passed the award dated 30.03.2011 in favour of first respondent, partially that "the petitioner is entitled for reinstatement with continuity of service, the petitioner is not entitled for back wages, and other attendant benefits." The Labour Court despite holding the charges to be proved,

has proceeded on a misplaced sympathy of awarding the reinstatement. The Labour Court has exercised its power in a sympathetic manner rather in a judicial manner. Under the circumstances, the petitioner/ Corporation has filed the above writ petition.

8. The highly competent counsel Mr.P.Paramasivadosh appearing for the petitioner / Transport Corporation submits that the first respondent joined as a Conductor in the year 1986. From the date of joining, he was continuously absent for long periods. Hence, he was terminated from service on 30.01.1995. Thereafter, he was permitted to join as temporary conductor on 24.05.1996 under 18(1) Settlement of the Industrial Disputes Act, 1947. Thereafter also, the employee was a chronic and habitual absentee and he had suffered various punishments for his misconduct. The highly competent counsel further submits that the employee was unauthorizedly absent for a long period of 18 days in April 1998, 14 days in May 1998, 8 days in June 1998, and 6 days in July 1998 without any intimation or proper leave applications. Because of his lack of service, the petitioner-Management had issued a charge memo on 06.05.1998 and the employee did not submit any explanation to the charges. Thereafter, a detailed domestic enquiry was conducted against the said employee and he was punished in the domestic enquiry on 24.07.1998 as he had admitted the charges which had been levelled against him and he had admitted his guilt. Hence, the second show cause notice was issued on the employee on 01.10.1998 to offer an explanation. The employee also filed explanation on the second show cause notice, which was not satisfactory. Hence, the first respondent was dismissed from service on 23.09.1999.

9. The highly competent counsel appearing for the petitioner further submits that employee / V.Radhakrishnan had filed an Industrial Dispute in I.D.No. 31 of 2007 as per Section 2A(2) of Industrial Disputes Act, seeking for reinstatement with continuity of service with back wages and other benefits. He further submits that the Labour Court had erroneously allowed the said case in part and directed the Management to reinstate him. Actually, the Industrial Dispute is not maintainable since the employee categorically admitted his guilt. The petitioner / Transport Corporation is operating transport for public convenience. Therefore, the duty of the Corporation is to provide effective transport service to the general public. Hence, the Management dismissed the first respondent / employee from service since he had committed serious lapse in performing his duty, especially through his unauthorized absence on various occasions and the same was proved at the time of domestic enquiry, in the presence of the employee, who admitted his guilt. As such, there is no lacuna in the impugned proceedings of the Management and as such, the dismissal order dated 23. 09.1999 is an appropriate order for execution. The highly competent counsel further submits that the Labour Court had partly allowed the said case based on an erroneous view. He has cited a judgment reported in Mahindra and Mahindra Ltd. Vs. N.B. Naravade etc., , wherein, the Hon"ble Supreme Court observed that the punishment of dismissal from service is appropriate in order to maintain the

harmony of employment. Hence, the highly competent counsel entreats the Court to allow the above writ petition.

10. The highly competent counsel appearing for the petitioner further submits that the erring employee had been punished 19 times under various irregularities committed by him, viz., unauthorized absence, shortage of daily collections, not issuing tickets after collecting money from the passengers, bus not operated on time and non stopping of the bus at the scheduled stops. The allegations were proved through domestic enquiry. Therefore, the employee's inefficiency of service is not only conducive but not required by the Corporation since the Corporation ought to offer essential service to the general public. Hence, the impugned order is not fit for execution.

11. The highly competent counsel Mr.M.V.Muralidaran appearing for the first respondent / employee submits that the employee had been appointed in the year 1986 as a Conductor with the petitioner's Transport Corporation. The mode of appointment was through Employment Exchange and he had been offered the post of Conductor under the Reservation Category since he belongs to the Scheduled Caste. Further, the Management had imposed punishment on 19 occasions without conducting comprehensive enquiry. On one occasion, he had taken out the bus from the Depot 20 minutes in advance for which, the driver was responsible. The allegation regarding shortage of collection was not proved. Therefore, no recovery proceedings had been initiated against the employee. Regarding the other allegations of the employee not issuing tickets and the allegation that he had collected fare from the passengers and not issued tickets, no proof has been let in as no independent witnesses were produced and the concerned passengers were not examined and as such, the Management's decision was one sided and arbitrary. The petitioner's post is still vacant and has to be filled up by appointment of another SC employee. This post cannot be merged with any other caste category of employees. Further, the petitioner's physical condition was not normal since he was suffering from the problem of stone in his bladder. Therefore, he applied for leave along with medical document. Now, the employee's physical condition is perfectly well to render prompt service to the satisfaction of his superiors as well as the public in general. The employee is now nearing the age of 53 years and his family members are totally depending upon his earning since he is the sole breadwinner of the family. The petitioner's prayer was reinstatement, payment of back wages and other attendant benefits with continuity of service, but the Labour Court had granted relief only for reinstatement with continuity of service. The petitioner had joined service as a Conductor in the year 1986 and he was dismissed from service on 23.09.1999 and as such, the petitioner had tendered service for a total period of 13 years. His dedicated and sincere service cannot be overlooked. Therefore, the Labour Court had granted continuity of service with reinstatement. Considering that the first respondent / employee being a permanent employee under the Management, as per Section 17B of the Industrial Disputes Act, the employee is entitled for monthly salary from the date of filing the above writ petition, since

the Management has not complied with the Labour Court's order i.e., reinstatement. Therefore, the highly competent counsel entreats the Court to dismiss the above writ petition.

12. From the above discussion, this Court is of the view that:-

(i) The employee / first respondent herein had joined service in the year 1986 as a Conductor under the Corporation and he was dismissed from service on 23.07.1999 and at that point of time, he was a permanent employee. One of the allegations levelled against the employee by the Corporation is that the employee was continuously on unauthorized absence. However, his absence has neither been willful nor wanton but due to his adverse health condition and in order to prove the same, the employee had marked relevant medical records before the Labour Court as Ex.W3. Therefore, the dismissal order passed by the Management / Corporation can only be taken as the highest punishment, which is not only detrimental to the welfare of the employee, but also detrimental to his innocent family members, who are totally dependant upon him for their livelihood.

(ii) The employee was originally appointed under the reservation category since he belongs to Scheduled Caste. As on date, the said post had not been filled up by appointing another Scheduled Caste qualified employee. Now, the employee is nearing the age of 53 years and as such, his period of superannuation will be reached in another two years and as such, if the Management reinstates him with continuity of service, as per Labour Court Order, the Management / Transport Corporation will not be put into hardship. At the same time, if the employee is denied re-employment, the employee and his family members livelihood would be affected.

(iii) The employee's service is countable and his service i.e., reinstatement is considered appropriate in the instant case. Therefore, the findings given by the Labour Court, Cuddalore, is fit to be carried out.

(iv) The State Transport Corporation can file an appeal against this Court's order, if it is not satisfied. However, in the event of filing of an appeal, the Management should pay the last drawn pay salary of the employee relating to the month of August 1999 with effect from 1st June 2012, till date. Thereafter, the Management has to pay the monthly salary till the Hon'ble Division Bench passes the order on the above appeal.

13. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on either side and on perusing the impugned order of the Labour Court and this Court's view mentioned above as (i) to (iv), this Court dismisses the above writ petition. Consequently, the impugned award passed in I.D.No. 31 of 2007, on the file of Labour Court, Cuddalore dated 30.03.2011 is confirmed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.