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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.NO.33795 OF 2012

The Management,
Tamilnadu State Transport Corporation Ltd.,
Kumbakonam Limited,
Trichy.

... Petitioner

Vs.

1. D.Anandhan

2. The Joint Commissioner of Labour (Conciliation),
D.M.S. Compound,
Chennai 600 006.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records of the 2nd Respondent made in Approval Petition No.77 of 2004, dated 23.05.2011, and to quash the same as illegal and against the provisions of the Industrial Disputes Act, 1947.

For Petitioner : Mr.L.Ramanathan
for Mr.D.Venkatachalam

For 1st Respondent : Mr.V.Ajoy Khose

O R D E R

Petitioner/Transport Corporation has come up with this Writ Petition challenging the order dated 23.05.2011 passed by the 2nd Respondent in rejecting their Approval Petition in A.P.No.77 of 2004, dismissing the 1st Respondent/employee from service.

2. The 2nd Respondent/Authority has come to the conclusion that, there is no evidence, muchless legal evidence against the 1st Respondent/employee and that, the enquiry conducted is against the principles of natural justice and that, proper finding has not been rendered in the domestic enquiry. When the domestic enquiry is bad, it is open to the Authority to take fresh evidence by giving an opportunity to the employer to establish charges against the employee in the light of the



judgment rendered by the Apex Court in the case of John D' Souza vs. Karnataka State Road Transport Corporation reported in (2019) 18 SCC 47. However, when there is no plea by the employer that, in case, the domestic enquiry is not fair and proper, they must be given an opportunity to let in evidence, in the light of the Apex Court decision in the case of Shankar Chakravarti vs Britannia Biscuit Co.Ltd reported in 1979 SCC (3) 371.

3. It is seen that, no plea has been taken by the employer that, he must be given an opportunity to let in evidence, in case, domestic enquiry is held to be not fair and proper. Remanding the matter at this stage after a lapse of ten years is not going to serve the purpose, as the employee was punished for going on leave for 40 days. Even assuming that, the Approval Petition is accepted, the employee is entitled to raise a dispute under Section 2(A) of the Industrial Disputes Act, 1947 and the date of dismissal will become final, only when it gets merged with the order of the Approval Authority and till such time, the employee cannot be deprived of approaching the Court on the ground that, he has not raised the dispute within three years, moreso in the light of the order dated 30.07.2021 passed by this Court in W.P.No.6850 of 2017. In any event, the Petitioner/Transport Corporation is a 'State' within the meaning of Article 12 of the Constitution of India. Further, a reading of the order passed by the Authority reveals that, the employee has not wilfully and intentionally availed leave.

4. With regard to the misconduct pertaining to unauthorized absence, the Apex Court in the case of Krushnakant B. Parmar v. Union of India reported in (2012) 3 SCC 178, has held as under:

"17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be willful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean willful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant.



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18. In a departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct."

5. Even though, the Approval Authority has no jurisdiction to hold that, the punishment is disproportionate, in order to give a quietus to the issue and shorten the life of litigation, while interfering with the order of the Approval Authority, this Court deprives backwages to the employee from the date of dismissal till the date of the order, on the principle of 'No Work No Pay'. Deprivation of entire backwages except towards PF contribution dues itself is a sufficient punishment. Even if it is restored and relates back, monthly wages during the pendency of the Writ Petition needs to be paid.

6. The Provident Fund dues of the employer and that of the employee shall be paid by the employer to the Provident Fund Trust without interest to enable the employee to get better pensionary and terminal benefits. This is because, the order of the Approval Authority in rejecting the Approval Petition is much better than the order of reinstatement passed by the Labour Court, as the employee is deemed to be in service till the dismissal order is restored. In the case of an Industrial Dispute being raised by the employee, the Labour Court is empowered to interfere with the punishment and grant modified relief under Section 11-A of the Industrial Disputes Act, 1947, which, this Court has done taking note of the peculiar situation of this case.

7. In the case on hand, as the employee has not attained the age of superannuation, he is expected to be provided with employment within a period of one month from the date of receipt of a copy of this order. On reinstatement, the employee shall be paid wages on par with his counterparts.

The Writ Petition is ordered accordingly. No costs. Consequently, connected M.P.No.1 of 2012 is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

(aeb)



To:

The Joint Commissioner of Labour (Conciliation),
D.M.S.Compound, Chennai 600 006.

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+1cc to Mr.D.Venkatachalam, Advocate, S.R.No.37091

+1cc to Mr.V.Ajoy Khose, Advocate, S.R.No.37167

W.P.No.33795 of 2012

PCH (CO)
CS/13/10/2021