

K.Sankaran Vs. Presiding Officer of I Additional Labour Court

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Court : Chennai

Decided On : Aug-12-2013

Judge : C.S.Karnan

Appellant : K.Sankaran

Respondent : Presiding Officer of I Additional Labour Court

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

12. 08/2013 CORAM THE HONOURABLE MR.JUSTICE C.S.KARNAN
W.P.No.46439 of 2002 K.Sankaran .. Petitioner Vs. 1.The Presiding Officer, I
Additional Labour Court, High Court Compound, Chennai - 600 104. 2.The
Managing Director, Tamil Nadu State Transport Corporation, (Villupuram Division-
3), Kancheepuram - 631 503. .. Respondents PRAYER: Writ Petition filed under
Article 226 of the Constitution of India for a Writ of Certiorari, to call for the records
from the files of the first respondent in I.D.No.679 of 1997 and quash the
impugned award passed therein dated 18.07.2000 in so far as it has denied and
negatived the claim of the petitioner for reinstatement in service, with continuity of
service, with back wages and with all other attendant and consequential benefits.
For Petitioner : Mr.K.M.Ramesh Mr.K.Viswanathan For Respondents :
Mr.V.R.Kamalanathan Mr.V.V.Krishna for R-2 - - -

ORDER

The brief facts of the case are as follows:- The petitioner submits that he joined the services of M/s.Pallavan Transport Corporation as Conductor in 1976. Due to bifurcation of routes, his services were taken over by the second respondent herein, viz., the Managing Director, Tamil Nadu State Transport Corporation. He was working in Trivellore Depot with Staff No.60464. He submits that due to his sudden illness, he could not report for his duty from 25.10.1994. However, he sent a message about his illness to the Branch Manager, thereafter, he reported for duty on 23.11.1994 and he was denied work and it was stated that he had unauthorizedly absented from duty without prior intimation and he was asked to show cause as to why disciplinary action should not be taken against him. Due to his illness, he did not submit any explanation to the said show cause notice. The second respondent-Management ordered an enquiry into the charge of unauthorized absence. During the course of inquiry, he denied the charges before the inquiry officer, thereafter, he was restored to his normal duty.

2. The petitioner further submits that while he had been discharging his duties as usual he was issued with a show cause notice dated 05.06.1996 asking him to show-cause as to why he should not be removed from service for his unauthorized absence from 28.04.1996 onwards. He submitted his explanation stating the reason for his absence and he stated that it was not correct to say that he was unauthorizedly absent but that he had intimated about his illness. Notwithstanding that the second respondent-Management, by order dated 25.01.1997, removed him from service stating that he had abandoned his duty. He prepared an appeal to the Managing Director of the second respondent / Management on 25.06.1997 which was turned down by order dated 11.08.1997.

3. The petitioner further submits that challenging his non-employment, he raised an Industrial Dispute under Section 2-A(1) of the Industrial Disputes Act, 1947 and the same was taken as I.D.No.679 of 1997, on the file of first respondent / Labour Court. Before the first respondent /Labour Court, no oral evidence was let in on either side and exhibits M-1 to M-10 were marked on the side of the second respondent-Management. Upon erroneously appreciating the documentary evidence available before him, the first respondent has passed the impugned award dated 18.07.2000 holding that his non-employment is justified and has

dismissed his Industrial Dispute. Hence, the writ petitioner filed the above writ petition for reinstatement and with continuity of service, with back wages and all other attendant and consequential benefits.

4. The learned counsel for the writ petitioner has contended that the writ petitioner joined with the second respondent-Management as a Conductor in the year 1976 and that he had rendered his services as a conductor without any adverse remarks, upto 24.10.1994. Due to sudden illness, he could not attend his duties from 25.10.1994 to 23.11.1994, however, the petitioner had sent due intimation about his illness supported by medical certificate. The learned Labour Court judge failed to note that in the domestic enquiry, the witnesses examined on the side of the second respondent-Management admitted that they were not aware as to whether the petitioner had submitted a medical certificate in support of his illness to one Mr. Shanmugam, Controller of Tiruvellore Depot. While it is a case of the petitioner that he had submitted a medical certificate for his illness to the Controller, it is the duty of the second respondent-Management to prove by examining the said person viz., Shanmugam that no such medical certificate was submitted by the petitioner. In the absence of a clear-cut denial, the learned Judge of the Labour Court ought to have accepted the plea of the petitioner that he was not on unauthorized absence and it was only authorized absence since medical certificate had been submitted before the Controller of Tiruvellore Depot, who is the authorized person to speak regarding petitioner's medical certificate and intimation and therefore, the second respondent-Management had not proved the charges. The learned counsel further submitted that the findings of the inquiry officer holding the petitioner guilty of the charges, is against law, since it was not decided on merits and no discussion was made about the medical certificate of the petitioner whatsoever. The petitioner was not on unauthorized absence, but he was on authorized absence after intimation to the competent authority of the Management regarding his illness. The petitioner has been removed from service due to unauthorized absence from 25.10.1994 to 23.11.1994, which is the cause of action in this case. On the basis of this issue, the petitioner was dismissed from service, which is an unjust, harsh punishment imposed on the petitioner who was a permanent employee, who had worked under the management for the past 18 years. The Management's additional allegation that his past records are not good

have also not been established. Further, the learned Labour Court judge failed to exercise the power vested with him under Section 11-A of Industrial Disputes Act, 1947.

5. The learned counsel for the second respondent / Transport Corporation argued that the petitioner had stopped at non-stopping spots and shown shortage of collection amount, not reporting for duty, late intimation regarding bus break down and repairs for which sufficient caution was given, and besides this, he was warned and fine was also imposed on him. The highly competent counsel further submitted that the petitioner was dismissed from service from 25.01.1997, after sending a show cause notice dated 23.11.1994 was issued to him and the same was received by the petitioner on 01.12.1994. After receipt of the said notice, he had not submitted any explanation and was not willing for a domestic inquiry. However, a domestic inquiry was conducted and the petitioner also participated in it and finally the charges were proved against the petitioner and the inquiry report was submitted by the inquiry officer and on the basis of this inquiry report, the petitioner was dismissed from service on 25.01.1997 since the petitioner caused hardships to the respondent's administration i.e., bus operation rendered for public.

6. The very competent counsel appearing for the second respondent further submitted that the learned Labour Court judge after framing two issues on the basis of averments of both parties and hearing the arguments of both sides learned counsels and on perusing the documents marked by the Management, dismissed the petition in I.D.No.679 of 1997, on 18.07.2000. Therefore, the case has been decided on merits by the Labour Court. The learned counsel further submits that after a domestic inquiry, he was permitted to join duty and thereafter, the petitioner had not reported for duty from 06.12.1996, without applying for leave and hence, he was dismissed from service. While the petitioner was in service, he had committed 36 violations and in spite of cautions issued to him, he had not rectified himself. As the petitioner had been negligent, insufficient in service and dishonest, he was dismissed from service since his attitude caused hardship to the management Corporation that endeavours to render transport facilities to the general public devoid of hitches. It is further submitted that the learned Labour

Court Judge after well considering the exhibits marked by the management, dismissed the petitioner's application since the exhibits marked clearly disclosed the irregularities and punishments imposed on the petitioner and only then, the petitioner's case was dismissed on the basis of documentary fact.

7. Per contra, the learned counsel for the petitioner submits that no show cause notice or any preliminary notice or a domestic inquiry was conducted by the management to prove the Management's current allegation that he was on unauthorized absence from 06.12.1996. The learned counsel further submits that only on the basis of an earlier domestic inquiry, he was dismissed from service on 25.01.1997. Therefore, the petitioner's fundamental and personnel rights have been violated by the Management, therefore, dismissal order of service is not sustainable under law, as it is against the principles of natural justice.

8. From the above discussions, this Court is of the view that :- (i) the petitioner was dismissed from service for the reason of his unauthorized absence without prior intimation from 06.12.1996 and that his dismissal was associated with the previous domestic inquiry which is pertaining to unauthorized absence from 25.10.1994 to 23.11.1994. Hence, the Management / second respondent herein ought to have conducted a domestic inquiry after issuing a show cause notice and after obtaining an explanation from the petitioner and only after finding the explanation not satisfactory, only then the Management could have passed appropriate order. But, in this case, the second respondent herein had not followed, an ethical procedure since the petitioner was considered on unauthorized absence from 06.12.1996 and therefore, the impugned order of dismissal from service dated 25.01.1997 is not sustainable as per law since no opportunity was provided to the petitioner to explain his absence from duty from 06.12.1996. Therefore, this Court is of the view that the petitioner's fundamental and personal rights has been affected. As such, the impugned order of the second respondent is against the principles of natural justice. (ii) as per the affidavit of the petitioner it is seen that the petitioner is now aged over 63 years and as such, he has crossed the superannuation retirement and therefore, reinstatement could not be granted. (iii) The petitioner is not entitled to get full back-wages, continuity of service and other attendant benefits, since the petitioner was warned on 7 occasions and out of the 16 charges framed against

him, it is seen that he was imposed penalty on five different occasions and his increment was postponed for six months on three occasions. (iv) However, the petitioner is a permanent employee and he was not given an opportunity to give his explanation, before his dismissal from service due to unauthorized absence from 06.12.1996. Without obtaining an explanation and without a Departmental inquiry, the dismissal from service is too harsh. Under the circumstances, this Court is inclined to grant an alternative remedy to the petitioner and as such, this Court is inclined to grant relief to the petitioner and holds that he is entitled to receive a minimum of 25% in back-wages from the date of dismissal till the date of his superannuation period, in the interest of justice and equity.

9. On considering the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the order of the labour Court, and the impugned order of the second respondent and this Court's view listed above, the above writ petition is partly allowed and the second respondent herein is directed to pay 25% back-wages to the petitioner from the date of removal from service till the date of his superannuation period as it is found to be appropriate in the instant case.

10. In the result, the above writ petition is partly allowed. Consequently, the order passed in I.D.No.679 of 1997, on the file of I Additional Labour Court, Chennai, dated 18.07.2000 is modified. There is no order as to costs. Accordingly ordered. r n s To 1.The Presiding Officer, I Additional Labour Court, High Court Compound, Chennai - 600 104. 2.The Managing Director, Tamil Nadu State Transport Corporation, (Villupuram Division-3), Kancheepuram 631 503

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