

(2007) 09 MAD CK 0200**Madras High Court****Case No:** W.A.No. 3083 of 2001

D. Sivasankaran

APPELLANT

Vs

Nesamony Transport
Corporation Limited

RESPONDENT

Date of Decision: Sept. 7, 2007**Hon'ble Judges:** R. Banumathi, J; F.M. Ibrahim Kalifulla, J**Bench:** Division Bench**Advocate:** S. Subbiah, for the Appellant; Kala Ramesh, for the Respondent**Final Decision:** Dismissed**Judgement**

F.M. Ibrahim Kalifulla, J.

The Appellant is aggrieved by the order of the learned Single Judge dated 08.06.2000 in W.P.No. 11597 of 1993.

2. The Applicant was originally employed in Kattabomman Transport Corporation Limited and on bifurcation of the said Corporation, he came to be employed under the Respondent-Corporation. While, he was in service of Kattabomman Transport Corporation Limited, No Objection Certificate was issued permitting the Appellant to seek employment in Arabian Countries. He was also issued with another "No Objection Certificate" by the said Corporation to enable him to secure a passport in his favour. The Appellant's services were transferred to the Respondent-Corporation on and from 01.04.1983. It is stated that the Overseas Man Power Corporation Limited through whom the Appellant applied for Overseas employment offered the post of "Vulcaniser" in the Country of Libya in its offer dated 21.02.1986, The confirmation of his flight to Libya was also intimated to the Appellant by the said Overseas Man Power Corporation Limited on 07.10.1986.

3. Though, the Appellant thus secured an employment in a Foreign Country, he did not disclose the same to the Respondent-Corporation, instead, he is stated to have applied for Medical Leave from 16.10.1986 without even a Medical Certificate as

stipulated in the Standing Orders. The Respondent-Corporation granted him leave upto 29.10.1986 to which he was eligible. Since, there was no leave to his credit and since his absence from 30.10.1986 was unauthorized, he was directed to appear before the Medical Officer. The Appellant failed to do so and therefore, he was issued with a chargesheet dated 9.1.2007 for his absence without prior permission and without producing Medical Certificate with effect from 30.10.1986 and for related misconducts in connection with such unauthorized absence. The charge memo sent by registered post was also returned by the Postal Authorities with an endorsement "Addressee went to Madras and residents refused to give address". The copy of charge memo was exhibited in the Notice Board. As there was no explanation from the Appellant, a Domestic Enquiry was ordered to be held on 10.02.1987. The Notice for holding the Domestic Enquiry was also sent by Registered Post, which was again returned by the Postal Authorities with an endorsement "Left India, Returned to Sender". To give one more opportunity, the enquiry was adjourned to 19.02.1987 and a fresh Notice was sent, which again came back with an endorsement "Left India". The copies of the Notices were exhibited in the Notice Board and since, the Appellant failed to attend the enquiry and since, enough opportunity was extended to him, the enquiry was held in his absence on 19.02.1987.

4. Based on the evidence let in the enquiry, the Enquiry Officer gave his findings holding that the charges were conclusively proved. Based on the findings of the Enquiry Officer, a second Show Cause Notice proposing the punishment dated 24.02.1987 was sent to the Appellant, which was also returned by the Postal Authorities with an endorsement "Left India". It is in the above stated background, the final order of dismissal dated 03.03.1987 came to be issued. Thereafter, the Appellant for the first time came with a representation on 05.03.1992, claiming reinstatement with continuity of service. The Respondent-Corporation by its communication dated 18.08.1992 intimated to the Appellant that irrespective of the order of dismissal, the Respondents-Corporation was prepared to offer fresh employment to the Appellant and that since, he was not inclined to accept the same, there was no scope to countenance his claim for reinstatement with continuity of service. It is as against the said order dated 18.08.1992, the Appellant preferred the present Writ Petition.

5. In the light of the above factual circumstances narrated above, the learned Single Judge in the order dated 8.6.2000 in W.P.No. 11597 of 1993 has held as under:

7. Now, I would like to examine the case of the writ petitioner. The writ petitioner came to understand that he got better employment in foreign countries than the respondent Management Corporation and economic condition would be fair and that without obtaining the permission of the respondent Management, he left for abroad and worked there and subsequently returned to his mother country and sought for employment. In the meanwhile, the respondent Management terminated

his services without giving any opportunity to attend before the enquiry. Now the stand of the petitioner that he left for abroad with a permission of respondent Management has been denied by the Management in the counter and the petitioner did not show or file any document before this Court to the effect that he obtained permission to leave the country to get better employment in gulf countries. He did not file any order with regard to the sanction of leave by the respondent Management, but the defence taken by the writ petitioner is that he left for foreign countries with the permission of Management is without any basis. If the petitioner left the foreign countries with the permission, certainly he could file the document to that extent, but his defence is not supported by any valid document. On the other hand, the Management made out a case in its favour that notice was sent to the petitioner to appear before the enquiry and the notice was returned unserved that the petitioner is not available at first round and he went for gulf countries at second round. Therefore in view of the facts and circumstances, there is no alternative for the Management except to conduct the enquiry. The petitioner did not appear before the enquiry officer as he is not available in the country, there is no obligation for the management except to pass such as order.

8. In view of the facts and circumstances, I am of the clear view that the termination order, passed by the respondent against the petitioner needs no interference and there is no error on the part of the same order even according to the service rules. No relief can be granted in the nature of the present case and the point is therefore accordingly answered.

6. We also bestowed our earnest consideration to the claim of the Appellant and we are also fully satisfied that the Appellant having chosen to arrange his affairs by securing employment in Foreign Country without due intimation and without getting necessary permission of the Respondent-Corporation, he was disentitled to seek for reinstatement after he found out that the Foreign employment was not suitable to him. The employees cannot be permitted to arrange their affairs in such fashion denors the Rules and Regulations prescribed by the Respondent-Corporation. If such individual's whims and fancies are permitted to be encouraged, that would cause serious inroads into the Administration of the Respondent-Corporation and therefore, Courts cannot take any sympathetic view in such matters.

7. In any case, we find that irrespective of the Appellant's conduct in having left the employment of the Respondent-Corporation in the year 1986 without getting the proper permission of the Respondent-Corporation, when they came forward to provide him employment afresh, the Appellant for reasons best known to him declined such a golden opportunity extended to him. Therefore, it is too late in the day for the Appellant to now claim for the relief of reinstatement with continuity of service in the Respondent-Corporation, to which, he is neither legally nor morally entitled to. Looking at from angle, we do not find any justification or any legal right

in the Appellant to claim for reinstatement with continuity of service or to question the order of dismissal passed against him.

8. Therefore, we do not find any merit in the Writ Appeal. This Writ Appeal fails and the same is dismissed. No costs.