



W.P.No.25880 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.06.2023

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.25880 of 2011

T.Rajamanickam

... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram Div-3),
Kanchipuram.

2.The Presiding Officer,
II Additional Labour Court,
Chennai.

... Respondents

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records of the second respondent in I.D.No.234 of 2004 dated 07.01.2011 and quash the same and direct the first respondent to reinstate the petitioner with backwages, continuity of service and all other consequent benefits.

For Petitioner : Mr.T.E.Ekambaram

For Respondent 1 : Mr.M.Aswin

For Respondent 2 : Labour Court

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ORDER

The relief sought by the petitioner in this writ petition is to call for the records of the second respondent in I.D.No.234 of 2004 dated 07.01.2011 and quash the same and direct the first respondent to reinstate the petitioner with backwages, continuity of service and all other consequent benefits.

2. The facts of the case in a nutshell:

The case of the petitioner is that he was appointed as conductor on 16.05.1979 in the respondent corporation and thereafter his services were regularized in the year 1982 and Subsequently, the petitioner attained superannuation on 30.06.2012. Ever since the date of his appointment, the petitioner had put in unblemished service for the past 24 years to the satisfaction of his superiors until 17.06.2002. When all of a sudden, the petitioner was suspended from service and charge memo was issued for no fault on him. In the departmental enquiry, which was conducted by the respondent corporation, the petitioner was not given a fair opportunity to put forth his representations and the enquiry officer in a hasty manner without



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following the principles of natural justice and with a predetermined mind, concluded that the charges against the petitioner are proved and dismissed the petitioner from service with effect from 20.08.2002. Subsequently, the petitioner has raised an Industrial Dispute before the II Additional Labour court, Chennai in I.D.No.234 of 2004, wherein the Learned Presiding Officer without assessing the evidence on record, had merely given his seal of approval upholding the decision of the management by dismissing the petitioner from service. Aggrieved by this order, the petitioner has come forward with the present writ petition.

3. Learned counsel for the petitioner submitted that on 16.06.2002 at 4.30 A.M, the petitioner took a trip from Pondicherry to Chennai, wherein 19 passengers boarded the bus at Pondicherry and the petitioner issued tickets to them. Thereafter, 11 passengers (8 Adults + 3 Children) boarded the bus at Marakkanam but in the statement alleged to have been signed by the passenger witness by name Paulraj, it was erroneously stated that they had boarded the bus at Pondicherry. If so, the tickets would have been issued to them at Pondicherry itself as in the case of the above said 19 passengers. When the petitioner was about to issue tickets to the above said passengers,



the bus was intercepted by the checking officials and all of a sudden, the ticket book and the invoice was snatched from the petitioner. Thereafter, the checking Inspector demanded tickets from the above said passengers and in order to escape levy of penalty, they had falsely stated that an amount of Rs.277/- was tendered to the conductor. Thereafter, tickets were issued to the passengers by the Checking Inspector. Subsequently, the cash in the cash bag was counted by the Checking Inspector in the presence of the petitioner and a deficit of Rs.29 was detected, which is a clear manifestation of the fact that fare was not collected from the passengers.

4. Learned counsel for the petitioner further submitted that the total fare from Pondicherry to Chennai for the above 11 fare passengers works out to Rs.271.50/- but the statement of the passengers that they had tendered Rs.277/- is highly suspicious and casts incredibility on the veracity of the statement given by one of the passenger witness for which the witness ought to have been examined to prove his statement. In the absence of examination of the passenger witness, the accuracy of the fare, alleged to have been tendered by the witness could not be ascertained and consequently, the charges framed are not substantiated and therefore, the decision of the



management in terminating the petitioner from service are based on perverse finding.

5. Learned counsel for the petitioner contended that in the tickets which were seized from the passengers (bearing No.69291, 69292, 69293, and 69294) initially the fare was written as Rs.18.50/- and subsequently, the same was re-written/corrected as 28.50/- by the checking Inspector falsifies the statement that fare of Rs.277/- was tendered to the petitioner. The alteration in the tickets, deliberately done by the checking Inspector without any authentication were clear manifestation of the vindictive attitude of the Checking Inspector to fortify the false charges and to impose maximum punishment on the petitioner in order to take revenge for the wordy altercation that ensued with the Checking Inspector. Based on the discrepancies in the seized tickets, the charges were framed against the petitioner is in itself an indication that the charges are not substantiated.

6. Learned counsel for the petitioner further contended that the Checking Inspector by issuing threat to the passengers that a fine of Rs.500/-



each would be levied from them forcibly obtained the signature of the witness and the statement tendered by the passenger witness which was marked as EX-MI on the management side, written on a piece of paper clearly shows that the passengers boarded at Pondicherry and fare of Rs.277/- was alleged to have been tendered to the conductor. The alighting place of the passengers was not even stated in the impugned statement. The passenger witness were not examined properly and the above statement was fabricated by the Checking Inspector in order to impose maximum punishment on the petitioner.

7. Learned counsel for the petitioner drew the attention of this Court to the standing orders issued by the first respondent dated 30.04.2014, in which it, Section 24 deals with ACTS AND OMMISSIONS CONSTITUTING MISCONDUCT, in which

Clause 41 (a) deals with Misappropriation of Corporation's money

Clause 41 (b) deals with Non-issue of tickets after receiving fares

Clause 41 (f) deals with holding deficit cash balance of Rs.29/-

8. Learned counsel for the petitioner further drew the attention of



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this Court to the Memorandum of Settlement under Section 12(3) of the Industrial Disputes Act, 1947, reached before the Joint Commissioner of Labour, (Conciliation) Chennai, dated 13.02.1999 and the decision taken during the meetings between the representatives of the managements of the State Transport Corporations of Tamil Nadu and the federations of the Central Trade Unions, in which it is mentioned that special batta has been increased from Rs.3/- to Rs.4/- with effect from 01.09.1998 and steering allowance has been raised to Rs.5/- with effect from 01.09.1998. Hence, a total sum of Rs.9/- (5+4=9) comes under these two heads. It is pertinent to note that a sum of Rs.29/- was found deficit in the cash bag and if the aforesaid amount of Rs.9/- is deducted, the balance is Rs.20 as per Section 24, Clause 41 (f) of the standing orders. According to the standing orders dated 30.04.2014, the amount under clause 41 (f) holding deficit cash balance or holding unauthorised cash in excess of Rs.20/- and in this case, after deducting a sum of Rs.9/-, the deficit amount is only Rs.20/-. So it is not amount to misconduct as per Section 24 of the Standing Orders dated 30.04.2014. Therefore, charge under Clause 41 (f) is not maintainable.

9. Learned counsel for the petitioner further submitted that since the



charges under Section 24, Clause 41 (a) and 41 (f) does not lie, hence, the punishment of dismissal from service is disproportionate to the charges framed. As far as charges under Clause 41 (b) and non-closing of stage are concerned, the above lapse have crept in due to his ill health. The above charges under Clause 41 (b) do not warrant imposing maximum punishment of dismissal from service of the petitioner.

10. Learned counsel for the petitioner further submitted that the seized tickets bearing No.69287 to 69295 have been produced to substantiate the charge of misappropriation against the petitioner. In the said tickets bearing No's 69291 to 69294 the fare was originally written as Rs.18.50/- and then rounded off and re-written as Rs.28.50/-. In the enquiry spot, the checking inspector seized the ticket book from the petitioner and drawn the tickets and thereafter, altered the fare as admitted by management witness in domestic enquiry and this was deliberately done by the checking inspector in violation of the rules of the corporation.

11. Learned counsel for the petitioner further submitted that under RTI application, the management in its reply in Ref No.10667-
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3325/PIO/TNSTC(VPM)/2013 dated 12.11.2013 has stated as follows:

"...Alteration or making corrections in the ticket are not allowed. In case of alteration /correction the ticket should be cancelled and retain all the copies of the ticket in the ticket book itself.

Alteration in the manual ticket is not allowed. If it is found necessary disciplinary action will be taken against the conductor as per the standing order."

Hence, alteration of fare in the manual ticket is against the rules and standing orders of the management corporation.

12. The statement alleged to have been written on a piece of paper and purported to have been signed by one of the passenger by name Paulraj, it is alleged that the passengers boarded the bus at Pondicherry and tendered Rs.277/- and demanded tickets. The said statement does not even disclose the destination to which the passengers demanded tickets. Therefore, when the passenger has given a bald statement purported to have been written on a piece of paper and based upon which capital punishment of dismissal from service was imposed it is the bounden duty of the management to produce the said passenger witness to prove his statement as mandated u/s 26(vii)(c) of the sanding orders of the respondent corporation.



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13. Learned counsel for the petitioner further submitted that Violation of standing order of the respondent corporation, the management ought to have examined the passenger witness to prove the statement in departmental enquiry but failed to comply and give effect to the standing order.

“26(vii)(C) The witness to prove the acts of commissions and omissions shall be examined in the presence of the workman and the workman shall be given an opportunity to cross examine the witnesses.”

In view of the above, the findings of the enquiry officer in the departmental proceedings as well as by second respondent that the charges of misappropriation have been proved is said to be perverse.

14. Learned counsel appearing for the first respondent submitted that the charge sheet dated 16.06.2002 was issued to the petitioner, in which three charges were framed viz.,

(i) the petitioner collected a sum of Rs.271.50/- from the passengers proceeding from Pondicherry to Mahabalipuram (8 adults and 3 children) but did not issue the tickets (Rs.28.50x8 and Rs.14.50x3)

(ii) He did not fill up the trip sheet



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(iii) a sum of Rs.29 was found deficit in the bag of the petitioner

15. Learned counsel appearing for the first respondent further submitted that there were seven previous misconducts committed by the petitioner, which was mentioned in the dismissal order dated 20.08.2002, issued by the first respondent. The above misconducts includes, collecting excess money, misbehaving with the colleagues, found drunken during the duty hours, etc., for which enquiry was conducted and appropriate punishment were awarded to the petitioner, from which, it can be construed that the petitioner is an habitual offender and the punishment imposed on the petitioner is appropriate and the writ petition is liable to be dismissed.

16. In this case, three charges were framed against the petitioner vide Charge Memo dated 17.06.2002, in which Rs.271.50/- was collected from 8 adult passengers and 3 children, who boarded the bus from Pondicherry. But, the tickets were not issued by the petitioner, the petitioner has not closed the stage and maintained a deficit cash balance of Rs.29/-.

17. In regard to Charge No.1, according to the statement of



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passengers witness Paulraj, a sum of Rs.277/- was given to the petitioner and asked tickets for 8 adults and 3 children, but, the petitioner did not issued tickets and in that statement he has also stated that the petitioner will pay the remaining sum of Rs.5.50 paise. It is pertinent to extract the relevant portion of the findings of the Labour Court and the same reads as follows:

“ 13. தொ. சா. ஆ.1ல் மனுதாரர் மீதான புகார் பதிவு செய்யப்பட்டுள்ளது. அதில் மனுதாரர் நடத்துனராக பணியாற்றிய தடம் எண் 188/A-0 பேருந்தில் கடப்பாக்கத்தில் சோதனை செய்தபோது காலை 5.35 மணிக்கு எட்டு பெரியவர்கள், மூன்று சிறியவர்களுக்கான டிக்கெட் கட்டணம் ரூ.277/- மனுதாரர் பெற்றுக்கொண்டு டிக்கெட் கொடுக்கவில்லை என்றும், அதுகுறித்து கேட்டபோது மனுதாரர் ஒப்புக் கொண்டதாகவும், அதிகப்படியான கட்டணம் ரூ.5.50/- வசலிக்கப்பட்டிருந்தால் அதை பயணிகளுக்கு திருப்பிக் கொடுத்ததாகவும், மேலும் Trip sheet பதிவு செய்யாமல் பாண்டிச்சேரியிலிருந்து கடப்பாக்கம் வரை நடத்துனர் வந்துள்ளதாகவும், நடத்துனரின் பணப்பையில் ரூ.29/- குறைவாக இருந்ததாகவும் குறிப்பிடப்பட்டுள்ளது. அதை Traffic Inspector ஆக பணி புரிந்த நிக.1 மற்றும் ஒருவர் அளித்துள்ளனர். அத்துடன் பறிமுதல் செய்த டிக்கெட்கள், பயணி வாக்குமூலம், பணப்பை குறித்து அறிக்கை ஆகியவையும் இணைக்கப்பட்டுள்ளதாக குறிப்பிடப்பட்டுள்ளது. பயணி பால்ராஸ் என்பவர் அளித்த வாக்குமூலத்தில் பேருந்தில் பாண்டிச்சேரியில் ஏறிய எட்டு பெரியவர்கள் மூன்று சிறியவர்களுக்கு ரூ.277/- கட்டணம்



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கொடுத்து பயணச்சீட்டு கேட்டதாகவும் நடத்துனர் கொடுக்கவில்லை என்று கூறி கையெழுத்திட்டுள்ளார். அதில் அவருக்கு மீதி ரூ.5.50/- கொடுக்கப்பட்டதாகவும் குறிப்பிடப்பட்டு அதிலும் பயணி கையெழுத்திட்டுள்ளார். தொ.சா.2 சான்றாவணத்தில் நிர்வாகம் புகாரின் பேரில் மனுதாரரை தற்காலிக பணி நீக்கம் செய்து 17.06.2002 தேதியில் குற்றப்பத்திரிக்கை தாக்கல் செய்யப்பட்டுள்ளது, அதில் அவர் மீது மூன்று குற்றச்சாட்டுகள் கூறப்பட்டுள்ளது. அதன்பேரில் தொ.சா.4 சான்றாவணத்தில் உள்துறை விசாரணை நடத்தப்பட்டுள்ளது. அதில் நிர்வாக தரப்பில் ஆக பணியாற்றிய நிசா.1 சாட்சியம் அளித்துள்ளார். அவரை மனுதாரர் விரிவாக குறுக்கு விசாரணை செய்துள்ளார். பின்னர் மனுதாரரை நிர்வாக தரப்பில் குறுக்கு விசாரணை செய்துள்ளார். பின்னர் மனுதாரரை நிர்வாக தரப்பில் குறுக்கு விசாரணை செய்யப்பட்டுள்ளது. அதில் தன் முன்னிலையில் பயணி வாக்குமூலம் பதிவு செய்யப்பட்டது என்பதை மனுதாரர் ஒப்புக்கொண்டுள்ளார். டிக்கெட் கட்டணத்தில் மீதித்தொகை பரிசோதகர் வாங்கிக் கொடுத்ததை பெற்றுக் கொண்டதாகவும் கூறி அந்த வாக்குமூலத்தில் பயணி கையெழுத்திட்டுள்ளார் மனுதாரர் நடத்துனராக பணியாற்றிய பேருந்தில் சோதனை நடத்தி குற்றத்தை கண்டறிந்த நிசா.1 நிர்வாக தரப்பில் சாட்சியம் அளித்துள்ளார். எனவே பேருந்து ஓட்டுநர் மற்றும் பயணி ஆகிறோரை விசாரிக்காததால் விசாரணை பாதிக்கப்பட்டதாக கூறும் மனுதாரர் வாதத்தை ஏற்பதற்கில்லை. அதுபோல சாட்சியை குறுக்கு விசாரணை செய்ய வாய்ப்பு அளித்து விசாரணை நடத்தப்பட்டுள்ளது. விசாரணையில் பயணிகள் எவரையும் மனுதாரர் தரப்பில் விசாரிக்கவில்லை. பயணியை சாட்சியாக அழைப்பதில் மனுதாரருக்கே தயக்கம் உள்ளதாக



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விசாரணை அதிகாரி அறிக்கையில் கூறியுள்ளார். மனுதாரருக்கு உடல்நிலை சரியில்லாததால் கட்டணம் வசலித்தும் டிக்கெட் கொடுக்காமல் இருந்ததாக மனுதாரர் தரப்பில் தக்க ஆதாரத்துடன் நீரூபிக்கப்படவில்லை. நிசா.ஆ.8 சான்றாவணத்தில் மனுதாரர் அளித்த விளக்கத்தில் பரிசோதகர்கள் பயணிகளை மிரத்தியதால் கட்டணம் கொடுத்தும் டிக்கெட் கொடுக்கவில்லை என்று பயணிகள் கூறியதாக கூறியிருந்தாலும் அதை நீரூபிக்கவும் மனுதாரர் தரப்பில் சாட்சியம் இல்லை. மனுதாரரை பழி வாங்குவதற்காகத்தான் நிர்வாகம் பணி நீக்கம் செய்தது என்பதையும் மனுதாரர் தரப்பில் நீரூபிக்கவில்லை. அவர் தொழிற்சங்க நடவடிக்கைகளில் தீவரமாக ஈடுபட்டார் என்பதற்கும் ஆதாரம் இல்லை நிசா.ஆ.7 சான்றாவணத்தில் மனுதாரரின் கடந்த கால பணி வரலாறு எதிர்மனுதாரரால் கூறப்பட்டுள்ளது. அதில் கோப்பு எண்கள், குற்றச்சாட்டு, மனுதாரர் அளிக்கப்பட்ட தண்டனைகள் ஆகியவை தெளிவாக குறிப்பிடப்பட்டுள்ளன. மனுதாரர் கடந்த கால பணியில் ஏழுமுறை அவருக்கு தண்டனை வழங்கப்பட்டுள்ளது.”

18. In regard to Charge No.3, i.e., a sum of Rs.29/- was found in deficit in the cash bag of the petitioner. It is pertinent to mention that as per Section 24, Clause 41 (a) and 41 (f) of the Standing Order dated 30.04.2014 of the first respondent/corporation deals as follows:

Section 24 deals with ACTS AND OMISSIONS CONSTITUTING MISCONDUCT, in which



Clause 41 (a) deals with Misappropriation of Corporation's money

Clause 41 (f) deals with holding deficit cash balance of Rs.20/-

19. In regard to the above two misconducts, Section 24, Clause 41 (a) – misappropriation of money has been proved as per the evidence of the passenger witness viz., Paulraj, who has been examined as M.W.1 and he has also cross examined by the petitioner. The relevant portion of the findings of the Labour Court has also been extracted supra.

20. In regard to Section 24, Clause 41 (f), according to the Memorandum of Settlement under Section 12(3) of the Industrial Disputes Act, 1947, reached before the Joint Commissioner of Labour, (Conciliation) Chennai, dated 13.02.1999 and the decision taken during the meetings between the representatives of the managements of the State Transport Corporations of Tamil Nadu and the federations of the Central Trade Unions, in which it is mentioned that special batta has been increased from Rs.3/- to Rs.4/- with effect from 01.09.1998 and steering allowance has been raised to Rs.5/- with effect from 01.09.1998 and Night halt batta has been fixed as a sum of Rs.7/- with effect from 01.09.1998.



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The learned counsel for the petitioner relied on the above Memorandum of Settlement under Section 12(3) of the Industrial Disputes Act, 1947 dated 13.02.1999 but the same was not marked as Exhibit before the Labour Court. Hence, the above document cannot be taken into consideration or relied by this Court for arriving at a decision. According to the Memorandum of Settlement, the petitioner was having only a sum of Rs.13/- but since, the settlement was not marked as Exhibit and the same cannot be relied by the petitioner in the appeal stage.

21. The Standing order issued by the Corporation dated 30.04.2014, in which Section 24 and Clause 41 (f) deals with holding the deficit cash balance of Rs.20/- but in the above case, the petitioner was having only a sum of Rs.13/- as per the Memorandum of Settlement and the said amount is lesser than the cash balance of Rs.20/-, which is mentioned in Clause 41 (f) of the standing order dated 30.04.2014 since, both the documents were not marked as Exhibits before the Labour Court/Tribunal, the petitioner cannot relied on this documents. In the deficit amount of sum of Rs.29/-, which was found in the cash bag of the petitioner, the following amount has to be deducted:



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- (i) Special Batta – Rs.4/-
- (ii) Steering allowance – Rs.5/-
- (iii) Night Hault Batta - Rs. 7/-

Hence, Rs.29 – Rs.16 = Rs.13/-, which does not attract Clause 41 (f) of the Section 24 of the Standing Order issued by the first respondent/corporation dated 30.04.2014. Hence, this Court arrives at the following findings:

- (i) Charge No. 1 – Proved
- (ii) Charge No.2 – Proved
- (iii) Charge No.3 – Not proved

At this juncture, it is pertinent to extract the relevant portion of the judgment passed by the Division Bench of this Court in W.A.No.372 of 2017 dated 27.06.2017 and the same reads as follows:

“6. In the case of MADRAS ALUMINIUM COMPANY LIMITED v. LABOUR COURT, COIMBATORE AND ANOTHER (1992 II LLN 101), it has been held that any plea or material not produced before the Court below, cannot be sought to be introduced and tested before this Court for the first time. In view of the above judgment, we find that the appellant/petitioner, having failed to establish the charges before the Labour Court, the fact finding authority, by producing the CBI report which I sought to be introduced now and which were very much available by that time, this Court,



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sitting in appeal, cannot come to a different conclusion that the order of the learned Single Judge needs interference or the award of the Industrial Tribunal is perverse.

In view of the above, the writ appeal is dismissed. The connected miscellaneous petitions are also dismissed. No costs."

22. In regard to the Charge No.1, though the petitioner has collected a sum of Rs.270.10/- from 8 adult and 3 children, he did not issue the tickets and this is only a temporary misconduct. Because, the trip has not ended. The bus is running from Pondicherry to Chennai and the Checking Inspector checked the bus only at Marakanam, which is just 40 Kms from Pondicherry and 100 Kms from Chennai.

23. Hence, this Court finds that the punishment of dismissal of service imposed on the petitioner by the first respondent is disproportionate to the delinquency committed by the petitioner.

24. In view of the above facts and circumstances of the case, this Court is of the considered view that the punishment ought to be modified and therefore, the punishment of compulsory retirement would be appropriate in instead of dismissal of service, since the same is disproportionate to the



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delinquency committed by the petitioner. Therefore, the first respondent is directed to modify the punishment and disburse all available terminal benefits, other benefits to the petitioner and the said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

25. In the result, this writ petition stands disposed of with the above direction. No costs.

01.06.2023

vm

Index : Yes/No

Speaking Order : Yes/No

To:

1.The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram Div-3),
Kanchipuram.

2.The Presiding Officer,
II Additional Labour Court,

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Chennai.

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J.SATHYA NARAYANA PRASAD,J.

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