

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.R. RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE ANIL K. NARENDRA

FRIDAY, THE 12TH DAY OF JUNE 2015/22ND JYAISHTA, 1937Q

WA.No. 1118 of 2010 ()

AGAINST THE JUDGMENT IN WP(C) 20629/2003 of HIGH COURT OF KERALA
DATED 01-01-2007

APPELLANT:

*[E.MOHAMMED HUSSAIN, ROAS QUARTX,
WEST OF COLLECTORATE, VANCHIYOOR,
THIRUVANANTHAPURAM -35] *EXPIRED

ADDL.A2 TO A4 IMPEADED:

ADDL.2ND APPELLANT:

JAMEELA BEEVI, WIFE OF E.MOHAMMED HUSSAIN,
'SHIBU COTTAGE', TC 29/241,
THENGAPPARA LANE, PETTAH P.O.,
TRIVANDRUM – 24.

ADDL.3RD APPELLANT:

SINI A.M., D/O E.MOHAMMED HUSSAIN,
-DO- -DO-.

ADDL.4TH APPELLANT:

SHAMNA J.HUSSAIN, SON OF E.MOHAMMED HUSSAIN,
-DO- -DO-.

ADDL.APPELLANTS ARE IMPEADED AS PER ORDER DT.3.7.2013 IN I.A.NO.530/10.

BY ADV. SRI.M.RAMESH CHANDER

RESPONDENTS:

1. THE KERALA STATE ROAD TRANSPORT CORPORATION,
REPRESENTED BY ITS MANAGING DIRECTOR, CHIEF OFFICE,
FOR PO, THIRUVANANTHAPURAM.
2. THE LABOUR COURT, KOLLAM.

R1 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR, SC, KSRTC
R2 BY GOVT.PLEADER SRI A.MOHAMMED SAVAD

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 27.5.2015 THE
COURT ON 12-06-2015, DELIVERED THE FOLLOWING:

P.R.RAMACHANDRA MENON & ANIL K.NARENDRAN, JJ.

W.A.No.1118 of 2010

DATED THIS THE 12th DAY OF JUNE, 2015

JUDGMENT

ANIL K.NARENDRAN, J.

This Writ Appeal arises out of the judgment of a learned Single Judge of this Court dated 1.1.2007 in W.P.(C)No.20629 of 2003. The said writ petition was filed by the Kerala State Road Transport Corporation (hereinafter referred to as 'the management'), the first respondent herein, seeking a writ of certiorari to quash Ext.P9 award of the Labour Court, Kollam in I.D.No.89 of 1995, setting aside the order of dismissal of one E.Mohammed Hussain (hereinafter referred to as 'the workman'), who was arrayed as the first respondent in the writ petition, and directing his reinstatement in service with 50% back wages, with a further direction to treat the period he was kept out of service as duty without any service benefits.

2. By judgment dated 1.1.2007, the learned Single Judge allowed the writ petition, holding that the findings of the Labour Court in Ext.P9 award on the first charge are perverse and in fact the management has succeeded in proving that charge also by cogent evidence. The learned single Judge held further that, the findings on the

second charge alone was sufficient to impose on the workman the punishment of removal from service and therefore, the direction of the Labour Court to reinstate him with 50% back wages is legally unsustainable. In the result, that direction was also quashed and it was declared that, the workman is not entitled to any relief in I.D.No.89 of 1995.

3. Aggrieved by the judgment of the learned Single Judge dated 1.1.2007 in W.P.(C)No.20629 of 2003, the workman filed this writ appeal. During the pendency of the writ appeal, the workman died and his legal heirs were impleaded as additional appellants 2 to 4, vide order dated 3.7.2013 in I.A.No.530 of 2010.

4. Pursuant to an order passed by this Court dated 15.10.2014, the matter was referred for mediation before the Ernakulam Mediation Centre and the parties were directed to appear before the Nodal Officer on 5.11.2014. Since both parties failed to appear before the Nodal Officer on that day, mediation could not take place and the said fact was intimated to this Court, vide letter dated 13.11.2014 of the Nodal Officer of Ernakulam Mediation Centre.

5. We heard the arguments of the learned counsel for the additional appellants and also the learned Standing Counsel for the Kerala State Road Transport Corporation.

6. The learned counsel for the additional appellants contended that, while setting aside Ext.P9 award of the Labour Court, the learned Single Judge exceeded his powers under Article 226 of the Constitution of India. Further, the learned Single Judge went wrong in holding that, the findings of the Labour Court on the first charge are perverse and that the management has succeeded in proving that charge also by cogent evidence. The learned counsel contended further that, the finding of the learned Single Judge that, when the second charge against the workman is proved the first charge stands proved automatically, is legally unsustainable. Further, the finding in the impugned judgment that, the second charge alone was sufficient to impose on the workman the punishment of removal from service is also legally unsustainable.

7. Per contra, the learned Standing Counsel for the Kerala State Road Transport Corporation supported the judgment of the learned single Judge and contended that, the challenge made by the appellants is not sustainable on any of the grounds raised in the writ appeal and that the judgment of the learned Single Judge calls for no interference in this writ appeal.

8. We have considered the rival submission made at the Bar.

9. The workman, who was originally the sole appellant in this

writ appeal, was working as a conductor under the management. On the allegation that, on 17.6.1989, while operating Trivandrum-Ernakulam Express service with bus No.P-671, the workman misappropriated public money, he was placed under suspension by order dated 15.7.1999 and disciplinary proceedings were initiated against him. According to the management, the workman issued dead tickets under ₹10/- denomination to two passengers who were on board in the Trivandrum-Ernakulam Express service from Alappuzha. On verification it was found that, the tickets were not included in way bill No.22671 and the workman had intentionally issued dead tickets for committing fraud. Further, the workman attempted to snatch away the ticket from the passenger while the Inspector was checking the tickets of individual passengers. The workman had also asked the passengers not to give any statement to the Inspector and he had also refused to obey the instructions of the Inspector to put signature in the Service Inspection Report (SIR). In addition to this, while remitting the way bill collection, the workman unauthorisedly scored off the word 'dead' recorded by the Inspector in the way bill.

10. The Inspector submitted a report before the DTO, Ernakulam. Since a prima facie case of gross misconduct was detected, the workman was placed under suspension by order dated

15.7.1989 of the DTO, Ernakulam. He was issued with Ext.P1 charge sheet with statement of allegations, to which he submitted Ext.P2 written statement of defence. An enquiry was conducted by the DTO, Ernakulam, who submitted Ext.P3 enquiry report. Based on the enquiry report, Ext.P4 show cause notice was issued to the workman, proposing the punishment of termination from service, to which he submitted Ext.P5 statement of defence. After considering the statement of defence submitted by the workman, he was imposed with the punishment of removal from service with immediate effect, vide Ext.P6, with a further direction that the liabilities, if any, including ₹20/- towards value of the withdrawn ticket will be recovered from any amount due to the workman.

11. Challenging the punishment imposed in Ext.P6, the workman filed appeal before the Managing Director of the KSRTC and the appellate authority by Ext.P7 order dismissed that appeal, thereby confirming the punishment of removal from service. Though Ext.P7 order is an order appealable before the KSRTC Appellate Tribunal, the workman approached the State Government for referring the dispute for adjudication to the Labour Court, under Section 10(1)(c) of the Industrial Disputes Act, 1947. Accordingly, by Government order dated 27.5.1995, the dispute, namely, 'removal of service of

Sri E.Mohammed Hussain, Conductor, Kerala State Road Transport Corporation' was referred for adjudication to the Labour Court, Kollam.

12. In I.D.No.89 of 1995, the management submitted Ext.P8 counter/objection. Before the Labour Court, the Management examined MW1 and the enquiry file and report were marked as Exts.M1 and M1(a) respectively. The workman was examined as WW1. The Labour Court by Ext.P9 award set aside the order of dismissal and the management was directed to reinstate the workman with 50% back wages and it was directed further that, the period he was kept out of service will be treated as duty without any service benefit.

13. It is pertinent to note that, initially an ex parte award was passed by the Labour Court on 18.1.1996, which was set aside by this Court as per the judgment in O.P.No.22257 of 1998, which was confirmed by the Division Bench in W.A.No.1018 of 2001. It was thereafter, the management filed Ext.P8 counter/objection. After taking evidence, the enquiry report was set aside by order dated 4.2.2002 of the Labour Court. Thereafter, fresh evidence was taken and the Labour Court passed an award on 5.4.2002 and Ext.P9 Gazette notification contains both the preliminary order dated 4.2.2002 as well as the award dated 5.4.2002.

14. In Ext.P1 charge sheet the charges levelled against the

workman read thus;

- (i) Gross misconduct – Deliberate attempt at fraud – Collected fare and issue of dead tickets to the passengers on 17.6.1989.
- (ii) Manipulation of records and insubordination.

Ext.P9 award of the Labour Court to the extent it absolved the workman from the first charge levelled against him was under challenge in W.P.(C)No.20629 of 2003 filed by the management. In Ext.P9 award, the Labour Court held that, since the management failed to adduce any acceptable evidence to prove the alleged incident, the workman cannot be found guilty on the first charge. The Labour Court arrived at such a conclusion mainly for the reason that the report regarding the alleged incident was submitted by the Inspector only after five days and that delay has not been explained. As far as the second charge of 'manipulation of records and insubordination', is concerned, the Labour Court concluded that the workman has manipulated the records in respect of the entries made by the Inspector in the way bills dated 10.6.1989 and 17.6.1989 as alleged by the management. The Labour Court found further that, the charge of insubordination levelled against the workman also stands proved in the facts and circumstances of the case. Considering the gravity of the

charges proved against the workman, the Labour Court concluded that the workman is not liable to be dismissed from service and an opportunity has to be given for improving himself because of that job is his sole source of livelihood. In such circumstances, the order of dismissal was set aside and the workman was ordered to be reinstated in service with 50% back wages on condition that, the period during which he was kept out of service will be treated as duty without any service break.

15. Though the Labour Court in Ext.P9 award found that, the second charge of 'manipulation of records and insubordination' stands proved against the workman, the workman has not chosen to challenge the said finding in Ext.P9 award.

16. A reading of Ext.P9 award passed by the Labour Court, in respect of the second charge of 'manipulation of records and insubordination', it could be seen that, in Ext.M1(b) report, the Inspector has stated that the workman attempted to snatch the dead tickets from the passengers while the Inspector was checking individual tickets. But the Inspector foiled the attempt of the workman and seized the above ticket. The workman had also asked the passengers not to give any statement to the Inspector and he had also disobeyed the instruction of the Inspector to put signature in the SIR.

The Inspector has also stated in Ext.M1(b) report that, on verifying the way bill subsequently at Ernakulam Depot, he noticed that the workman had scored off the word 'dead' in the report made by the Inspector. The Inspector verified the way bill of 10.6.1989, apprehending manipulation by the workman in that report also, and found that the workman had scored off the endorsement made by the Inspector in that report. The Inspector has categorically stated before the Enquiry Officer that, the workman made manipulation of such records with a view to suppress the fraud committed by him. After verifying Ext.M1(g) report of the Inspector, the Labour Court found that the word 'dead' written in the above report is scored off. The Labour Court also found that, the endorsement made by the Inspector in the way bill for the journey conducted on 10.6.1989 is completely scored off and it is not readable at present. The Labour Court has also noticed certain corrections in other entries in the said way bill.

17. It is pertinent to note that, the workman has not mounted the box during the stage of fresh evidence. The Labour Court found that, admittedly the Inspector made entries in the way bill regarding the misconduct of the workman detected on 17.6.1989 and also the alleged loss of way bill stated by the workman on 10.6.1989. The workman submitted the way bill of 17.6.1989 at the depot and it

contains the report of the Inspector and the word 'dead' in that report is seen scored off. Further, the endorsement on the way bill of 10.6.1989 regarding loss of journey bill is also seen scored off completely. The Labour Court has also rejected as untenable and unbelievable, the explanation offered by the workman that these corrections might have been made by the Inspector. As rightly noticed by the Labour Court, no ill-will or enmity for the Inspector against the workman is also disclosed. Further, the allegations made by the workman against the Inspector stand not proved.

18. In Ext.M1(l) written statement of defence filed by the workman against Ext.M(k) show cause notice, the workman has admitted that, the Inspector made certain endorsements in the way bill and his contention was that, it was irregular for the Inspector to make such entries in the way bill. When it is found from records that, such entries are corrected and scored off, the preponderance of probabilities indicate that, such corrections to the report of the Inspector made in the way bill of 17.6.1989 and scoring off the report dated 10.6.1989 are done by the workman himself. It was in such circumstances the Labour Court came to the conclusion that, the contention of the workman that he did not make any correction in the records and the Inspector might have made such corrections with a

view to victimise him does not stand to reason.

19. As noticed by the Labour Court, the workman had admitted that on 17.6.1989 he refused to put his signature in the SIR when the Inspector requested him to do so. The Labour Court categorically held that, the contention of the workman that he refused to put his signature as the SIR was blank cannot be believed and that his refusal to put signature in that report is nothing but an act of insubordination. It was on an examination of all the facts and evidence on record, the Labour Court came to the conclusion that, the workman made manipulations in respect of the entry made by the Inspector in the way bills dated 10.6.1989 and 17.6.1989, as alleged by the management. A reading of Ext.P9 would further show that, the Labour Court has also noticed the stand taken by the management that, the workman was formerly found guilty of misconduct in 14 instances and that he does not deserve any leniency.

20. As rightly noticed by the learned Single Judge, the findings against the workman in Ext.P9 award passed by the Labour Court on the second charge of 'manipulation of records and insubordination' alone is sufficient to conclude that, the first charge levelled against him i.e., 'deliberate attempt at fraud – collected fare and issue of dead tickets to the passengers on 17.6.1989' stands proved. The Inspector

who found out the alleged fraud committed by the workman was not available for giving evidence before the Labour Court, since he was no more. But the said Inspector lead evidence before the Enquiry Officer and the workman had the opportunity to cross examine him. The said enquiry was set aside only on the ground that the workman was given an opportunity to adduce evidence on his behalf and not because of any infirmity in the evidence adduced on behalf of the management. Before the Enquiry Officer, the Inspector gave evidence in support of the statement of allegation and he has categorically stated that, the workman issued dead tickets to passengers and pocketed the fare collected from that passengers. The issue of dead ticket and the necessity to collect the fare relating to dead ticket from the workman was also entered in the way bill, by the Inspector. But that endorsement was alleged to have been scored off by the workman, which stands proved in the second charge levelled against him, namely, 'manipulation of records and insubordination'. That being so, the Labour Court would not have come to a different conclusion in respect of the first charge, when the second charge is very much a continuation of the first charge itself.

21. As rightly noticed by the learned single Judge, the Labour Court exonerated the workman in respect of the first charge stating

two grounds, namely, (i) the alleged passenger to whom the dead ticket was issued was not examined and (ii) there was a delay of five days on the part of the Inspector in submitting his report. A reading of Ext.P9 judgment of the Labour Court, so far as it relates to the finding on the first charge, would show that the Labour Court proceeded with the matter as if it was dealing with a criminal case or as a civil case, where proof of reasonable doubt and preponderance of probability are the standard of proof required. When satisfaction of a prudent mind on the evidence before him alone can be insisted by a Labour Court deciding an industrial dispute, the findings of the Labour Court in Ext.P9 award, in respect of the first charge can only be termed as a finding which is perverse and patently illegal.

22. Relying on the judgment of the Apex Court in **Amrit Vanaspati Co. Ltd. v. Khem Chand and another (2006 (6) SCC 325)**, the learned counsel for the appellant would contend that, this Court while exercising the power under writ jurisdiction cannot deal with sufficiency of the punishment inflicted by the management on a workman for a particular misconduct nor can it interfere with the factual findings of the Labour Court. In our opinion, the principle laid down in the aforesaid judgment of the Apex Court is that, this Court while exercising powers under writ jurisdiction cannot deal with

aspects like, whether the quantum of punishment meted out by the management to a workman for a particular misconduct is sufficient or not, or interfere with the factual findings of the Labour Court which are based on appreciation of facts adduced before it by leading evidence.

23. In **General Manager, Oil and Natural Gas Commission, Silchar v. Oil and Natural Gas Commission Contractual Workers Union (2008 (12) SCC 275)** the Apex Court held that, the High Court had the authority to enquire as to whether a finding arrived at by the Tribunal was based on evidence and to correct an error apparent on the face of the record. The observations in Trambak Rubber Industries Ltd.'s case (2003 (6) SCC 416) are to this effect and it has been highlighted that the High Court would be fully justified in interfering with an award of an Industrial Court on account of a patent illegality. In Seema Ghosh's case (2006 (7) SCC 722), it was observed that the High Court's interference under Article 226 and 227 of the Constitution with an award of the Labour Court was justified as the award had been rendered contrary to the law laid down by the Apex Court and as a measure of "misplaced sympathy", and was thus perverse. Therefore, the interference would be limited to a few cases and as already noted above, in the case of a patent illegality or perversity. Since no such infirmity was found in the case before the

Apex Court, the Apex Court in Oil and Natural Gas Commission's case (supra) held that interference of the award by the Single Judge of the Gauhati High Court was rightly set aside by the Division Bench.

24. In **Workmen v. Bharat Firtz Werner (P) Ltd. and another (1990 (3) SCC 565)** the Apex Court held that, in view of the provisions contained in Section 11A of the Industrial Disputes Act, 1947, which empowers the Industrial Tribunal to go into the question whether the order of discharge or dismissal passed against a workman is justified or not and permits the Tribunal to set aside the order of discharge or dismissal as the circumstances of the case may require, it was open to the High Court to consider what would be adequate punishment for the misconduct found to have been committed by the workman.

25. In the case on hand, the Labour Court found that, the workman could not bring out anything against the version of the Inspector. The Labour Court found further that, Ext.M1(b) report of the Inspector would not become totally inadmissible for the reason that the management could not examine him before court as he was no more and the correctness or otherwise of the same can be considered in the dispute before it. As rightly noticed by the learned Single Judge, the report of the Inspector coupled with the finding of the Labour

Court regarding the second charge that, the workman manipulated records to score off the endorsement made by the Inspector would be more than sufficient to prove the first charge also against him. The findings of the Labour Court in para.16 of the award, which has been extracted in the judgment of the learned Single Judge, itself do not give room to doubt the guilt of the workman in respect of the first charge. The subsequent acts of the workman, which were found proved by the Labour Court itself is nothing but that of guilty mind trying to destroy proof of his earlier misconduct. It was in such circumstances, the learned Single Judge came to the conclusion that, the findings of the Labour Court on the first charge are perverse and in fact the management succeeded in proving that charge also by cogent evidence.

26. The second charge levelled against the workman, who was a conductor under the management, relates to manipulation of records and insubordination. It was after examining all the materials on record, the Labour Court came to the conclusion that the workman made manipulation in respect of the entry made by the Inspector in the way bills dated 10.6.1989 and 17.6.1989. As we have already noticed, the workman has not chosen to challenge the finding of the Labour Court on the second charge. When the second charge proved

against the workman alone is sufficient to inflict him the major penalty of removal from service, the punishment imposed by the management can only be termed as an adequate punishment for the misconduct found to have been committed by the workman.

27. It was in such circumstances, the learned Single Judge set aside the findings of the Labour Court in respect of the first charge as well and held that the workman is found guilty of both charges and quashed Ext.P9 award, declaring that the workman is not entitled to any relief in I.D.No.89 of 1995 before the Labour Court, Kollam.

28. We find absolutely no grounds to interfere with the judgment of the learned single Judge.

In the result, the Writ Appeal fails and the same is dismissed.
No order as to costs.

SD/-
P.R.RAMACHANDRA MENON,
JUDGE

SD/-
ANIL K.NARENDRA,
JUDGE