

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.1688 of 2014

K.Devendran

.. Appellant

Vs.

1.The Presiding Officer,
1st Additional Labour Court,
Chennai.

2.The Tamilnadu State Transport Corporation,
(Villupuram Division III) Ltd.,
rep by its General Manager,
Kancheepuram Region,
Kancheepuram.

.. Respondents

This writ appeal is preferred under Clause 15 of the Letters Patent against the order of this court dated 6.2.2014 made in W.P.No.25483 of 2008 Petition presented to this court to issue a writ of certiorari to call to the records made in I.D.No.488 of 2002 dated 25.02.2008 on the file of the 1st Respondent and quash the same.

For Appellant : Mr.AL.Namasivayam
for M/s.O.A.V.Srimathy

JUDGMENT

(Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

Questioning the legality and propriety of the order dated 6.2.2014 rendered by the learned Single Judge in W.P.No.25483 of 2008, the second respondent in the writ petition has come up with this intra-court appeal.

2. Being aggrieved by the Award dated 25.2.2008 passed by the I Additional Labour Court, Chennai in I.D.No.488 of 2002, the second respondent management has preferred the writ petition on the ground that the Labour Court while setting aside the order of dismissal dated 10.1.2002 issued against the employee, fully ignored the fact that the employee was charge-sheeted for two offences. The first offence was of intoxication in service time, which was not proved. However, the second charge with respect to misappropriation to the

tune of Rs.724/- stood proved in the enquiry. The enquiry was properly conducted. Observing that the sickness may be the mitigating circumstance, the Labour Court set aside the punishment with a direction to reinstate the employee with continuity of service and all other attendant benefits without backwages.

3. The learned Single Judge examined all facts of the case and held as under :

"9.This Court is unable to agree with the submissions of the second respondent workman. Admittedly, the second respondent while serving as conductor in the petitioner Corporation suffered charge memo containing two charges. The first charge implicating him for having committed offence of charge of intoxication. Of course, the said charge was not proved. However, in respect of the 2nd charge, it was found that he had committed a shortage of Rs.724/- while remitting the collection for which the Labour Court had found that it has been proved. The petitioner Corporation after considering the report of the Enquiry Officer and also by taking note of his previous records which show that the second respondent has suffered 72 more punishments for various misconducts, thought fit to impose an order of punishment of dismissal. Learned Labour Court so surprisingly while examining the legality of the dismissal order should have taken into account the past records of 72 punishments.

10.While considering the case of the second respondent the learned Labour Court miserably failed to consider not only the claim made by the second respondent but also the antecedents based on the records of the second respondent which was rightly brought to the knowledge of the Labour Court by filing detailed counter affidavit. A close reading of the same shows that the second respondent has admittedly committed 72 misconducts and the records also show that the second respondent has suffered repeated punishments at the hands of the petitioner Corporation."

4. A Review application was filed against the order dated 6.2.2014, which is the subject matter of the instant appeal, in Review Application No.172 of 2014, which also stood dismissed on 16.6.2014.

5. The learned counsel appearing for the appellant/employee would submit that small shortage of Rs.2/- to Rs.10/- is a regular happening and Conductors used to cover the shortages. The shortage was not intentional with any motive. Thus, having regard to the sickness, as recorded by the Labour Court, the learned Single Judge

ought to have dismissed the writ petition filed by the management and maintained the order passed by the Labour Court. It is further contended that since the employee had attained the age of superannuation on 31.1.2009, if the order of dismissal has been maintained, the appellant/employee would be unable to receive the terminal benefits.

6. Heard the learned counsel for the appellant and perused the pleadings and documents appended thereto.

7. There is no dispute that the enquiry has not been held as vitiated on account of procedural irregularity or otherwise. It is also not the case of the employee that he was not afforded full opportunity of hearing. The Labour Court has also not found that the enquiry was not proper and as such, the offence of shortage of Rs.724/- is without any basis. In that view of the matter, there was no reason to set aside the dismissal order and to reinstate him with continuity of service and all other attendant benefits, but without backwages. The learned Single Judge has rightly considered all aspects of the matter and set aside the Award, also keeping in view the over all conduct of the employee in his service career.

8. We do not find any irregularity or illegality in the order passed by the learned Single Judge, warranting interference. Resultantly, the writ appeal stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vvk

To

- 1.The Presiding Officer,
1st Additional Labour Court,
Chennai.
- 2.The General Manager,
The Tamilnadu State Transport Corporation,
(Villupuram Division III) Ltd.,
Kancheepuram Region,
Kancheepuram.

+ 1 cc to Mr.O.A.V. Srimathy, Advocate SR.20401
+ 1 cc Government Pleader Sr.20541

NM(CO)
EU 28.04.2015

W.A.No.1688 of 2014