

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.04.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.13661 of 2016

The Management,  
rep. by its General Manager,  
State Express Transport Corporation,  
Pallavan Salai, Chennai - 600 002.

...Petitioner

Vs.

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

2. D.Banumathi  
3. D.Dineshkumar  
4. D.Nirajini

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the first respondent in I.D.No.864 of 2001 dated 12.05.2015, and to quash the award passed in the said industrial dispute.

For Petitioner : Mr.P.Paramasivadosh

O R D E R

Heard Mr.P.Paramasivadosh, learned counsel appearing for the petitioner, and carefully perused the materials placed on records.

2. The petitioner/Management have challenged the award passed by II Additional Labour Court, Chennai, in I.D.No.864 of 2001, dated 12.05.2015.

3. The respondents 2 to 4 are the legal heirs of the deceased employee, Mr.Dillibabu. The said employee was a physically challenged person, with no eye in one of the eyes. He was employed as a Reservation Assistant, and subsequently as Conductor. While he was functioning as conductor on 08.08.1998, in the bus, bearing route No.803, the Checking Inspector of the

petitioner/Management inspected the bus at Pallavapuram. During the inspection, it was reported that 49 passengers boarded the bus in Tindivanam, and the employee was having tough time in controlling the crowd and taking advantage of such hectic situation, one of the passengers had sneaked in two flowers baskets from the window and hidden the same under the seat. The employee/workman was not aware of this, because of heavy crowd inside the bus. While the bus arrived at Pallavapuram, the passenger, who had hidden the flower baskets in the Bus, has taken the same and was getting out of the bus, and this was noted by the Checking Inspector, which resulted in charging that the workman was having excess amount of Rs.11, in his cash bag. The workman submitted his explanation, and not satisfied with the same, domestic enquiry was conducted, and the workman contended that the domestic enquiry was not fair and proper. Ultimately, the Enquiry Officer submitted a report holding that the charges are proved, and a second show cause notice was issued to the workman, and not satisfied with the explanation offered by the workman, he was dismissed from service on 05.06.1999. Since the workman was no more, his legal heirs, viz., wife and two sons, raised the dispute before the Labour Court challenging the order of dismissal.

4 The petitioner/Management contended that when the Checking Inspector examined tickets, he found one of the passengers carrying two flower baskets, without purchasing tickets for the luggage/flower baskets, and the workman never inspected that the passenger had paid Rs.50 to the workman for him as well as luggage, and the workman issued ticket only for the passenger, for Rs.31, and not issued ticket for the luggage, and therefore, the workman had pocketed Rs.19. Admittedly, the Inspector found Rs.11/- in excess in the cash bag of the deceased workman. The Management contended that the charges are very serious and considering the gravity of the charges, domestic enquiry was conducted in a fair manner, and taking into consideration of the circumstances, the workman was dismissed from service.

5. Before the Labour Court, the legal heirs of the deceased employee did not lead any oral or documentary evidence. The Management examined one witness as M.W.1, and marked 10 documents, as Exs.M.1 to M.10, which are i) Checking Inspector's report, ii) Suspension Order, iii) Chargememo, iv) Reply given by the petitioner, v) Order revoking the suspension, vi) Minutes of enquiry proceedings, vii) Enquiry report, viii) Second show cause notice, ix) Reply given by the workman and x) Order of dismissal.

6. The Labour Court after considering the oral and documentary evidence placed by the Management, and the dispute raised by the legal heirs of the deceased workman, framed three issues for consideration, viz. 1) Whether the workman is guilty of the charges levelled against him, 2) Whether the punishment given to the deceased workman is proportionate to the misconduct and 3) To what relief, legal heirs of the deceased employee is entitled to.

7. Labour Court pointed that the Management examined one witness, Nayeem Nisha, who was working as Senior Superintendent in the Office of the Management, and the evidence was said to have been made only based on records. It was admitted by the said witness stating that she came to know about the matter only from the files. The Labour Court held that the fact that the deceased workman had allowed a passenger to carry flower baskets without issuing ticket for the same, could have been proved by examining the Checking Inspector of the Management, or any one of the passengers travelled in the bus, or driver of the bus. This having not been done by the Management, the Labour Court held that the charges have not proved by the Management, as required to be done by them.

8. Therefore, the order of dismissal was interfered with and the award was passed, granting relief to the legal heirs of the deceased workman. The Labour Court directed the deceased workman to be notionally reinstated, and to be paid backwages and all other monetary benefits payable to similarly placed employee of the Management from the date of dismissal to the date of demise of the workman or till the superannuation, which had occurred earlier, and pay all the terminal benefits to the legal heirs of the workmen in equal shares. The reasons assigned by the Labour Court are cogent and proper, and the evidence placed before the Labour Court by the Management was properly appreciated, and there is no perversity in approach of the Labour Court. Therefore, this Court while exercising jurisdiction under Article 226 of the Constitution of India, is not inclined to interfere with the reasoned award passed by the Labour Court. Accordingly, the Writ Petition fails and it is dismissed. Needless to say that if any benefits, granting appointment to any one of the legal heirs of the deceased workman on compassionate ground, shall also be considered as and when such an application is being made by one of the legal heirs of the deceased workman without reference to limitation.

9 In the result, the Writ Petition is dismissed, as stated above. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

The Presiding Officer,  
II Additional Labour Court,  
Madras High Court Campus,  
Chennai.

1 cc to Mr.P.Paramasivadosh, Advocate, sr.23938

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kra 10.05.2016



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