

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2016

Reserved on : 22.12.2014

CORAM

THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN

W.P.No.12415 of 2006  
W.P.M.P.No.14010 of 2006

The Tamil Nadu State Transport Corporation  
(Villupuram) Ltd. Rep. by its General Manager,  
Vellore. ... Petitioner

Vs.

1. The Presiding Officer,  
Labour Court, Vellore.

2. S.Varadan ... Respondents

Prayer : Writ Petition filed under Article 226 of the  
Constitution of India praying for the issuance of a Writ of  
Certiorari to call for the records of the first respondent in  
I.D.No.182 of 2002, dated 10.03.2005, and quash the same.

For Petitioner : Mr.P.Paramasivados

For Respondents : R1 - Court  
Mr.S.T.Varadarajulu for R2

ORDER

The writ petitioner is a Transport Corporation fully owned by the Tamil Nadu Government. The second respondent was employed as Conductor by the writ petitioner from 1979 onwards until he was dismissed from service by an order dated 19.05.2001. The dismissal is based on certain allegations and after enquiry. The second respondent took up the matter before the first respondent - Labour Court in I.D.No.182 of 2002, since his conciliatory efforts failed. The Labour Court passed an Award dated 10.03.2005 reinstating the workman with continuity of service, but without backwages. This writ petition is filed by the petitioner Corporation questioning the said award.

2. The facts in brief are as follows :

(i). On 12.09.2000, the second respondent was on duty in the route No.444 running between Vellore and Bangalore. The bus started its trip at Bangalore and proceeded towards Vellore. The bus was checked prior to Vaniyambadi by three checking officials at 1.45 A.M. during the night time. They gave him a irregularity report alleging the following irregularities :

- (1) He collected a sum of Rs.60/- per ticket to travel from Bangalore to Vellore from a group of eight persons, while one ticket costs Rs.52/- and he thus, misappropriated a sum of Rs.64/-.
- (2) He collected a sum of Rs.57/- per ticket to travel from Bangalore to Vellore from a group of two persons, while one ticket costs Rs.52/- and he thus, misappropriated a sum of Rs.10/-.
- (3) He did not write legibly the fare amount of Rs.52/- in those tickets.
- (4) There was a shortage of Rs.91.75.
- (5) He violated the rules of the Corporation.

(ii) The checking officials submitted a report about the aforesaid irregularity to the petitioner Corporation. Along with their report, they gave a statement of the second respondent made to them, wherein, he stated that the amount was voluntarily given by the passengers and he did not demand any extra amount. In the said statement, the signature of the Driver was obtained. The checking officials also received a statement from one of the passengers from each group to the effect that the second respondent demanded the excess amount above the fare and accordingly, they paid to him. In the said statement, the signature of the Driver was also obtained. In these circumstances, the checking officials took a sum of Rs.74/- from the cash bag of the second respondent and gave it to the concerned group of passengers.

(iii). Based on the said report along with documents referred to above, the writ petitioner Corporation issued a charge memo dated 20.09.2000 making the above said five charges. He was also placed under suspension by an another order dated 20.09.2000.

(iv) The second respondent submitted his explanation denying the charges. He stated that he only collected the actual fares from the passengers and that he returned the appropriate balance amount.

(v) Not satisfied with the said explanation, an enquiry was held.

(vi) In the enquiry, one of the checking officials, namely, Ramalingam, was examined and the documents Ex.M.1 to M.8 were marked. One other checking official by name, Mr.Murugesan,

was also present during the enquiry, but the Enquiry officer proceeded as if two witnesses were examined. But, only Mr.Ramalingam deposed in the enquiry.

(vii) On behalf of the second respondent, he examined himself. The second respondent, after the commencement of the enquiry, gave a letter dated 14.11.2000 to the General Manager, which was marked before the Labour Court as Ex.W.4 requesting to examine the concerned passengers, who signed the statements, and two separate letters sent by the concerned passengers were marked as Ex.W.5 and Ex.W.6. In Ex.W.4, the seal of the Corporation and also signature for having received the letter is found. But no effort was taken to examine the passengers and no notice was sent by the Enquiry officer to the passengers to appear before the enquiry. Moreover, the Driver, who also signed in the statements of the passengers and in the statement of the Conductor was also not examined, though he was in the service of the petitioner Corporation.

(viii) The Enquiry officer gave a report dated 30.01.2001 holding that all the charges were proved. Based on the same, the second show-cause notice dated 12.03.2001 was issued asking the second respondent to show-cause as to why dismissal should not be imposed on him.

(ix) The second respondent gave his explanation dated 03.05.2001. He pointed out that his request to examine the concerned passengers was not considered. However, the petitioner passed an order dated 19.05.2001 dismissing the second respondent from service. According to the workman, his specific plea as to his request to examine the passengers in the reply to second show-cause notice was not considered, while passing the dismissal order.

(x) The second respondent took up the matter of his non-employment before the first respondent-Labour Court in I.D.No.182 of 2002.

(xi) Before the first respondent - Labour Court, on the side of the second respondent - workman, the second respondent examined himself as W.W.1 and he also examined one of the passengers, who signed the statement as W.W.2. The management examined one Mr.Ramalingam, who was one of checking officials, as M.W.1. On the side of the workmen, documents Ex.W.1 to Ex.W.16 were marked and Exs.M.1 to M.14 were marked on the side of the writ petitioner.

(xii) The Labour Court passed an award dated 10.03.2005 holding that the enquiry was conducted fairly and properly and that the charges No.1 to 3 and 5 were proved. According to the Labour Court, as far as the charge relating to shortage of Rs.91.75, it was held that the same was not proved. Thus, a finding was recorded by the Labour Court by re-appreciating the evidence adduced in the enquiry, by exercising its power under Section 11-A of the Industrial Disputes Act. Taking into

account, overall circumstances, the Labour Court interfered with the punishment by modifying the dismissal into that of reinstatement, with continuity of service, but without backwages. The Labour Court interfered with the punishment that the passengers could only be aggrieved for paying more fare and therefore, extreme penalty is not warranted. The Labour Court also found that no major punishments were imposed earlier in his service. The same is questioned by the writ petitioner Corporation in this writ petition.

3. The learned counsel for the petitioner management vehemently contended that since the Labour Court came to the conclusion that the petitioner was benefited by Rs.74/-, that were collected from the passengers, the Labour Court committed error in interfering with the punishment. The learned counsel submitted that the Labour Court was not correct in holding that it is not a case of misappropriation. The learned counsel for the petitioner Corporation argued that the Labour Court was not correct in holding that there was no loss to the Corporation. According to the learned counsel, since the second respondent collected excess fare from the passengers, the Labour Court ought not to have interfered with the punishment.

4.1. On the other hand, the learned counsel for the second respondent vehemently contended that apart from the reasons given by the Labour Court, the award of reinstatement could be sustained by other reasons by invoking Order 41, Rule 22 and also in view of the judgment of the Apex Court in Anil Kumar Gupta and Others V. Municipal Corporation of Delhi, reported in (2000) 1 SCC 128 and also the decision of this Court in C.Umapathy V. The Manager (Marketing), Tamil Nadu Dairy Development Corporation, reported in 1984-I-LLJ 248 (Madras).

4.2. The learned counsel for the second respondent submitted that the petitioner Corporation did not give any reasons for not examining the Driver, though he was in service. According to him, the Driver is the relevant witness to speak about the event, as he signed the statements of the workman and the passengers. Therefore, it is incumbent on the Corporation to examine the Driver to know the true facts, particularly, the extreme when punishment of dismissal was imposed on the workman and when the workman denied that he collected excess amount from the passengers.

4.3. The learned counsel for the Workman further contended that though the second respondent/workman gave a letter to the General Manager, who is the Disciplinary Authority, to examine the concerned passengers, no effort was taken to examine the passengers. The learned counsel brought to my notice paragraph 7 of the impugned Award, wherein, the Labour Court held that the workman failed to give Ex.W.4, letter to the

Enquiry Officer seeking to send notice to the passengers. The Labour Court failed to take note of the fact that the letter was sent to the Disciplinary Authority. He also brought to my notice that similar plea was raised in the reply to second show cause notice. But the same was not considered by the Disciplinary Authority, while passing the dismissal order. He also pointed out that in paragraph 7(b) of the claim statement, he raised the said issue and the same was not denied in the counter statement. According to him, it is a different matter, if the notice was sent to the passengers, but they did not turn up for enquiry. Then the burden of examining the witness could be taken as discharged.

4.4. According to him, the deposition of the passengers before the Labour Court could be a relevant factor for modifying the punishment of dismissal into reinstatement. Therefore, the non-examination of the Driver and also the non-examination of the passengers in spite of the request from the workman coupled with the evidence of the workman could be taken together to hold that the charges No.1 and 2 were not proved. According to him, the incident took place at 1.45 A.M. during night time is also an extenuating factor.

4.5. He also submitted that the tickets were written in the running bus and therefore, the same could not be held as a serious one, warranting dismissal.

4.6. Further, he submitted that the fifth charge is a vague one and the crux of the allegations is only made in charge Nos.1 to 4.

4.7. He also submitted that the workman reached the age of superannuation during 2013 in the meantime. He prayed to sustain the award in the said circumstances.

5. I have considered the submissions made by either side.

6. It is not in dispute that the petitioner rendered service from 1979 onwards as a Conductor. The aforesaid facts are also not in serious dispute. As rightly contended by the learned counsel for the second respondent, the petitioner Corporation did not give any reason as to why the Corporation did not examine the Driver, who was in service at the time of enquiry. The Driver is a relevant witness, as the checking officials collected signature from the Driver in the statement obtained from the passengers and also in the statement of the second respondent/workman. The workman disputed the contents of the statement of the passengers that was recorded by the Checking Officials. The second respondent also gave a statement at the time of checking to the officials. Later, when he gave explanation, he disowned the statement and he explained that the statement was obtained by the higher officials using their

position. Therefore, he wanted to examine the passengers. He also produced those letters in this regard, particularly, Ex.W.4. As rightly contended by the learned counsel for the workman, the Labour Court was not correct in refusing to take into account Ex.W.4 on the ground that the same was not given to the Enquiry Officer, when the same was given to the Disciplinary Authority. The Labour Court also failed to note that the workman was consistent in his plea as he also stated the same thing in his reply to the second show cause notice. But the same was not considered by the Disciplinary Authority, while passing the dismissal order. Further, he pleaded in paragraph 7(b) of the claim statement before the Labour Court as follows :

"7.(ஆ) விசாரணை அதிகாரி ஒரு தலைபட்சமாக நடந்து கொண்டார். பயணியிடம் இருந்து பெற்ற வாக்குமூலம் விசாரணையில் நிர்வாகத்து தரப்படாது, சாட்சியம் மூலமாக தாக்கல் செய்யப்பட்டது. மனுதாரர் அதற்கு எதிர்ப்பு தெரிவித்தார். மேலும் விசாரணை 14.11.2000 அன்று துவங்கிய போது அதே தேதியிட்ட கடிதம் மூலம் பொது மேலாளர் அவர்களுக்கு பரிசோதகரிடம் வாக்குமூலம் அளித்த சாட்சியை விசாரணையில் நடவடிக்கையில் உட்படுத்த வேண்டும் என்று கடிதம் அளித்தார். ...."

But the same was not denied by the writ petitioner Corporation, while filing counter statement before the Labour Court. In fact, the Workman also examined one of the passengers before the Labour court, in support of his claim. The workman has not chosen to question the award insofar denying backwages is concerned. But he had chosen to sustain the award by giving aforesaid reasons under Order 41, Rule 22, besides the reasons given by the Labour Court and in the light of the judgment of the Apex Court in Anil Kumar Gupta and Others V. Municipal Corporation of Delhi, reported in (2000) 1 SCC 128 and the judgment of this Court in Umapathy V. The Manager (Marketing), Tamil Nadu Dairy Development Corporation, reported in 1984-I-LLJ 248 (Madras). As rightly contended by the learned counsel for the workman that the checking took place at 1.45 A.M. during night and the same could be taken as an extenuating circumstances. Yet another extenuating circumstance is that the checking took place before Vaniyambadi and not at Vellore. Further, the workman retired from service in the meantime.

7. It is useful to extract the following passage in paragraph 17 of Anil Kumar Gupta's case (cited supra) :

"17. In view of the recent judgment of this Court in Ravinder Kumar Sharma v. State of Assam, (1999) 7 SCC 435, it is, in our opinion, open to the respondents to attack the adverse findings arrived at or observations made by the High Court, even if the respondents had not filed a separate appeal against that part of

the judgment. Hence, the respondents can contend that the finding or observations that their appointments were tainted was not correct."

8. It is also useful to extract the following passage in paragraph 4 of the judgment in Umapathy's case (cited supra) :

"4. .... The Supreme Court in Northern Railway Co-operative Credit Society Ltd. V. Industrial Tribunal [1967-II-L.L.J. 46] was prepared to apply the principles of rule 22 of Order XLI of the Code of Civil Procedure in the matter of an industrial tribunal even though in the rules of the Supreme Court there was no rule analogous to rule 22 of Order XLI of the Code of Civil Procedure and held that the party is entitled to support the decision of the tribunal even on grounds which were not accepted by the tribunal or on other grounds which may not have been taken notice of by the tribunal while they were patent on the face of the record. Learned Judges of the Supreme Court referred to two Judgments of the same court, one is Ramanbhai Ashabhai Patel V. Dabhi Ajitkumar Fulsinji and the other in Powari Tea Estate v. Barkataki [1965-II L.L.J. 102]. In my view, the same principles should be invoked in writ jurisdiction also while canvassing orders passed by authorities similar to the third respondent. There is no scope for the party who has ultimately succeeded before the statutory tribunal and authority to approach this Court under Article 226 of the Constitution of India for the only purpose of canvassing a particular finding which has gone against him. There is a possibility that a relevant aspect or assessed and considered would have led to a finding being rendered on that aspect in favour of the party concerned. It would be equitable for this court, in the exercise of its jurisdiction under Art. 226 of the Constitution of India, to permit such a party to canvass those aspects and support the ultimate order of the tribunal or authority on grounds, which have been negatived by it. In Ramanbhai Ashabhai Patel V. Dabhi Ajitkumar Fulsinji (supra) the Supreme Court observed as follows :

"Apart from that, we think that while dealing with the appeal before it, this

court has the power to decide all the points arising from the judgment appealed against and even in the absence of express provision like Order XLI Rule 22 of the Code of Civil Procedure, it can devise the appropriate procedure to be adopted at the hearing. There could be no better way of supplying the deficiency than by drawing upon the provisions of a general law like the code of Civil Procedure and adopting such of those provisions as are suitable. We cannot lose sight of the fact that normally a party in whose favour the judgment appealed from has been given will not be granted special leave to appeal from it. Consideration of justice, therefore, requires that this court should in appropriate cases, permit a party placed in such a position to support the judgment in his favour even upon grounds which were negatived in that judgment."

9. In my view, taking into account the aforesaid facts borne out by the records, that were elaborately stated in paragraph 6 of this judgment and in the light of the aforesaid judgments, I am not inclined to interfere with the award of the Labour Court. Further, the workman has retired from service long back. Even before this Court, the learned counsel for the petitioner Corporation is not able to state as to why at the least the Driver was not examined and also why no effort was taken to send letter to the passengers, particularly, when the Conductor made a request in this regard to the Disciplinary Authority.

10. The Apex Court in U.P. State Road Transport Corporation and Others V. Mahesh Kumar Mishra and Others, reported in (2000) 3 SCC 450, held that when there is a dispute with regard to the place of boarding, the concerned passenger has to give evidence in the enquiry and the Transport Corporation shall take efforts to examine the passenger. In my view, the said principle is applicable herein also. It is useful to extract paragraphs 11 and 12 of the said judgment :

"11. We have already noticed above that instead of charging a fare of Rs 1.80, the respondent had charged a fare of Rs 1.50 from the passengers. While the appellants maintained that the passengers had boarded the bus at the "High Court" and were to alight at "Manauri", the respondent contended that the passengers had

boarded the bus at "Zero Road" and were to get down at "Manauri" and, therefore, he had rightly charged Rs 1.50 from those passengers. This fact could have been established beyond doubt if any of those passengers was examined at the domestic inquiry, or the Transport Inspector, who checked the bus, could have recorded their statements at the spot. This was not done and reliance was placed only upon the report of the Transport Inspector which was signed by the respondent also. It was not a case where the passengers were allowed to travel without tickets so that the amount of fare charged from the passengers could be pocketed by him.

12. Under these circumstances, we do not agree with the contention of the counsel for the appellants, that the High Court should not have interfered with the quantum of punishment inflicted upon the respondent. The appeal is, therefore, dismissed but without any order as to costs."

11. The workman took a stand that he did not collect any excess fare. Hence, it is for the Corporation to examine the passengers to prove the charge, particularly when the workman made a request. It is a different matter, if the passengers did not turn up for the enquiry, even after receipt of the letter from the Enquiry Officer to appear for the enquiry. In any event, the Corporation did not even examine the Driver, who signed the statements referred to above.

12. Taking into account, overall facts as discussed in detail in paragraph 6 of this judgment and also the fact that the second respondent retired from service, I am not inclined to interfere with the award. Hence, the writ petition fails and the same is dismissed and a direction is issued to the writ petitioner/management of the corporation to pay the benefits to the second respondent as per the Award and also the terminal benefits, within a period of six weeks from the date of receipt of a copy of this order. However, there will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Presiding Officer,  
Labour Court,  
Vellore.

+1cc to Mr.S.T.Varadarajulu, Advocate, S.R.No.16412

W.P.No.12415 of 2006

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