

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 06.04.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.42569 of 2006

The Management
Tamil Nadu State Transport Corporation
(Villupuram) Divn II Ltd., rep. by its
General Manager
Rangapuram, Vellore. ... Petitioner

Versus

1.The Joint Commissioner of Labour
(Conciliation)
D.M.S.Cmpound
Teynampet, Chennai - 600 006.

2.R.Baskar ... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records of the first respondent in Approval Petition No.51 of 2005 dated 22.12.2005 and to quash the same.

For Petitioner : Mr.P.Paramasiva Doss

For Respondents : Mr.R.Rajeswaran - R1
Special Government Pleader

Mr.S.T.Varadharajulu - R2

O R D E R

Heard Mr.P.Paramasiva Doss, learned counsel appearing for the petitioner, Mr.R.Rajeswaran, the learned Special Government Pleader appearing for the first respondent and Mr.S.T.Varadharajulu, learned counsel appearing for the second respondent and with the consent of the learned counsel on either side, the Writ Petition is taken up for final disposal.

2.The Petitioner is the Management of the Tamil Nadu State Transport Corporation, Villupuram Division and the challenge is to an order passed by the first respondent exercising their

power under section 33(2)(b) of the Industrial Disputes Act, 1947 (in short 'Act'). The second respondent/workman was employed as a Conductor and he was charged for having re-issued the tickets to several passengers and the amount defrauded was to the tune of Rs.5,688/-. Consequently, after conducting domestic enquiry, the second respondent was dismissed from service.

3.The Management sought approval of the order of dismissal from the first respondent by filing a Petition under section 33 (2)(b) of the Act. The first respondent framed four questions for consideration, viz.

(i) As to whether the domestic enquiry is in accordance with the relevant rules/Standing orders and the principles of natural justice ?

(ii) Whether a prima facie case for dismissal based on legal evidence adduced in the domestic enquiry is made out ?

(iii) Whether the Management has come to a bona fide conclusion that the workman was guilty and dismissal did not amount to unfair labour practice and was not intended to victimise the Opposite Party ? and

(iv) whether the workman was paid or offered to pay wages for one month to the Opposite Party ?

4.The first three issues were decided in favour of the Management and the second respondent/workman has not challenged that portion of the findings recorded by the first respondent. With regard to the payment of notice, pay the first respondent, in my view on a flimsy ground, interfered and rejected the the Approval Petition.

5.It is not in dispute that the wages were paid and if according to the first respondent, the correct wages were not paid, then their should have been evidence to the said effect and without any evidence, merely because the rates of wages for the employee was not produced before the first respondent, he could not have drawn an adverse inference. Further, the first respondent has not recorded any finding that inspite of directions being issued to the Management, they failed to produce the records. Therefore, the said finding recorded by the first respondent is untenable.

6.Accordingly, the Writ Petition is allowed and the findings recorded by the first respondent regarding the wages payable to the second respondent/workman is set aside and as a consequence of which, approval of the dismissal from service has to be

granted. However, taking into consideration of the fact that the employee has been working for more than fifteen years and the litigation has been prolonging for all these years, this Court is of the view that instead of imposing a punishment of dismissal from service, the Management can modify the punishment. However, considering the nature of proven charges, it would be undesirable to reinstate the second respondent/workman. Therefore, the Management can consider and impose the punishment such as compulsory retirement on the second respondent. The above direction be complied with by the petitioner/ Management, within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Joint Commissioner of Labour
(Conciliation)

D.M.S.Cmpound
Teynampet, Chennai - 600 006.

2.The Section Officer,
VR Section,
High Court, Madras.

[01/06/2016]

+1cc to Mr.P.Paramasivadass, Advocate, S.R.No.22342
+1cc to Mr.S.T.Varadarajulu, Advocate, S.R.No.22069
+1cc to the Government Pleader, S.R.No.22511

W.P.No. 42569 of 2006

sr(CO)
srg(27/04/2016)

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