



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.06.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P (MD) No.11549 of 2016

and

W.M.P (MD) No.8836 of 2016

The General Secretary,
Kanniyakumari District Bharathia
State Transport Thozhilalar Sangam,
Saithanyam,
Vivekandar Street,
Ranithottam,
Nagercoil-1,
Kanniyakumari District.

... Petitioner

vs.

1) The Presiding Officer,
Labour Court,
Tirunelveli.

2) The General Manager,
Tamil Nadu State Transport Corporation
Tirunelveli (Va.Thu)
Nagercoil Division,
Ranithottam,
Nagercoil,
Kanniyakumari District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the order dated 07.12.2015 in I.D.No.26 of 2015 passed by the 1st respondent-Labour Court and the punishment order the order No.8084/legal-14/Olungu/Tha.Aa.Po.Ka/2008 dated 15.11.2010 passed by the 2nd respondent and quash the same.

For Petitioner : Mr.A.Thirumurthy for
M/s.Victory Associates
For R2 : Mr.K.Sathiya Singh

ORDER

The General Secretary, Kanniyakumari District Bharathia State Transport Thozhilalar Sangam, has filed this writ petition challenging the order dated 07.12.2015 passed by the 1st respondent/Labour Court, Tirunelveli, in I.D.No.26 of 2015 and the punishment order dated 15.11.2010 passed by the 2nd respondent, to quash the same.



2.Mr.Velappan while serving as a driver in Tamil Nadu State Transport Corporation, Dharmapuri, was issued with a charge memo dated 22.11.2008 by the 2nd respondent framing four counts of charges which are given as under:-

1) On 09.09.2008 at about 8.45 A.M., the bus bearing Registration No.TN.74 N-0712 (Route No.87 B) driven by Mr.N.Velappan, Driver from Melmidalam to Marthandam was stopped at Munchirai bus stop and after unloading and loading of passengers, when the bus was moved, six passengers ran towards the bus showing their hands but the bus was not stopped and even after the Checking Inspectors blew whistle twice, the bus was not stopped.

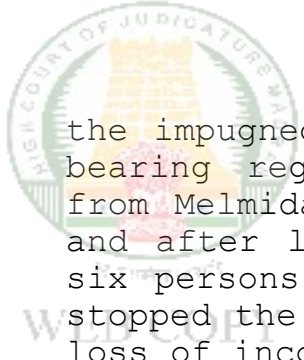
2) Thus, the passengers were put into hardship and loss of income to the Corporation.

3) The bus was not stopped even after whistling by Checking Inspectors.

4) Thus, the petitioner committed misconduct under Standing Order No.16(14) of the Corporation.'

3. On receipt of the charge memo, the said N.Velappan submitted his explanation on 04.12.2008 denying all the charges, stating that he moved the bus from Moongsirai bus stop after unloading and loading of all the passengers and also after hearing a whistle sound from the Conductor. In addition to the denial of the charges, Mr.Velappan requested the 2nd respondent to drop the charges, however, the disciplinary authority rejecting his explanation ordered for an enquiry and the enquiry officer holding enquiry on different dates from 31.01.2009 to 15.10.2009 found him guilty and submitted a report. On the basis of the enquiry report, the 2nd respondent/disciplinary authority after giving him reasonable opportunities, finally imposed a punishment of stoppage of increment for three years with cumulative effect on 15.11.2010. Aggrieved by the same, Mr.Velappan preferred an appeal before the Managing Director, Tamil Nadu State Transport Corporation, Tirunelveli, on 03.08.2011, however, finding that there was no response on the listing of his appeal, he has raised an industrial dispute under Section 2(k) of the Industrial Disputes Act on 05.03.2012 before the Assistant Commissioner of Labour (Conciliation), Nagercoil, and the 2nd respondent also filed a reply. Finally, the Assistant Commissioner of Labour, Nagercoil, finding no positive result from both sides, filed his conciliation failure report on 30.07.2014, pursuant thereto, G.O(D)No.145, Labour and Employment Department, dated 10.04.2015 has been issued referring the demand to the 1st respondent for adjudication. The issue referred to the 1st respondent was, whether the demand of the Union to quash the punishment order dated 15.11.2010 imposing the punishment of stoppage of increment for three years is justified? If so, to pass appropriate order. Thereafter, the Labour Court dismissed the industrial dispute confirming the punishment imposed against Mr.Velappan, as against that, present writ petition has been filed.

4.Mr.AThirumurthy, learned counsel for the petitioner assailing



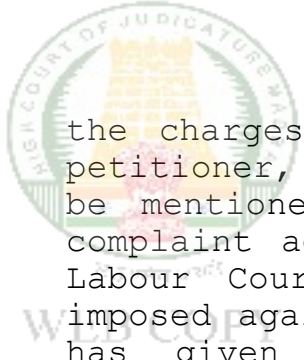
the impugned order submitted that when Mr.Velappan was driving a bus bearing registration No.TN-74-N-0712 (Route No.87-B) on 09.09.2008 from Melmidalam to Marthandam, it was stopped at Moongsirai bus stop and after loading and unloading the passengers, it was alleged that six persons ran towards the bus showing their hands, but he has not stopped the bus, as a result, the passengers were put to hardship and loss of income also had occurred to the corporation. When the charges were levelled against the driver of the bus Mr.N.Velappan, the 2nd respondent has shown prejudicial attitude towards the driver Mr.Velappan alone and conveniently omitted to include the Conductor who was also on duty on 09.09.2008 in the same bus.

5.Adding further, he would submit that even no passenger had given any complaint against the said incident that had allegedly taken place on 09.09.2008 about 08.45 A.M, as alleged in the charge memo. It was also contended that when Mr.Velappan was a member of the petitioner's Sangam as well as the President of Bharatia Mazdoor Sangh, Kanniyakumari District and actively participating in the Trade Union activities for collective bargaining and to redress the grievance of the members of the petitioner's Sangam working in the 2nd respondent corporation, having grudge against the him, the charge memo has been issued in an effort to victimise him for breaching the trade union activities. Finally, it was contended that no evidence whatsoever has been produced in the domestic enquiry. Moreover, when there was a specific direction to produce the relevant documents, the management did not come forward to comply with the said direction, therefore, the management witness who took part in the domestic enquiry to support the case of the management, he pleaded, has to be construed only as a biased one.

6.But this Court is not able to find any merit. The reason is, when Mr.N.Velappan was issued with the charge memo containing three counts of charges therein with one serious charge that on 09.09.2008 about 08.45 A.M while plying the bus belonging to the transport corporation bearing registration No.TN-74-N-0712 (Route No.87-B) on 09.09.2008 from Melmidalam to Marthandam, after stopping at Moongsirai bus stop, he has failed to take up six passengers, who were running towards the bus showing their hands in spite of the whistle blown by the Conductor.

7.It may be mentioned herein that although the learned counsel for the petitioner has repeatedly canvassed a point in this regard that the Checking Inspector who was standing at a place opposite to the bus stop, could not have exactly seen the persons actually boarded the bus, therefore, the charge made against the petitioner based on the evidence of the Checking Inspector cannot be accepted and the same should be brushed aside as far from acceptance, this Court is not inclined to accept the said contention for the following reasons:-

Firstly, when the charge memo was issued to Mr.N.Velappan, the delinquent employee, he submitted his explanation on 04.12.2008. A perusal of the explanation which is filed along with the typedset of papers clearly shows that he has not given sufficient explanation to



the charges. Secondly, as claimed by the learned counsel for the petitioner, no complaint was given by any of the passengers. It may be mentioned that it is not necessary for any passenger to give complaint against either driver or conductor. Thirdly, the learned Labour Court while considering the correctness of the punishment imposed against Mr.N.Velappan, also after going through the records, has given a clear cut finding holding against Mr.N.Velappan, delinquent employee that he has not questioned the enquiry nor produced any supportive evidence to assail the quantum of punishment imposed against him, therefore, when the Labour Court in its order has refused to exercise the inherent powers conferred under Section 11-A of the Industrial Disputes Act, may be, for the reason that it is only a question of fact, this Court also sitting under Article 226 of the Constitution of India finding that finding of facts given by the disciplinary authority based on the report of the enquiry officer after being confirmed by the Labour Court, is not inclined to re-write the same, therefore, the impugned award is hereby confirmed and the writ petition is dismissed. No costs. W.M.P(MD)No.8836 of 2016 is closed.

Sd/-
Assistant Registrar[P AND A]

/True copy/

Sub Assistant Registrar

nbi
To
1)The Presiding Officer,
Labour Court,
Tirunelveli.

1CC TO MR. K. SATHIYASINGH, ADVOCATE SR: 33790

AM GSV PM SARI
4P 3C

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