



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.09.2016

Delivered on : 15.11.2016

CORAM

WEB COPY

THE HON'BLE Mr. JUSTICE M.SATHYANARAYANAN

AND

THE HON'BLE Ms. JUSTICE V.M.VELUMANI

W.A. (MD) No.278 of 2013

M.Kanniyappan

.. Appellant/Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Tiruchirappalli.

2.Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Rep. by its Managing Director,
Kumbakonam.

.. Respondents

Appeal filed under under Clause 15 of the Letters Patent, to set aside the order dated 23.02.2011, made in W.P.(MD)No.4041 of 2006.

Prayer in WP(MD)No.4041/2006:-

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the award dated 30/09/05 passed by the 1st respnodent in I.D.No. 70/02, quash the same and to hold that termination of service of the petitioner by the 2nd respondent by an order dated 02/08/01 is illegal and consequently to order the 2nd respondent to pay the petitioner the back wages from the date of termination of his service to the date of his superannuation with continuity of my service and other attendant benefits including Pension.

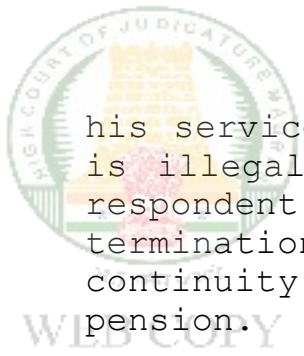
For Appellant : Mr.S.Arunachalam
For R2 : Mr.D.Sivaraman

JUDGMENT

V.M.VELUMANI, J.

This Writ Appeal has been filed challenging the order of the <https://hservices.ecourts.gov.in/hservices/> Bench of Single Judge, dated 23.02.2011, made in W.P.(MD)No.4041 of 2006.

2. The appellant/petitioner filed W.P.(MD)No.4041 of 2006 seeking to quash the award dated 30.09.2005, passed by the first respondent in I.D.No.70 of 2002 and to hold that termination of



his service by the second respondent by an order dated 02.08.2001 is illegal and also for a consequential direction to the second respondent to pay the appellant the back wages from the date of termination of his service to the date of his superannuation with continuity of his service and other attendant benefits including pension.

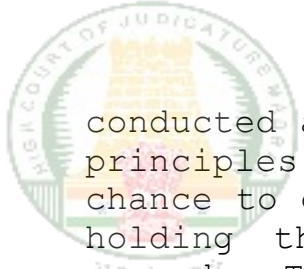
3. The facts of the case:-

(i) The appellant was working as Conductor in the second respondent Transport Corporation from 30.06.1975. While the appellant was on duty on 28.09.2000 as Conductor in the second respondent Transport Corporation bus, bearing Registration No.TN-55-N-0087 on it's trip from Trichy to Madurai, the Checking Inspectors checked the bus at Melur. At the time of checking, it was found that one passenger travelling from Trichy to Madurai did not have ticket. On enquiry, the passenger stated that he and another passenger were travelling together and they purchased two tickets by paying Rs.55/-, but, the appellant issued only one ticket. The appellant denied that the passenger paid for two tickets and also that he issued only one ticket. The passenger did not buy ticket and to escape from paying penalty, he has stated that he paid the amount, but the appellant did not issue ticket. The respondent introduced a new system of issuing tickets to the passengers and the appellant was not familiar with new system. Many number of passengers boarded the bus at Trichy and the appellant issued tickets to all the passengers, who boarded the bus at various stops and recorded it in the invoice. One passenger did not buy the ticket and due to overcrowding, the appellant could not notice it.

(ii) While the bus started the trip at Trichy, one staff of the second respondent Transport Corporation, boarded the bus and showed his identity card for his travel. In the old system, while recording the number of passengers travelling in the bus and the number of staff allowed free travel without ticket, would be recorded separately in the invoice. But, in the new system, there was no column in the invoice to record such free travelers in the bus and the conductors were also not asked to record their travel either in the invoice or in any other documents maintained by them and the staff were allowed to travel by just showing their identity card issued by the Management of the Corporations. The staff without informing the appellant got down from the bus. The appellant did not receive Rs.55/- from the passenger. In fact, there was shortage of Rs.25.50. Three Checking Inspectors checked the bus at Melur. They checked all the passengers in the bus only and at the time of checking, it was found that it was a group of two passengers, but they had only one ticket. Therefore, one among them was not having ticket and was travelling without ticket from Trichy taking advantage of the crowd in the bus. The appellant issued fare for only one ticket from Trichy to Madurai and issued ticket for the same.

<https://hcc.madurai.gov.in/reserve/>

(iii) The appellant was suspended from service on 29.09.2000 and a charge memo dated 20.10.2000 was issued. The appellant submitted his explanation. The domestic enquiry



conducted against the appellant was not conducted according to the principles of natural justice and the appellant was not given fair chance to deny the charges. The Enquiry Officer gave his findings holding that the charges levelled against the appellant were proved. The second show cause notice was issued to the appellant with proposed punishment. The appellant submitted his explanation. The second respondent, by order dated 02.08.2001, dismissed the appellant from service.

(iv) The appellant raised an Industrial Dispute, which was taken on file in I.D.No.70/2002 on the file of the first respondent/Labour Court, Trichy. The first respondent/Labour Court held that the domestic enquiry was conducted in a fair and proper manner, charges levelled against the appellant were proved and dismissal order was legal.

(v) Against the said award dated 30.09.2005, made in I.D.No.70 of 2002, the appellant filed W.P.(MD)No.4041 of 2006.

(vi) The learned Judge after considering all the materials on record, the award of the first respondent and the contentions of the learned counsel for the appellant as well as the second respondent, dismissed the writ petition as devoid of merits.

4. Against the order dated 23.02.2011, made in W.P.(MD)No.4041 of 2006, the present writ appeal is filed.

5. The learned counsel for the appellant contended that;

(a) the passenger did not pay Rs.55/- for two tickets, but paid only for one ticket and the appellant issued the ticket. In order to escape from paying penalty, the passenger had given a false complaint;

(b) the Checking Inspectors got the signature of the passenger in a blank paper and asked the appellant to sign and the appellant refused. The Checking Inspectors got the signature of driver and wrote the alleged statement of passenger;

(c) there was no excess amount;

(d) the domestic enquiry was not conducted following the principles of natural justice;

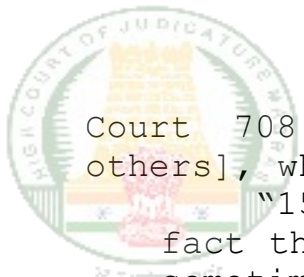
(e) the appellant was not given proper opportunity to defend himself;

(f) the second respondent did not examine other Checking Inspectors and they also did not examine the passenger, who gave statement. The statement given by the passenger cannot be marked and relied on by the second respondent;

(g) the appellant did not misappropriate any amount. Even if the charges were held to be proved, the order terminating the services of the appellant, is disproportionate to the charges levelled against him; and

(h) the first respondent ought to have exercised its power under Section 11-A of the Industrial Disputes Act [hereinafter referred to as "the Act"] and modified the order of termination.

6 (i). The learned counsel for the appellant relied on the judgment of the Hon'ble Apex Court reported in AIR 1964 Supreme



Court 708 [M/s.Kesoram Cotton Mills Ltd., Vs. Gangadhar and others], wherein at paragraph 15, it has been held as follows:

"15. Further we can take judicial notice of the fact that many of our industrial workers are illiterate and sometimes even the representatives of labour union may not be present to defend them. In such a case to read over a prepared statement in a few minutes and then ask the workmen to cross-examine would make a mockery of the opportunity that the rules of natural justice require that the workmen should have to defend themselves. It seems to us therefore that when one is dealing with domestic enquires in industrial matters; the proper course for the management is to examine the witnesses from the beginning to the end in the presence of the workman at the enquiry itself.

.....

The minimum that we shall expect where witnesses are not examined from the very beginning at the enquiry in the presence of the person charged is that the person charged should be given a copy of the statements made by the witnesses which are to be used at the enquiry well in advance before the enquiry begins and when we say that the copy of the statements should be given well in advance we mean that it should be given atleast two days before the enquiry is to begin. If this is not done and yet the witnesses are not examined-in-chief fully at the enquiry, we do not think that it can be said that principles of natural justice which provide that the person charged should have an adequate opportunity of defending himself are complied with in the case of a domestic enquiry in an industrial matter. In the present case all that had happened was that the prepared statements were read over to the workmen charged and they were asked then and there to cross-examine the witnesses. They were naturally unable to do so and in the circumstances we agree with the tribunal though for different reasons that the enquiry did not comply with the principles of natural justice."

(ii) The learned counsel for the appellant relied on the judgment of the Hon'ble Apex Court reported in AIR 1964 Supreme Court 719 [M/s.Khardah and Co. Ltd., Vs. The Workmen] and submitted that in the said decision, the Hon'ble Apex Court held that evidence must be recorded in the presence of the workman and finding must be given based on evidence.

(iii) The learned counsel for the appellant relied on the Judgment of a Division Bench of this Court reported in 1978-II-L.L.J. 437 [Indian Airlines and others Vs. W.B.Correya], and submitted that the statements recorded from the witnesses at the time of preliminary enquiry, cannot be held as statement in the domestic enquiry. Principles of natural justice are violated when the witnesses were examined behind the back of the delinquent employee and was called upon to cross-examine them.



(iv) The learned counsel for the appellant relied on the judgment of the Hon'ble Apex Court reported in 1999-I-L.L.J.604 (SC): 1992 (2) SCC 10 [Kuldeep Singh Vs. Commissioner of Police and others] and submitted that the Hon'ble Apex Court held that when there was a finding against the delinquent employee as guilty of charges levelled against him without there being any evidence is perverse, the Courts can exercise its judicial review and interfere with the said finding.

(v) The learned counsel for the appellant relied on the judgment of the Hon'ble Apex Court reported in 2000 (3) SCC 450 [U.P. State Road Transport Corporation and others Vs. Mahesh Kumar Mishra and others] and submitted that the Hon'ble Apex Court held that the Corporation did not collect the sufficient evidence though available. Statement of witnesses were not recorded and none of the passengers were examined. Only available evidence was Checking Inspector. Charges levelled against Conductor was not serious in nature. In the circumstances, the Hon'ble Apex Court held that the punishment of dismissal is shockingly disproportionate to the gravity of charges and the High Court rightly interfered and set aside the order of dismissal and ordered reinstatement with 1/4th backwages.

7. Per contra, the learned counsel for the second respondent contended that;

(a) the appellant received Rs.55/- from the passenger for issuance of two tickets of Rs.27.50 each, but issued one ticket for Rs.27.50 only and misappropriated Rs.27.50;

(b) the statement of passenger was recorded on the spot;

(c) the appellant initially admitted his guilt, but subsequently, denied having received Rs.55/-;

(d) the appellant refused to sign the statement of passenger and only the driver signed the same;

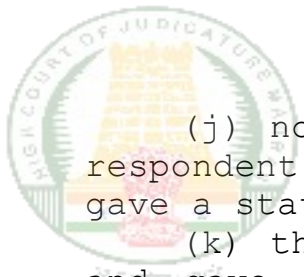
(e) the bus at the time of checking at Melur was not having with many passengers and the appellant could have easily checked and found out one passenger was travelling without ticket;

(f) the appellant has taken a different stand in this matter. Originally, he had stated that the bus was overcrowded at Trichy. Therefore, he could not find out that one passenger did not buy ticket. Subsequently, he took the stand that one staff travelled in the bus and there is no provision for making entry in the invoice to show that the staff are travelling in the bus;

(g) domestic enquiry was conducted in a fair and proper manner following the principles of natural justice and the appellant was given ample opportunity to defend himself and he fully participated in the enquiry without any complaint;

<https://hcservices.ecourts.gov.in/hcservices> (h) the appellant was imposed with punishments for 23 previous misconducts and out of 23 punishments, 6 were similar misconduct;

(i) the quantum of amount misappropriated is not a criteria, but only fact to be considered is whether the appellant misappropriated money of the second respondent or not;



(j) non-examination of passenger is not fatal, as the second respondent examined the Checking Inspector, to whom, the passenger gave a statement duly attested by the driver;

(k) the appellant refused to sign the statement of passenger and gave a contradictory statement denying misappropriation of Rs.27.50. The statement of passenger was marked through P.W.2 Checking Inspector. At that time, the appellant did not object the same. He also in the objection given to the show cause notice as well as the second show cause notice, did not raise any procedural irregularity, with regard to marking of statement of passenger;

(l) the appellant had taken a different stand at different point of time and therefore, his statement cannot be relied on;

(m) the first respondent considered all the materials on record, documents filed by the second respondent and held that the domestic enquiry was fair and proper and order of dismissal is valid and legal;

(n) the learned Judge also considered the facts and law and held that the award of the first respondent does not suffer from any serious material irregularity or patent irregularity warranting any interference by this Court in writ jurisdiction;

(o) the Enquiry Officer, the first respondent as well as the learned Judge have held that the appellant is guilty of charges levelled against him and order of termination is proper punishment. There is no reason to interfere with the concurrent findings; and

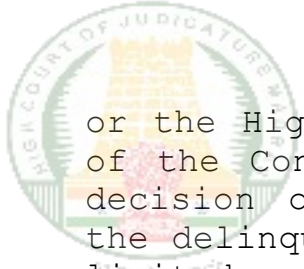
(p) the order of termination is valid and legal and proportionate to proven charges.

8 (i). The learned counsel for the second respondent relied on the judgment of the Hon'ble Apex Court reported in 1977 (2) SCC 491 [State of Haryana and another Vs. Rattan Singh], and submitted that the Hon'ble Apex Court held that the departmental enquiry must be conducted following the principles of natural justice and fair play and not bound by strict rules of evidence. The Court can interfere if there is no sufficiency of evidence.

(ii) The learned counsel for the second respondent relied on the judgment of the Hon'ble Apex Court reported in 2002 (10) SCC 330 [Regional Manager, RSRTC Vs. Ghanshyam Sharma], and submitted that the Hon'ble Apex Court held that the power under Section 11-A of the Act is discretionary power. The Labour Court or the Tribunal must exercise the said power judicially. The Conductor, who received the money did not issue ticket. He acted dishonestly. The Hon'ble Apex Court further held that the order of dismissal is proportionate to the charges levelled against the Conductor and proved in the enquiry and held that it will be misplaced sympathy to order his reinstatement.

<https://hcservices.ecourts.gov.in/hcservices/>

(iii) The learned counsel for the second respondent relied on the judgment of the Hon'ble Apex Court reported in AIR 2007 Supreme Court 705 [Govt. of India and another Vs. George Philip] and submitted that the Hon'ble Apex Court held that the Tribunal



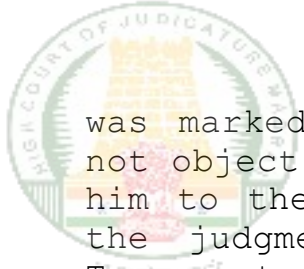
or the High Court while exercising jurisdiction under Article 226 of the Constitution of India, not hearing an appeal against the decision of the disciplinary authority imposing punishment upon the delinquent employee. The Tribunal and the High Court exercise limited power while exercising power of judicial review and cannot set aside the punishment altogether or impose some other punishment unless the principles of natural justice or rules and procedures are not followed and grossly violated.

(iv) The learned counsel for the second respondent relied on the judgment of the Hon'ble Apex Court reported in 2009 (7) SCC 552 [Divisional Manager, Rajasthan State Road Transport Corporation Vs. Kamruddin] and submitted that the Hon'ble Apex Court held that the delinquent employee committed 5 times misconduct of non-issuing tickets after receiving money and also held that the domestic enquiry was conducted in a fair and proper manner and charges were proved. In the circumstances, order of termination is proper and the order of the Labour Court setting aside the said order awarding stoppage of increment, which was confirmed by the High Court are not proper and valid. The power of Labour Court or the Tribunal to interfere with the quantum of punishment must be exercised judicially.

9. We have carefully perused all the materials available on record, the award of the first respondent as well as the order of learned Judge, dated 23.02.2011, made in W.P.(MD)No.4041 of 2006 and considered the arguments advanced by the learned counsel appearing for the parties.

10. It is the case of the second respondent that the appellant having received money from the passenger, failed to issue ticket and misappropriated a sum of Rs.27.50. The appellant denied the charges. The second respondent conducted a domestic enquiry and based on the Enquiry Report, following the procedure, terminated the services of the appellant. The appellant raised an Industrial Dispute before the first respondent and alleged that the second respondent did not conduct proper domestic enquiry and did not give fair opportunity to him and the punishment imposed is disproportionate to the charges levelled against him. Before the first respondent, the appellant did not examine himself and did not produce any documentary evidence. The second respondent did not let in any oral evidence, but marked Exs.M.1 to M.13. The first respondent considering the domestic enquiry proceedings and the procedure adopted by the second respondent held that the domestic enquiry was fair and proper. There is no error in the said order.

11. The contention of the learned counsel for the appellant <https://hds.ces.ecm.gov.in/secure/> respondent failed to examine the passenger and therefore, the statement of passenger could not be relied on, is untenable. It is well settled that in the domestic enquiry, strict proof of evidence to prove the charges levelled against the delinquent employee is not necessary. The statement of passenger



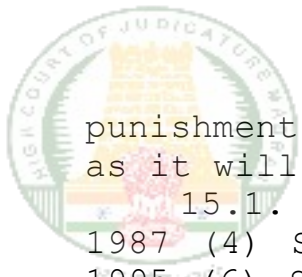
was marked through the Checking Inspector and the appellant did not object to the same at that time or in the explanation given by him to the second show cause notice. The Hon'ble Apex Court in the judgment reported in 2010 (6) SCC 555 [U.P. State Road Transport Corporation Vs. Suresh Chand Sharma] following its judgment reported in 1977 (2) SCC 491 : AIR 1977 SC 1512 [State of Haryana Vs. Rattan Singh], has held that non-examination of passenger is not fatal to the case of Corporation. The report of the Checking Inspector was marked and he was not cross-examined. The High Court must give cogent and valid reasons to interfere with the order of Labour Court, confirming the order of Management. Therefore, the judgments relied on by the learned counsel for the appellant with regard to non-examination of passenger do not advance the case of the appellant. The appellant has not made out any case before the learned Judge as well as before us to interfere with the said finding.

12. The next point for consideration is whether the order of termination is disproportionate to the charges levelled against the appellant and proved by the second respondent.

13. The Hon'ble Apex Court in the judgment reported in 1973 (1) SCC 813 [The Workmen of M/s.Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and others] has considered the scope of interference under Section 11-A of the Act. The Hon'ble Apex Court considered the power of interference with quantum of punishment imposed by Management before insertion of Section 11-A as well as after the amendment of Industrial Disputes Act by including Section 11-A. The Hon'ble Apex Court has held that power under Section 11-A is a discretionary power, which has to be exercised judicially. The order of punishment can be set aside or modified, only if the same is shockingly disproportionate to the proven charges. The Courts must record reasons for exercising the discretionary power under Section 11-A of the Industrial Disputes Act.

14. The Industrial Disputes Act was amended by including Section 11-A. This Section gives discretionary power to the Labour Court to interfere with the quantum of punishment. The Labour Court or the Industrial Tribunal can consider the nature of charges levelled against the delinquent and the quantum of punishment imposed and can exercise the discretion and set aside the punishment or modify the punishment by imposing a lesser punishment. For exercising discretionary power, the Labour Court or Industrial Tribunal must give acceptable reasons. The discretionary power of Court as per Section 11-A of the Act is well settled.

15. This Court taking into consideration that the appellant is 26 years as Conductor in the second respondent Transport Corporation and has already attained the age of superannuation, is of the view that instead of remanding the matter to the disciplinary authority to decide the quantum of punishment, thought fit to modify the order of termination into



punishment of stoppage of two increments with cumulative effect, as it will meet the ends of justice.

15.1. The Hon'ble Supreme Court in the judgments reported in 1987 (4) SCC 611 [Ranjit Thakur Vs. Union of India and others]; 1995 (6) SCC 749 [B.C.Chaturvedi Vs. Union of India and others]; and 1997 (7) SCC 463 [Union of India and another Vs. G.Ganayutham] held that the matter need not be remanded to the disciplinary authority for imposing lesser punishment.

16. It is relevant to extract below the relevant portion of Clause 30(iii) of the Standing Orders of the Transport Corporation.

"30.Punishment for misconduct:

Punishments other than minor punishments:

(iii) Stoppage of increment or increments with or without cumulative effect.

In cases of stoppage of increment, when it cannot be effected, if without cumulative effect, the monetary equivalent of the increments ordered to be withheld and if with cumulative effect, the monetary equivalent to 3 times of his increment ordered to be withheld, may be ordered to be recovered."

17. In result, the order of the learned Single Judge, dated 23.02.2011, made in W.P.(MD)No.4041 of 2006 and the award of the first respondent, dated 30.09.2005, made in I.D.No.70 of 2002 are set aside and the order of termination, is modified into one of punishment of stoppage of two increments with cumulative effect. The second respondent is directed to settle the terminal benefits within a period of eight weeks from the date of receipt of a copy of this judgment. The writ appeal is disposed of accordingly. No costs.

Sd/-

Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To

1.The Presiding Officer, Labour Court,
Tiruchirappalli.

2.The Managing Director,
Tamil Nadu State Transport
Corporation (Kumbakonam) Ltd.,
Kumbakonam.

+One cc to Mr.S.ARunachalam, Advocate, SR.No.69218

+One cc to Mr.D.Sivaraman, Advocate, SR.No.69591

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