

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2017

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THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.22325 of 2006

Tamil Nadu State Transport
Corporation (Villupuram) Ltd
Vellore Region
rep.by its General Manager

... Petitioner

Vs

1. The Presiding Officer,
Labour Court, Vellore

2. M.Nagarajan

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the 1st respondent in I.D.No.68 of 2001 dated 21.07.2004 and quash the same.

For Petitioner : Mr.P.Paramasivados
For R1 : Court
For R2 : Mr.V.Ajoy Khose

O R D E R

Heard Mr.P.Paramasivados, learned counsel for the petitioner and Mr.V.Ajoy Khose, learned counsel appearing for the second respondent.

2. The petitioner has approached this Court for seeking the following relief,

"To issue a Writ of Certiorari, to call for the records of the 1st respondent in I.D.No.68 of 2001 dated 21.07.2004 and quash the same.."

3. The case of the petitioner is as follows:-

The second respondent was an employee under the petitioner/Corporation as Bus Conductor. While, he was on duty, the bus bearing No.TN 23-N 1206 on 19.03.1999 in Route No.109/A, the bus was inspected by the Checking Inspectors and it was found that he failed to issue tickets to the passengers in the

bus and consequently, it was found that he had excess amount of Rs.34.50 in the cash bag.

4. A charge memo was issued on 31.03.1999 to the workman/second respondent for the above said misconduct. As the explanation of the 2nd respondent was not satisfactory, a Domestic Enquiry was conducted and the workman was found guilty of misconduct alleged against him. The disciplinary authority accepted the enquiry report; a second show cause notice was issued to the workman proposing to impose punishment of dismissal from service. Since the explanation of the workman to the second show cause notice also was not satisfactory, the second respondent/workman was ultimately dismissed from the service by an order dated 11.10.1999.

5. The second respondent/workman raised an Industrial Dispute in I.D.No.68 of 2001 before the first respondent/Labour Court, challenging his dismissal order.

6. The first respondent/Labour Court, framed a preliminary issue, whether the enquiry conducted against petitioner was fair and proper?

7. The Labour Court found that enquiry conducted was not fair and proper and therefore proceeded to give an opportunity to the petitioner Management to lead fresh evidence before it. The finding of the Labour Court was that the passengers who were not issued tickets, despite collection of ticket fare were not examined before the Domestic Enquiry Officer and therefore, finding that the Domestic enquiry holding the workman guilty was invalid and perverse.

8. According to the Labour Court, although an opportunity was given to the management to lead evidence, such opportunity was not made use of by the management for letting in any effecting evidence in support of the charge memo. In the circumstances, the Labour Court ultimately decided on the issue whether charges framed against the workman are proper or not?. However, the Labour Court went on to hold that there was a negligence on the part of the workman, who did not issue tickets to the passengers at the appropriate time and therefore, ultimately passed an award ordering reinstatement with continuity of service and with 50% of backwages. The said award is challenged in this Writ Petition.

9. Mr.P.Paramasivadosh, learned counsel appearing for the Writ Petitioner vehemently argued that the findings of the Labour Court was perverse and cannot be countenanced. Both on the law and on practical aspects, according to him, the Labour Court has completely misdirected itself by holding that the

findings of the Domestic Enquiry as perverse, on the ground that the passengers involved were not examined in the Domestic Enquiry.

10. In support of this contention, the learned counsel for the petitioner has relied on the judgment reported in 1977 (2) SCC Page 491 (State of Haryana and another Vs. Rattan Singh). In the said decision, the Hon'ble Supreme Court of India has held that "In a domestic enquiry all the strict and sophisticated rules of the Evidence Act may not apply".

11. The learned counsel for the petitioner would also contend that it is an admitted fact that some excess amount was found in the cash bag entrusted with the workman and that excess cash was only in relation to the collection of ticket fares without issuing corresponding tickets with the passengers.

12. According to the counsel for the petitioner, the first respondent/Labour Court has overlooked such vital issues and thereafter held in favour of the workman, stating that the amount involved in the transaction did not tally and therefore, the workman cannot be held guilty of misappropriation.

13. In the above said circumstances, the learned counsel for the petitioner would argue that the workman having committed a serious misconduct has to suffer severe penalty and the award directing continuity of service will only encourage such employees in the Corporation, which is against the public interest.

14. Per contra, Mr. V. Ajay Khose, learned counsel appearing for the second respondent/workman, would submit that the preliminary finding of the Labour Court namely that enquiry was not held in a fair and proper manner had attained finality and that was not put to challenge in the present Writ Petition. Once the finding of the Domestic Enquiry is set aside and further opportunity was given to the management to lead evidence, the management having failed to make use of the opportunity, cannot be allowed to assail the finding of the labour Court, unless the same is found to be perverse. He would further submit that the finding of the Labour Court is on the basis of all the materials placed before it and such finding of fact cannot be re-appreciated by this Court exercising its jurisdiction under Article 226 of Constitution of India.

15. According to the learned counsel for second respondent/workman, the findings of the Domestic Enquiry was perverse and in the absence of any fresh evidence, the case of the management was not established at all in its favour.

Therefore, the Labour Court has rightly held that the charge of the misappropriation was not at all established. However the Labour Court, in its finding held that the petitioner was found guilty of negligence with regard to non issuance of tickets at the appropriate stage and for such act of misconduct, the Labour Court had denied the second respondent/workman 50% backwages and therefore, the award of the Labour Court did not require any interference by this court.

16. This Court has given anxious consideration to the rival submissions of this Court appearing for the parties. This Court has also perused the materials and pleadings placed on record. This Court having considered the facts and circumstances in his entirety is of the firm view that the award passed by the first respondent/Labour Court is a valid award and does not call for any interference.

17. As rightly contended by the learned counsel for the second respondent/Workman, once the preliminary finding of the Labour Court has attained finality, since the same has not been put to challenge in the Writ Petition, it is not open to the management to assail the findings of the Labour Court, as admittedly, the management failed to utilize the opportunity given to them for leading fresh evidence before the Labour Court. Moreover, the Labour Court has also considered whatever evidence that has been available before it and found that there was no material available to hold the workman guilty of the charges. In fact, in response to the citation relied on learned counsel for the petitioner/Corporation, the learned counsel for the second respondent has relied on decision reported in 2017(3) LLJ 257 (A.P.S.R.T.C., rep.by Depot Manager Vs.G.Murali), wherein, in paragraph 5 it is held as follows:-

5. We have heard the learned counsel for the appellant and perused the impugned judgment. We find that the order of the Industrial Court exonerating the respondent from charges 2 to 5 are on good grounds and do not call for any interference, as the passengers were not produced for cross-examination specifically when the respondent had denied the charges of collecting farer and non-issuing of tickets.

18. The Hon'ble Supreme Court has held that absence of examination of the passengers of the bus who were not issued tickets but fare was collected by the bus conductor was rightly exonerated of the charges. Therefore, the issue of examination of passengers has direct bearing on the question of establishing the charges framed against the workman.

19. In these circumstances, the preliminary finding of the Labour Court holding the findings of the Domestic Enquiry as perverse is supported by the above decision of the Hon'ble Supreme Court of India. Therefore, the final findings of the Labour Court that charges framed against the workman are not established, is valid manner and perfectly correct and the same does not call for any interference by this Court.

20. For all the above said reasons, this Court has no hesitation in upholding the award passed by the Labour Court, the I.D.No.68 of 2001, dated 21.07.2004. Therefore, the Writ Petition is dismissed as devoid of merits.

21. While, dismissing the Writ Petition, this Court is inclined to place it on record its appreciation over the manner in which, the matter was argued by the learned counsel for the petitioner/Corporation.

22. The learned counsel for the petitioner/Corporation succinctly argued his case and also cited the relevant decision in support of his contention.

23. However, unfortunately since the case of the second respondent/workman outweighed the case of the petitioner, this Court has to reject the effective arguments put forth by the learned counsel for the petitioner/Corporation.

24. It is represented that the second respondent/employee retired from service on 31.05.2013 on attaining the age of superannuation. Since the employee has retired from service on the due age of retirement, the petitioner/Corporation is directed to settle all the terminal benefits payable to him and arrears of salary within a period of 12 weeks from the date of receipt of a copy of this order. It is also represented that some money is accrued in deposit to the credit of I.D.No.68 of 2001 on the file of the Labour Court. It is open to the second respondent/workman to move an appropriate application for return of money in deposit of I.D.No.68 of 2001, if so advised.

s/d-

Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

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To

1. The General Manager,
Tamil Nadu State Transport
Corporation (Villupuram) Ltd
Vellore Region

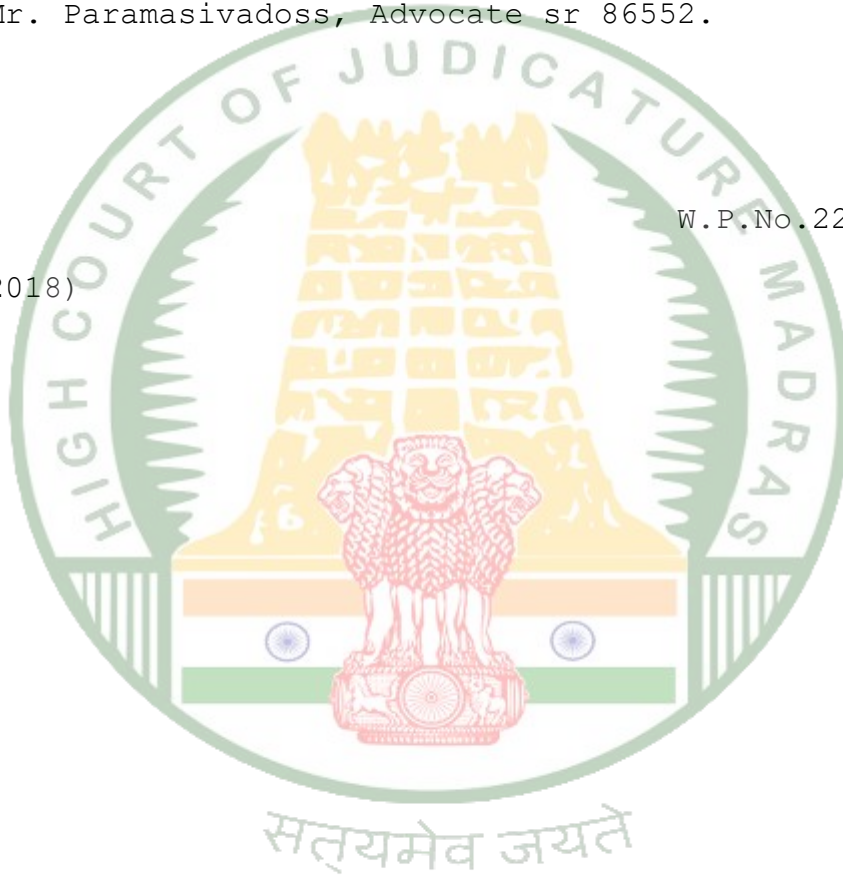
2. The Presiding Officer,
Labour Court, Vellore

+1 CC to Mr.V. Ajoy Khose, Advocate sr 86101.

+1 CC to Mr. Paramasivadosh, Advocate sr 86552.

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SP(18/01/2018)



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