

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 07.02.2017

DELIVERED ON: 02.03.2017

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

W.P. No.11962 of 2003

K. Markanda Rao ... Petitioner
vs.

1 The Presiding Officer
Labour Court
Cuddalore
Cuddalore District

2 The Management of
Tamil Nadu State Transport Corporation Ltd.
(Kumbakonam Division I)
formerly known as
Cholan Roadways Corporation Ltd.
Railway Station New Road
Kumbakonam 612 001
Thanjavur District ... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records from the first respondent relating to the award in I.D. No.39 of 1998 dated 13.01.2003 and quash the said award and direct the second respondent to reinstate the petitioner in service with backwages and attendant benefits.

For petitioner Mr. S. Ayyathurai

For R2 Mr. Paramasivados

ORDER

This writ petition has been filed challenging the award dated 13.01.2003 passed by the first respondent-Labour Court in I.D. No.39 of 1998 and for a direction to the second respondent to reinstate the petitioner in service with backwages and attendant benefits.

2 The facts germane and necessary for the disposal of this writ petition, in a nutshell, are as under:

2.1 The petitioner was working as a bus conductor in the second respondent-Transport Corporation (for brevity "the Management"). On 19.06.1987, he was on duty in the first shift in the bus TMN 4698 plying from Pattukottai to Kumbakonam. En route, around 5.45 a.m., the checking squad boarded the bus at Melattoor and found that two passengers were not having tickets with them and when they were questioned, they stated that they got into the bus at Annappanpettai and the petitioner collected Re.1 each from them, being the fare from Annappanpettai to Melattoor and that he did not issue tickets. The checking squad checked the cash bag and found that there was a sum of Rs.229.85, but, the trip sheet calculation showed Rs.208.20. Thus, there was an excess of Rs.21.65 (Rs.229.85 (-) Rs.208.20) in the cash bag, which, the petitioner was not able to explain. The petitioner accepted his mistake and what he said was recorded by the checking squad in the form of a statement in which, he signed and the same was attested by the driver of the bus. The two passengers also signed in the said statement. The checking squad issued two tickets to the two passengers and made necessary entries in the trip sheet.

2.2 Based on the report submitted by the checking squad, the Management placed the petitioner under suspension on 29.06.1987 and thereafter, he was issued with a charge memo dated 03.07.1987 in which three charges were made against him. The petitioner gave his explanation dated 10.07.1987 and not satisfied with that, the Management appointed one R.K. Jayapandian as Enquiry Officer to enquire into the charges.

2.3 Before the Enquiry Officer, the Management examined one witness and marked 6 documents. On behalf of the petitioner, Rangarajan, driver of the bus was examined as witness and one document was marked. The Enquiry Officer, by his report dated 20.02.2008, held the charges as proved. The Management issued a second show cause notice dated 30.07.1988 enclosing a copy of the Enquiry Officer's report and called for explanation from the petitioner with regard to the punishment of dismissal that was proposed to be imposed on him. The petitioner submitted his explanation dated 09.08.1988. The Management, by order dated 25.08.1988, rejected his explanation and imposed upon him, the punishment of dismissal from service. Challenging the same, the petitioner raised an industrial dispute and on the failure of conciliation proceedings, the same was referred by the Government to the Labour Court, Cuddalore, in I.D. No.39 of 1998.

2.4 The Labour Court framed the following issues:

a. Have the misconducts alleged against the petitioner been proved?

b. Is the punishment imposed on the petitioner justified?

c. Is the dispute barred by limitation?

d. What relief is the petitioner entitled to?

2.5 Before the Labour Court, the petitioner examined himself as a witness and marked 5 documents. On the side of the Management, no witness was examined, but, 15 documents were marked.

2.6 The Labour Court, after considering the evidence on record, passed an award dated 13.01.2003 in I.D. No.39 of 1998, wherein, issue nos. 1,2 and 4 were held in favour of the Management and issue no.3 was held in favour of the petitioner. Challenging the said award, the petitioner is before this Court.

3 Heard Mr. S. Ayyathurai, learned counsel for the petitioner and Mr. Paramasivadosh, learned Standing Counsel for the Management.

4 Mr. Ayyathurai, learned counsel for the petitioner made the following submissions:

a The Checking Squad did not take the cash bag at Melattoor but only at the final destination, viz., Kumbakonam and therefore, there is infirmity in the procedure adopted by the Checking Squad;

b The deficiency report (Ex.M.5) and inspection report (Ex.M.6) are in cyclostyled format and therefore, they should have been rejected by the Labour Court.

c The petitioner took a clear stand that a bird had hit the left windscreen of the bus on account of which, there was a crack in the windscreen and the driver called the petitioner for help and at that time, the Checking Squad entered into the bus and forcibly seized the petitioner's cash bag and conducted check, which is illegal.

d The statement from the petitioner was obtained by force by the Checking Squad.

e Of the two members in the Checking Squad, only R. Baskaran was examined as witness before the Enquiry Officer and the other member was not examined and therefore, the Enquiry Officer should not have proceeded to hold the petitioner guilty without corroboration.

f One Chandru, a passenger, had addressed a letter to the Management saying that he got into the bus on 19.06.1987 at Thittai and got down at Patteeswaram and had given a sum of Rs.20/- to the conductor, but, had failed to collect the balance amount of Rs.17.50 from the conductor. A copy of this communication was marked as Ex.D.1 by the petitioner before the Enquiry Officer, which was not properly considered by the Enquiry Officer or by the Labour Court.

g The petitioner was not given sufficient opportunity to cross-examine the Management witnesses in the enquiry.

h The punishment of dismissal from service is disproportionate to the alleged misconduct and therefore, the same requires to be set aside.

i The Labour Court should have interfered with under Section 11-A of the Industrial Disputes Act, 1947 and should have set aside the punishment on the ground that it is excessive.

5 In support of his submission that the punishment of dismissal from service is disproportionate to the alleged misconduct, the learned counsel for the petitioner placed strong reliance on the judgment of this Court in National Carbon Company, Madras and Labour Court, Madras and another [1987 1 LLN 399].

6 Per contra, Mr. Paramasivadosh strongly refuted the allegations.

7 This Court gave its anxious consideration to the rival submissions.

8 The petitioner has not denied that he was on duty on the said date and time and that the Checking Squad led by Baskaran, boarded the bus for checking at Melattoor. His contention was that a bird had caused damage to the left windscreen of the bus and Rangarajan, the driver of the bus, called him and at that time, the Checking Squad had forcibly

conducted inspection of his cash bag and the trip sheet. He also admitted that two passengers had boarded the bus, but, before he could issue tickets to them, the incident with regard to the bird damaging the windscreen of the bus had happened and therefore, he could not issue tickets to those two passengers.

9 On the contrary, it is on evidence that those two passengers had boarded the bus at Thittai and when they were alighting at Melattoor, the Checking Squad stopped them to check the tickets, for which, they had told the Checking Squad that they had paid the fare to the petitioner, but, he had not issued tickets to them.

10 This aspect has been unequivocally accepted by the petitioner in his statement given to the Checking Squad contemporaneously, but, he had sought to explain it saying that he had not issued tickets, because, he was called by the driver to check the windscreen. The trip sheet which was marked before the Enquiry Officer and also the Labour Court, clearly shows that it was the Checking Squad who had issued two tickets at Melattoor to the two passengers, after collection Re.1 each from them.

11 At the threshold, this Court wanted to satisfy itself whether the petitioner was properly assisted in the domestic enquiry proceedings. On a perusal of the proceedings, it is seen that before the Enquiry Officer, the petitioner was assisted by two of his colleagues, viz., M.Selvaraj and M.Manoharan. Therefore, it cannot be stated that the petitioner did not have any assistance in the domestic enquiry.

12 Baskaran, MW 1 in the domestic enquiry has clearly stated that the statement of the petitioner was not obtained under compulsion and that the statement given by the petitioner was signed not only by him but also by Rangarajan, driver of the bus and the two passengers who got down at Mealtttoor. The said statement was marked as Ex.M.3 in the domestic enquiry and as Ex.M7 before the Labour Court. Baskaran had stated before the Enquiry Officer that neither the driver nor the conductor gave any complaint with regard to the alleged breakage of the left windscreen nor was any entry made in the vehicle log book about it.

13 Coming to the defence set up by the petitioner that on account of a bird causing damage to the left windscreen of the bus, he was not able to attend to the two passengers, it is seen that he has given conflicting versions on this aspect. In his statement to the Checking Inspector, he had stated that a bird had hit the windscreen near Thittai crossroad, whereas, in his reply to the charge memo, he had stated that the said incident

had taken place near Kaattukurichi. This becomes very much relevant, because, according to the two passengers for whom tickets were not issued, they had boarded at Thittai and till Melattoor, they were not issued with tickets and only at Melattoor, when the Checking Squad checked tickets at the time when they were alighting, the fact that the petitioner had not issued tickets came to light.

14 As regards the contention of Mr. Ayyathurai that the deficiency report (Ex.M.5) and inspection report (Ex.M.6) are cyclostyled formats, this Court perused the same and found that Exs.M. 5 & 6 before the Labour Court are printed forms and the same have been filled up by hand by the Checking Inspector on 19.06.1987 at the place of inspection. This printed format is normally issued by the Transport Corporation to all the Checking Inspectors for their use during inspection, as that contains several columns which they are required to fill up at the time of inspection and that cannot be said to be illegal. There is absolutely no material to show that the inspection had taken place only at Kumbakonam as alleged by Mr. Ayyathurai now. All the records, including the statement recorded contemporaneously with the signature of the passengers, show that the inspection was done at Melattoor.

15 As regards the evidence of Rangarajan, driver of the bus, he has stated before the Enquiry Officer that while the bus was plying, a hawk had hit the windscreen of the bus, on account of which, both the windscreens developed crack and therefore, when he called the petitioner and told him of this, the petitioner stated that the windscreens can be washed at Melattoor and the blood stains be removed. The Enquiry Officer has disbelieved the evidence of Rangarajan, driver of the bus, on the ground that the log book of the bus does not show that the windscreens were damaged. When any damage is caused to a bus, it is the duty of the bus driver to make necessary entries in the log book and in the absence of any entry to that effect in the log book, the Enquiry Officer has rightly rejected the evidence of Rangarajan, driver of the bus. That apart, the driver who has to concentrate on the road, can, by no stretch of imagination, be aware of what transpires between the conductor and the passengers with regard to collection of fares in the rear.

16 Coming to the excess money found in the petitioner's cash bag, Mr. Ayyathurai submitted that one Chandru, a passenger had sent a letter to the Transport Corporation stating that he had boarded the bus at Thittai and had given Rs.20/- to the petitioner towards bus fare, but, had failed to collect the balance amount of Rs.17.50 from the petitioner. Strangely, in the explanation dated 10.07.1987 given by the petitioner to the

charge memo, he has not taken this stand. For the first time, he has marked a copy of the letter of Chandru as Ex.D.1 before the Enquiry Officer and the Management had submitted the entire proceedings with Ex.D.1 to the Labour Court, where, it was again re-marked as Ex.M.11 instead of delinquent's document. What is surprising to this Court is, as to how the petitioner got a copy of the letter that is said to have been sent by one Chandru, a passenger, to the Management. The said Chandru was not examined before the Enquiry Officer or the Labour Court. In the said letter of Chandru, he has stated that he boarded the bus at Thittai and alighted at Patteeswaram. In the cross-examination of Baskaran (MW 1 before the Enquiry Officer), the petitioner has specifically made a suggestion that when the bus reached its final destination, viz., Kumbakonam, a passenger demanded balance amount of Rs.17.50, but, the Checking Inspector had refused to give it and had shown it as excess in his cash bag. Thus, in the letter of Chandru, it is stated that he got down at Patteeswaram without collecting Rs.17.50 from the petitioner/conductor, but, the petitioner has pleaded that a quarrel ensued between the passenger and the checking staff at the destination point, viz., Kumbakonam, for refund of Rs.17.50. Truth requires no memory, unfortunately, lie would get exposed due to failing memory. Both the Enquiry Officer and the Labour Court have given sound reasons to disbelieve Chandru's letter (Ex.D.1 before the Enquiry Officer and Ex.M.11 before the Labour Court) and this Court has no reasons to disagree with those findings. Therefore, this Court is of the view that there is no infirmity in the enquiry proceedings and findings given by the Enquiry Officer.

17 Coming to the quantum of punishment inflicted on the petitioner, the learned counsel for the petitioner placed strong reliance upon the judgment of this Court in National Carbon Company, Madras (supra) and submitted that the Labour Court should have interfered with the quantum of punishment.

18 In the order dated 25.08.1988 passed by the Management dismissing the petitioner from service, the Management has taken into account the past conduct and the punishment suffered by the petitioner. It is seen that during 1974-1975, the petitioner had availed 12 days leave in excess, for which, he was issued with a charge memo; on 19.08.1976, he had refunded some excess amount to a party even without the permission of the Branch Manager, for which, he was severely warned; on 15.12.1977 and 25.07.1978, he had issued tickets to the passengers even without writing the fare, for which, he was warned; on 25.05.1983, in the tickets issued by the petitioner to the passengers, he had not written the stage fare, but, in the trip sheet, he has shown it as 0.75 paise, for which, he was warned; on 17.01.1984, in the ticket issued by the petitioner, he had made corrections,

but, in the trip sheet, he had made entry as 0.75 paise, for which, he was warned; on 18.06.1985, he had issued one single ticket for two items of luggage and had not brought the amount collected in the ticket book; from 17.09.1985 to 25.09.1985, he had not reported to duty, for which, he was imposed a punishment; from 21.11.1985 to 29.11.1985, he did not report to duty, for which, he was warned and on 06.06.1987, he had deposited deficit of Rs.22/- in the depot, for which, he was warned.

19 From the above series of lapses on the part of the petitioner and the action taken by the Management against the petitioner in regard thereto, this Court is convinced that the Management has not mechanically imposed the punishment of dismissal from service on the petitioner, but, had taken into consideration, the antecedents of the petitioner and only thereafter, has imposed the penalty of dismissal from service after the charges in the enquiry were duly proved.

20 Recently, in U.P. State Road Transport Corporation and another vs. Gopal Shukla and another [2015 (9) Scale 567], while dealing with a case of a bus conductor who had permitted 25 passengers to travel without ticket, the Supreme Court has held as under:

"10. In the instant case, as accepted by the Labour Court, the first respondent was carrying 25 passengers without tickets which has caused financial loss to the Corporation. That apart, the workman had also violated the postulates under the Rule and committed misconduct. Two aspects are absolutely clear. It is established that 25 passengers were allowed to enter into the bus. There is no material on record that they had entered inside the bus by application of any kind of force. On the contrary, the finding that has been recorded clearly establishes that they were travelling in the bus without ticket. The Labour Court, while recording such a finding, has been guided by the observations of this Court that justice must be tampered with mercy and the erring workman should be given an opportunity to reform himself and to prove to be a loyal and disciplined employee. The said observations have been reproduced from Scooter India Ltd. Lucknow vs. Labour Court, Lukcnov and another [(1989) Supp. 1 SCC 31]. The said decision was rendered in the context of a workman having an ideology and behaving in a different manner which bordered on rudeness with the management. There was no allegation of the present nature and, therefore, we really fail to fathom how the said

observations could have been applied to a case of this magnitude when approximately half of the passengers travelled without ticket and the first respondent was performing the duties of a Conductor. The loss caused to the Corporation cannot be marginalised. In such a situation, the question of reformation and to make him disciplined or giving him another chance, in our considered opinion, does not arise. The Conductor holds the post of trust under the Corporation. It is extremely difficult on the part of the checking authorities to check in a constant manner. An employee holding the post that requires trust and confidence is expected to behave with discipline, loyalty and also maintain the fiscal sanctity. He should not allow anything to creep in which would make him a person of questionable integrity. When the first three charges were treated to have been established by adducing cogent evidence, neither the Labour Court nor the High Court should have been guided by the sense of mercy and direct reinstatement. The motive of the respondent from the act is inherent. When such kind of indiscipline causes financial loss to the Corporation, adequate punishment has to be imposed and in our view such misconduct does not stand on a lesser footing than embezzlement or corruption and more importantly results in loss of faith and breaches the trust. We must not forget the fundamental duty and work. A number of persons had been allowed to travel in the bus, without paying fare as if the fare was paid, the same was pocketed.”(emphasis supplied)

21 It is also worth pointing out that in the same judgment, an argument was advanced before the Supreme Court that where the amount that is said to be embezzled is very meagre, a lenient view should be taken. This contention was negated by the Supreme Court by relying upon the judgment in U.P. State Road Transport Corporation vs. Suresh Chand Sharma [(2010) 6 SCC 555, wherein, at paragraph no.21, it has been held as under:

“21. We do not find any force in the submissions made by Dr. J.N. Dubey, learned Senior Counsel for the employee that for embezzlement of such a petty amount, punishment of dismissal could not be justified for the reason that it is not the amount embezzled by a delinquent employee but the mens rea to misappropriate the public money.” (emphasis supplied)

22 The same is the tenor of law in all the following judgments of the Supreme Court:

i Karanataka State Road Transport Corporation vs. B.S. Hullikatti [(2001) 2 SCC 574]

ii Regional Manager, RSRTC vs. Ghanshyam Sharma [(2002) 10 SCC 330]

iii Regional Manager, UPSRTC, Etawah and others vs. Hoti Lal and another [(2003) 3 SCC 605]

iv Regional Manager, Rajasthan State Road Transport Corporation vs. Sohan Lal [(2004) 8 SCC 218]

v V. Ramana vs. A.P.State Road Transport Corporation and others [(2005) 7 SCC 338]

vi State Road Transport Corporation, Dehradun vs. Suresh Pal [(2006) 8 SCC 108]

vii U.P. State Road Transport Corporation vs. Ram Kishan Arora [(2007) 4 SCC 627]

viii Uttaranchal Transport Corporation vs. Sanjay Kumar Nautiyal [(2008) 12 SCC 131]

ix Rajasthan State Road Transport Corporation vs. Kamruddin [(2009) 7 SCC 552]

x U.P. State Road Transport Corporation vs. Nanhe Lal Kushwaha [(2009) 8 SCC 772]

xi U.P. State Road Transport Corporation vs. Suresh Chand Sharma [(2010) 6 SCC 555]

23 In the aforesaid judgments, the Supreme Court has consistently held that no leniency can be shown to a Conductor for acts of embezzlement and that dismissal from service for such misconduct cannot be said to be excessive.

In view of the foregoing discussion, this writ petition is liable to be dismissed as being devoid of merits and is accordingly dismissed. No costs.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

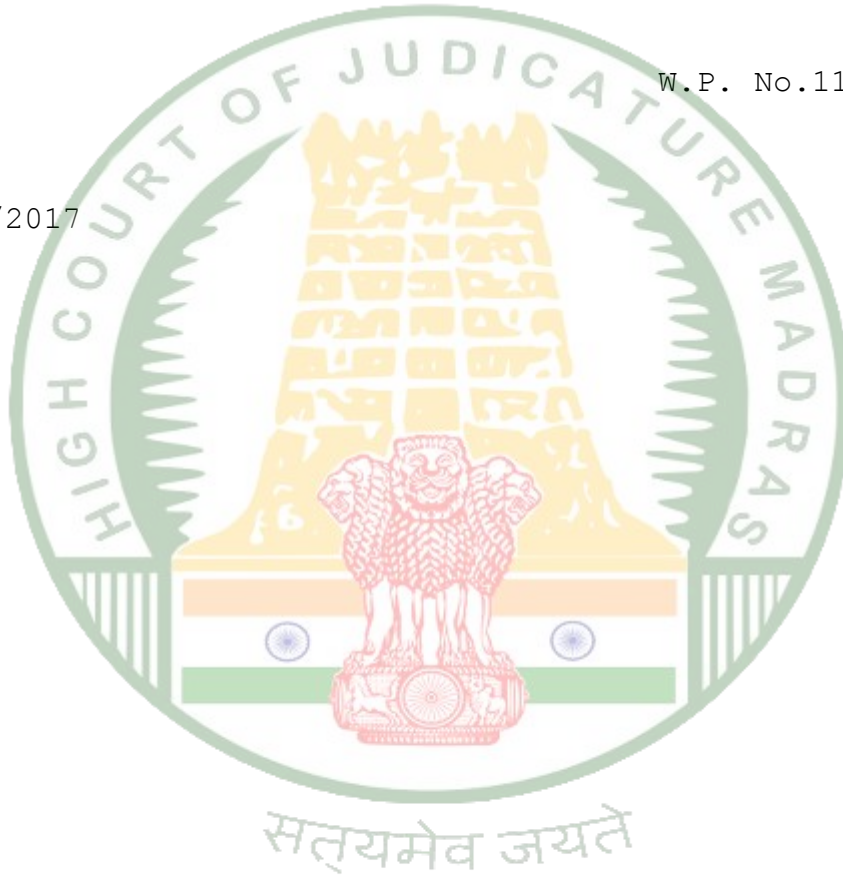
To

The Presiding Officer
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+lcc to Mr.P.Paramasivadoss, Advocate Sr.13972
+lcc to Mr.S.Ayyathurai, Advocte Sr.13673

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