IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2017

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.43775 of 2006

The Management of Tamil Nadu
State Transport Corporation,
Kumbakonam Dn.(I) Ltd.,
Rep.by its Managing Director,
Railway Station New Road,
Kumbakonam 612 001. ... Petitioner

Vs

1.The Joint Commissioner of Labour
(Conciliation),
Chennai 600 086.

2.S.Panneerselvam ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records relating to the order of the first respondent in A.P.No.442 of 2003 dated 06.01.2006, and quash the same.

For Petitioner : Mr.P.Paramasivadoss for Mr.R.Parthiban

For Respondents : Mr.S.Gunasekaran Additional Government Pleader for R1
: Mr.V.Ajoykhose for R2

O R D E R

Heard Mr.P.Paramasivadoss, learned counsel for the petitioner and Mr.S.Gunasekaran, learned Additional Government Pleader appearing for the first respondent.

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

> "To issue a writ of Certiorari, to call for the records relating to the order of the first respondent in A.P.No.442 of 2003 dated 06.01.2006, and quash the same."

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

The petitioner is the State Transport Corporation, is before this Court, aggrieved by the order passed by the first respondent Authority, rejecting the approval petition filed by the Corporation. The Approval Petition No.442 of 2003, filed by the Corporation, seeking approval for dismissal of the second respondent employee. The facts which gave rise to the filing of the writ petition are stated hereunder.

4. The second respondent employee was working as a conductor in the petitioner Corporation in Kumbakkonam Mufussil Branch. On 13.03.2003, the second respondent was performing his duty in the bus bearing No.TN49/M1071 plying between Kumbakonam to Chidambaram. The bus started at 5 a.m. in the morning from Kumbakonam to Mayiladuthurai. The bus was checked by the Checking Inspector of the Corporation at Ammachatram at 5.10 a.m. and found that the second respondent collected Rs.50.50 from a lady passenger for a journey from Kumbakonam to Mayiladuthurai for the ticket fare of Rs.10.50 and returned the balance of Rs.40/- at Kumbakonam itself.

5. However, the second respondent failed to issue ticket for Rs.10.50 to the lady passenger till the time of checking by the Inspector. Moreover, on further check by the Inspector, it was found that there was an excess amount of Rs.41.50 found in the cash bag. Therefore, a charge memo was issued to the second respondent on 28.03.2003 as follows:-

> "a) On 13.03.2003, after collecting from a lady passenger travelling from Kumbakonam to Mayiladuthurai, a sum of Rs.50.50 towards a fare of Rs.10.50, issued a balance amount of Rs.40/- to the concerned lady passenger. But the ticket was not issued to the lady passenger thereby misappropriated the revenues of the petitioner Corporation.
>
> b) The cash bag was checked and found that the conductor was having excess cash of Rs.41.50/- more than the collection
>
> c) Creating a bad reputation of Corporation among the public."

6. In response to the charge memo, the second respondent submitted his explanation on 28.04.2003. However, not satisfied with the explanation, a domestic enquiry was conducted and report was submitted on 21.06.2003, holding the charges proved. Finally, after obtaining explanation from the second respondent-workman, the petitioner Corporation imposed the punishment of dismissal from service and eventually, dismissed from service on 07.10.2003. At the time of dismissing the second respondent from service, there was a dispute between the petitioner Corporation and the employees, pending before the first respondent.

Therefore, the petitioner Corporation filed an application under Section 33(2)(b) of the Industrial Disputes Act, seeking approval of the action taken against the second respondent-workmen. The said approval petition was numbered as 442 of 2003.

7. The first respondent after adverting to various materials and submissions made on behalf of the parties, finally rejected the approval petition in substance, holding that the finding of the Enquiry Officer was perverse. The operative portion of the findings in this regard by the first respondent is extracted below:-

> "The second charge against the opposite party is that he had kept excess cash of Rs.41.50/-
>
> The last two charges are related to the earlier charges.
>
> It has to be seen whether the Enquiry Officer had before him, evidence for him to come to the prima facie conclusion that the charges are proved. The evidence placed by the management before the Enquiry Officer during the enquiry are the statement of the Checking Inspector and the tickets issued to the passengers by the opposite party and the invoice of the bus which was checked and in which entries relating to the issue of the tickets during the journey was made. The contention of the opposite party regarding the first charge both in his explanation to the charge and before the Enquiry Officer is that the bus was checked at Puliampettai and before Amma Chatram. This contention of the opposite party is noticed by the Enquiry Officer in paragraph four of his findings. But in paragraph seven of his findings the Enquiry Officer had recorded that the opposite party had accepted that the bus was checked at Amma Chatram bus stop. The findings of the Enquiry Officer that the opposite party had accepted that the bus was checked at Amma Chatram bus stop is not based on any evidence and is therefore perverse. The place of checking of the bus is very relevant in this case and the entire set of charges issued to the opposite party stands on the place of check. The Enquiry Officer had stated in his enquiry findings without any basis that the opposite party had agreed that the check was carried out at Amma Chatram bus stand while in reality the opposite party was disputing the place of check as stated by the Checking Inspectors. The findings of the Enquiry Officer relating to the second charge that the opposite party had kept excess in his cash bag is also perverse as he bases his findings on the entry in the invoice that there was not money belonging to the conductor or driver. Even according to the Applicant, the bus was on its 5.00 a.m. trip, Exhibit A-4

> indicates that at the time of check the opposite party had issued 1xRs.3.50, 1xRs.4, 1xRs.5, 1xRs.6, 1xRs.7, tickets. The value of these tickets do not add up to Rs.218/- as alleged by the Checking Inspectors. But this was not clarified by the Applicant/Management before the Enquiry Officer and the Enquiry Officer had also not adverted to this aspect in his findings but had held that the charge of keeping excess cash was proved. As this finding of the Enquiry Officer has not considered the relevant evidence before him I hold that this findings of the Enquiry Officer are perverse. The other charges are based on the first two charges and they cannot be sustained independently. Therefore, for the reasons stated above, I find that the findings of the Enquiry Officer are perverse."

Except the above findings, all other findings are in favour of the petitioner Corporation. Having aggrieved by the rejection order of approval petition, the Corporation is before this Court.

8. The learned counsel for the petitioner Corporation would empathically placed his submission that the first respondent Authority had not appreciated the evidence which was made available before the domestic enquiry and the same was not appreciated in proper perspective. The findings of the first respondent was that the enquiry report was perverse and unsupported by any supporting materials and the first respondent had given no proper reasons for holding such.

9. The learned counsel for the petitioner Corporation would further contend that the workman himself had admitted that no ticket had been issued to the passenger concerned and that being the case, the first respondent's conclusion the finding of the domestic enquiry was perverse, cannot be countenanced both in law and on facts. He would submit that the second respondent-workman had already suffered minor penalties on several occasions in the past and some of the acts of misconduct pertain to the same misconduct that no ticket was issued to passengers while collecting money from them. Therefore, he would further submit that the Authority has to see only whether a prima facie case was made out for the purpose of taking action against the second respondent-workman. In this case, from the totality and circumstances much more than prima facie case was established and therefore, the rejection of the approval petition was not sustainable in law.

10. On the other hand, learned counsel for the second respondent would submit that the reasoning given by the first respondent Authority was well founded and cannot be questioned as being perverse or unacceptable in law. As regards the submission made by the learned counsel for the petitioner Corporation, regarding establishment of prima facie case against the second

respondent-workman, he would submit that the Enquiry Officer did not appreciate the explanation offered by the workman and by over looking such valid explanation, a report was submitted holding the charges proved. Therefore, the first respondent Authority has rightly held that the findings of the domestic enquiry was perverse and unacceptable.

11. This Court has given its anxious consideration to the rival submissions of the parties and perused the materials and pleadings placed on record. There is some force in the contention put forth by the learned counsel for the petitioner Corporation that while holding all other aspects in favour of the petitioner Corporation, the first respondent Authority had concluded that the findings in the domestic enquiry was perverse on the basis of very slender reasoning and supportive material. Such conclusion by the first respondent Authority cannot be countenanced in law, since the Authority had to only see whether any prima facie material was available for taking action against the employee concerned.

12. On the other hand, the submissions made on behalf of the second respondent-workman that unless the finding of the Authority is perverse, the same cannot be interfered with by this Court by exercising its judicial review under Article 226 of the Constitution of India. The learned counsel would further submit that various Court decisions have held in the absence of examination of the passenger concerned and the charge of this nature against the workman cannot said to be proved.

13. This Court is of course in agreement with the said legal submission made on behalf of the second respondent-workman. At the same time, this Court has to take into consideration the valid submission made on behalf of the petitioner Corporation that the Authority had to merely look into the prima facie aspect of the said issue and not called upon to go deeper into the evidence. At the same time, this Court cannot brush aside the submission made on behalf of the second respondent that unless the finding is perverse, the same cannot be interfered with or re-appreciated by this Court. In any event, the order passed by the first respondent which is impugned in the writ petition, is a questionable order, since many issues were not considered by the Authority, in respect of his final conclusion, holding that the finding was perverse.

14. Be that as it may, this Court was informed that during the pendency of the writ petition, the second respondent-workman had attained the age of superannuation and retired long ago. After the writ petition was admitted, the petitioner Corporation was directed to deposit 17(B) wages and the same is lying under deposit. Since the workman concerned had attained the age of superannuation long ago, it would not be in the fitness of things

to remit the matter back to the first respondent Authority for fresh consideration, since that would not secure the ends of justice in the facts of the present case.

15. In the above circumstances, taking a balanced view in the matter, this Court is of the opinion that some kind of punishment had to be imposed on the second respondent-workman for being negligent in discharge of his duties, if not, for his culpability in the act of misconduct as alleged against him. Therefore, this Court holds that the petitioner is entitled to 25% of the wages payable to him during the period of his non-employment.

16. It is made clear that the 17(B) wages, which was deposited by the petitioner Corporation should be allowed to be withdrawn by the second respondent-Workman. The denial of 75% of the back wages could not have any impact on the 17(B) wages, to be payable to the petitioner. As far as the remaining amount that was due to petitioner, the petitioner Corporation is liable to pay only 25% of the back wages. It is also made clear that it is open to the petitioner Corporation to make appropriate deduction from the dues payable to the petitioner towards any contribution. The petitioner Corporation is directed to issue appropriate orders in this regard, within a period of 10 weeks from the date of receipt of a copy of this order.

17. In the light of the above rulings, the writ petition is disposed of. No costs.

Sd/-
Deputy Registrar

/true copy/

Sub Asst. Registrar

gsk

To

1.The Joint Commissioner of Labour
(Conciliation),
Chennai 600 086.

+ 1 cc to Mr.P.Paramasivadoss Advocate,SR.91747
+ 1 cc to The Govt.Pleader, SR.91474
+1 cc to M/s.V.Ajoy Khose Advocate sr 90987 dt 03/04/2018

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nr 20/02/2018