



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 26.10.2017

CORAM:

**THE HONOURABLE MS.INDIRA BANERJEE, CHIEF JUSTICE
AND**

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

WEB COPY

**W.A. [MD] .No1347 of 2017
and
C.M.P (MD) .No.9548 of 2017**

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

: Appellant

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: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 28.06.2016 made in W.P.(MD).No.11549 of 2016, on the file of this Court.

Prayer in WP(MD). 11549/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari 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 Appellant : Mr.A.Thirumurthy
for M/s.Victory Associates

For Respondent No.2 : Mr.K.Sathiya Singh
R.1 - Labour Court.

**JUDGMENT**

[Delivered by **The Hon'ble Chief Justice**]

This appeal is against an order dated 28.06.2016 passed by the learned Single Judge, dismissing the writ petition filed by the appellant/writ petitioner, *inter alia*, challenging an order dated 07.12.2015 passed by the first respondent - Labour Court in I.D.No.26 of 2015, as also an order of punishment in No.8084/Legal-14/Olungu/Tha.Aa.Po.Ka/2008, dated 15.11.2010 passed by the second respondent.

2. While one N.Velappan was serving as a driver in the Tamil Nadu State Transport Corporation, Nagercoil, the second respondent, as the Disciplinary Authority, issued a charge memo dated 22.10.2008 to him.

3. There were four charges against the said Velappan in the charge memo, which are extracted hereinbelow for convenience:-

"(i) 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 Inspector blew whistle twice, the bus was not stopped.

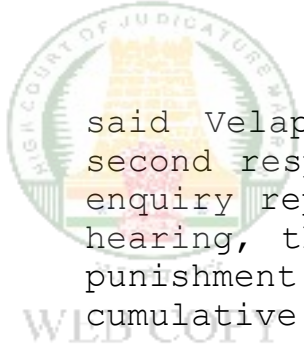
(ii) Thus, the passengers were put into hardship and loss of income to the Corporation.

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

(iv) Thus, the petitioner committed misconduct under standing order No.16(14) of the Corporation."

4. After receipt of the charge memo, the said Velappan submitted his reply on 04.12.2008 denying all the charges levelled against him. From the facts as recorded in the order under appeal, it appears that the said Velappan had, in his reply, contended that he had moved the bus from Munchirai bus stop "after unloading and loading" all the passengers and also after the conductor had blown the whistle.

5. The Disciplinary Authority did not accept the explanation given by the said Velappan and ordered an enquiry. The enquiry conducted gave rise to diverse dates between 31.01.2009 and 15.10.2009, after which the Enquiry Officer submitted a report finding the



said Velappan guilty of the charges levelled against him. The second respondent, being the Disciplinary Authority, accepted the enquiry report. After giving the said Velappan an opportunity of hearing, the Disciplinary Authority imposed on the said Velappan punishment of stoppage of increments for three years with cumulative effect.

6. Aggrieved by the decision of the second respondent, being the disciplinary authority, the said Velappan filed an appeal before the Managing Director, Tamil Nadu State Transport Corporation.

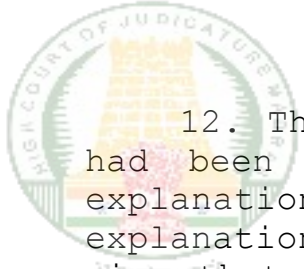
7. According to the appellant/writ petitioner, no decision was taken on the appeal. The appellant/writ petitioner, thus, raised an industrial dispute under Section 2(k) of the Industrial Disputes Act, 1947, on 05.03.2012 before the Assistant Commissioner of Labour (Conciliation), Nagercoil.

8. Conciliation proceedings commenced, but failed, after which the Assistant Commissioner of Labour (Conciliation), Nagercoil, filed a Conciliation Failure Report on 30.07.2014.

9. By an order in G.O (D)No.145, dated 10.04.2015, the Labour and Employment (C) Department of the Government of Tamil Nadu, referred to the Labour Court, being the first respondent, the dispute of whether the order of punishment dated 15.11.2010 of stoppage of increments for three years was justified and if so, to what relief, the said Velappan was entitled?

10. The respondent Labour Court dismissed the industrial dispute and confirmed the punishment, whereupon the appellant/writ petitioner filed the writ petition, which has given rise to the order under appeal.

11. The learned Single Bench, after recording the submissions made by the appellant/writ petitioner, found no merit in the writ petition. The reason was that the said Velappan had been issued with charge memo containing three counts of charges with one serious charge that on 09.09.2008, at about 08.45 a.m., while plying the bus belonging to the Transport Corporation from Melmidalam to Marthandam, after stopping at Munchirai bus stop, he had failed to take six passengers who were running towards the bus showing their hands, in spite of the whistle blown by the conductor (*sic Checking Inspector*). The learned Judge recorded that the appellant/writ petitioner had repeatedly canvassed the point that the Checking Inspector, who had been standing opposite to the bus stop, could not have exactly seen the persons actually boarding the bus. Therefore, the charge made against the said Velappan on the evidence of the Checking Inspector ought not to have been accepted and the same should have been brushed aside.



12. The learned Single Judge found that after the charge memo had been issued to the said Velappan, he had submitted his explanation on 04.12.2008. The learned Judge, on perusal of the explanation filed along with the typed set of papers, was of the view that the said Velappan had not given sufficient explanation to the charges, but claimed that no passenger had made any complaint.

13. It is true as held by the learned Single Judge that a complaint of a passenger may not have been mandatory. The Corporation was not debarred from taking cognizance of the misconduct on its own, based on the report of the Checking Inspector. Furthermore, neither the Labour Court nor the Writ Court could perhaps have gone into the factual disputes of whether the Checking Inspector could actually have seen the passengers boarding or not.

14. However, the fact remains that on the face of the charges as framed against the said Velappan, he had stopped the bus at Munchirai bus stop and had moved the bus after "unloading and loading" of the passengers. It is stated that six passengers ran towards the bus showing their hands, but the bus had not stopped.

15. It is the case of the said Velappan that he had started the bus after the conductor blew the whistle signalling that the bus could leave. It was only after the bus had started that the passengers rushed towards the bus from behind. The said Velappan claimed that he had neither seen the passengers nor heard the whistle of the Checking Inspector.

16. It appears that neither the Enquiry Officer nor the Disciplinary Authority applied their minds to this aspect of the defence raised by the said Velappan. Furthermore, it appears to us that imposition of punishment of stoppage of increments for three years with cumulative effect was grossly disproportionate to the gravity of the misconduct with which the said Velappan had been charged.

17. As contended by the appellant/writ petitioner, no passenger had complained. Assuming that the said Velappan could have been proceeded against, irrespective of whether any passenger had complained, the Enquiry Officer and the Disciplinary Authority were obliged to weigh the gravity of the lapse, if any, on his part upon proper and meaningful consideration of his defence and impose a punishment proportionate to the gravity of such lapse.

18. Neither the Enquiry Officer nor the Disciplinary Authority assessed the quantum of the actual loss caused to the Transport Corporation by reason of the lapse on the part of the said Velappan.



19. The bus was being driven on Route No.87-B from Melmidalam to Marthandam. The concerned authorities did not take the actual loss of fare into account. The maximum fare would perhaps have been Rs.10/- (Rupees Ten only) per passenger, i.e., the total loss of Rs.60/- (Rupees Sixty only), to the Corporation. The amount could, at the highest, have perhaps been recovered from the said Velappan. The grossly disproportionate punishment of stoppage of increments for three years with cumulative effect cannot, in our view, be sustained.

20. As held by the Supreme Court in *Bhagat Ram v. State of Himachal Pradesh*, reported in (1983) 2 SCC 442 : AIR 1983 SC 454, penalty disproportionate to the gravity of the offence is violative of Article 14 of the Constitution of India.

21. In *Ranjit Thakur v. Union of India*, reported in (1987) 4 SCC 611 : AIR 1986 SC 2386 (2390), the Supreme Court held that though the question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court Martial, the sentence has to suit the offence. However, if the punishment is unduly harsh or vindictive or so disproportionate to the gravity of the offence as to shock the conscience of the Court, the Court would interfere in exercise of its extraordinary power of judicial review under Article 226 of the Constitution of India.

22. Irrationality and perversity are recognized grounds of judicial review. If the penalty is an outrageous defiance of logic, the penalty would not be immune from interference. In this case, the imposition of penalty without application of mind to the actual financial loss to the Tamil Nadu State Transport Corporation and without consideration of the clear defence of the said Velappan that the passengers had tried to stop the bus from the back after it had started and that he had not heard the whistle of the Checking Inspector smacks of perversity.

23. It is true that in exercise of its extraordinary power of judicial review under Article 226 of the Constitution of India, the Court does not examine a decision, but the decision making process. However, arbitrariness and irrationality vitiate the decision making process, as also violation of principles of natural justice. As observed above, the failure of the respondents to put the said Velappan to notice of his past records vitiates the decision making process for imposition of the impugned punishment.

24. It appears that in imposing punishment, the disciplinary authority took into account his past records. However, there is <https://hcservices.ecourts.gov.in/hcservices/> in the impugned order of punishment of the disciplinary authority as to what was against the said Velappan in his past records. Furthermore, as rightly argued by the learned



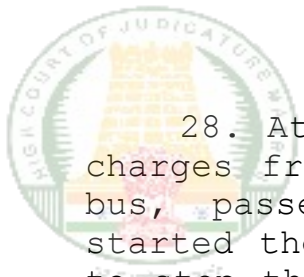
Counsel appearing on behalf of the appellant/writ petitioner, the charge sheet did not bear any reference to any past conduct. The writ petitioner had no opportunity to explain the adverse past records, if any, against him. It is reiterated at the cost of repetition that there is not a whisper of the nature of the past acts and past records, if any, of the said Velappan. The said Velappan does not appear to have ever earlier been proceeded with departmentally.

25. In ***Indu Bhushan Dwivedi v. State of Jharkhand and another*** reported in **(2010) 11 Supreme Court Cases 278**, cited by counsel for the appellant/writ petitioner, the Supreme Court held that an employee must be put to notice before taking into consideration the past service records, unless penalty imposed on him is less than the penalty proposed in the show cause notice. To quote, the Supreme Court:

"28. An analysis of the two judgments shows that while recommending or imposing punishment on an employee, who is found guilty of misconduct, the disciplinary/competent authority cannot consider his past adverse record or punishment without giving him an opportunity to explain his position and considering his explanation. However, such an opportunity is not required to be given if the final punishment is lesser than the proposed punishment."

26. In our view, the Disciplinary Authority patently erred in taking into account the undisclosed past records without any opportunity to the said Velappan. Furthermore, as observed above, the order of punishment is *ex facie* disproportionate to the gravity of the offence with which the said Velappan had been charged.

27. In *Collector Singh v. L.M.L. Limited, Kanpur*, reported in (2015) 2 SCC 410, the Supreme Court, in effect, held that where penalty imposed was found disproportionate to proved misconduct, the Court could appropriately mould relief either by directing Disciplinary Authority to reconsider punishment imposed or to shorten litigation, in exceptional circumstances, impose appropriate punishment with cogent reasons in support thereof. However, in this case, considering that the finding of misconduct itself appears to be perverse, in the absence of any evidence that could falsify the defence of the said Velappan of not having heard the whistle and not having seen the concerned passengers waive their hand, we are not inclined to impose any punishment or to remit the matter to the Disciplinary Authority for imposition of punishment.



28. At the cost of repetition, it is reiterated that from the charges framed it is apparent that the said Velappan stopped the bus, passengers got off, others boarded, and thereafter, he started the bus. After he started the bus, some passengers tried to stop the bus and the Checking Inspector, who was outside, blew the whistle. It is nobody's case that the said Velappan did not stop the bus at all, or did not pick up any passengers. There is no evidence to dispel the case of the said Velappan that the passengers waived from the back and he had not seen them try to stop the bus. The defence that he had not heard the whistle of the Checking Inspector could not just have been simply brushed aside. The lapse, if any, seems to be too trivial to attract any punishment apart from a caution.

29. The writ appeal is allowed and the order of the learned Single Bench is set aside. The impugned orders are set aside. No costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-

Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar

To

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.

+1cc to Mr.A.Thirumurthy, Advocate Sr.No.83721

NB/RSB

VB/KK/SAR2/15/11/2017/7P/4C

JUDGMENT MADE IN
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