



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:22.08.2017**

CORAM:

**THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND**

**THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR
W.A. (MD) No.1612 of 2016 &
W.A. (MD) .No.1116 of 2017**

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W.A. (MD) .No.1612 of 2016

J.Jeevanandham

... Appellant/Petitioner

Versus

1. The Presiding Officer,
Labour Court,
Trichirappalli.

2. The Management,
Tamil Nadu State Transport Corporation Ltd.,
Kumbakonam Division II,
Collector's Office Road,
Trichirappalli.

... Respondents/Respondents

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent Act against the order dated 22.04.2013 in W.P.(MD).No.1543 of 2009.

For Appellant : Mr.V.Ajoy Khose for
Mr.A.Rahul

For Respondents :Mr.D.Sivaraman for R2

W.A. (MD) .No.1116 of 2017

The Management,
Tamil Nadu State Transport Corporation Ltd.,
Kumbakonam Division II,
Collector's Office Road,
Tiruchirapalli-620 001.

.. Petitioner/Respondent No.2

Versus

1. J.Jeevanandham
2. The Presiding Officer,
Labour Court,
Tiruchirapalli.

.. Respondents
Petitioner & 1st Respondent

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent Act against the order dated 22.04.2013 in W.P.(MD).No.1543 of 2009.



Prayer in WP(MD). 1543/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, after calling for the records relating to the Award dt. 16/10/2003 passed by the 1st respondent Labour court, Tiruchirappalli in I.D.No. 112 of 2000 and to quash the same and direct the 2nd respondent management to reinstae the petitioner in service with full backwages and continuity of service and other benefits.

For Appellant : Mr.D.Sivaraman
For Respondent 1 : Mr.V.Ajoy Khose for
Mr.A.Rahul

COMMON JUDGMENT

[Judgment of the Court was delivered by **M.M. SUNDRESH, J**]

As both the appeals arising out of the order passed by the learned Single Judge, by which the award of the Labour Court was modified while confirming its finding, we deem it fit to dispose of the both the appeals by way of this common judgment.

2. For the sake of brevity the parties in W.A.(MD).No.1612 of 2016 are taken as such. The appellant was working as a driver with the second respondent Corporation. A charge memo was issued to him alleging that he has assaulted another driver. Enquiry officer after affording due opportunity found the appellant guilty. Based upon the report of the enquiry officer, the appellant was also given opportunity. The disciplinary authority having found the charges proved as held by the enquiry officer imposed the punishment of dismissal from service.

3. The appellant raised a dispute in I.D.No.112 of 2000 before the Labour Court. The appellant neither examined himself nor any document marked. The respondent No.2 marked 16 documents as Ex.M1 to Ex.M16. The Labour Court found that the appellant was given a fair opportunity to participate in the enquiry. On merit it was also found that charges are also proved and awarded the punishment as stated above. The learned Single Judge concurred with the award of the Labour Court. It was also noted that there is nothing wrong in the statement made on behalf of the second respondent in proving that the appellant has committed the misconduct as mentioned in the charges framed. The occurrence took place inside the bus. Therefore, it was merely held that there was no perversity in the finding held by the labour Court warranting <https://hservices.ecourt.gov.in/lcservice48> service. However, exercising its discretion with reference to charges proved, it was felt that the punishment imposed is



disproportionate and shocking his conscience and accordingly it was directed to modify as one of compulsory retirement.

4. The learned counsel appearing for the appellant would submit that the evidence of appellant has not been looked into through his statement. He has not been cross-examined. A charge has to be proved by the Department as against the delinquent officer. Thus, the award of the Labour Court as confirmed by the learned Single Judge requires interference.

5. The learned counsel for the second respondent would submit that the appellant was punished for misconduct on 18 other cases and out of the 18 cases, 7 punishments were for the misconduct involving his behaviour. Therefore, the learned Single Judge ought not to have exercised his discretion. When once the charges are proved, the nature of punishment lies with the Disciplinary Authority over which power of judicial review is not required. Hence, the order of the learned Single Judge requires interference. The punishment imposed requires to be set aside. Consequently, W.A.(MD).No.1612 of 2016 liable to be dismissed.

6. The jurisdiction of this Court in exercising the judicial review over the Tribunal is very limited. This Court cannot act like an appellate authority and go into the findings rendered. Suffice it is to state that the award of the Labour Court does not suffer from any perversity. Admittedly, the appellant was given sufficient opportunity to examine the witnesses. Merely because he has made a statement, it cannot be stated that the same will have to be accepted. Strict rule of evidence is not required in a departmental enquiry. The Enquiry Officer is expected to consider the entire materials available on record for coming to his conclusion or he goes with the disciplinary authority as recorded by the learned Single Judge both before the disciplinary authority and the enquiry officer, the appellant was given sufficient opportunities. The appellant also on his part has not examined any other witnesses. There is no material to hold that the factors taken into consideration to hold that the charges are proved cannot be accepted in law. In such view of the matter, we do not find any error in the order and so the finding of the learned Single Judge in confirming the same.

7. Coming to the other question with respect to the punishment modified by the learned Single Judge, we are of the view that he has rightly exercised his discretion. The punishment imposed will have to be proportionate to the charges proved. Though it is true that a Writ Court shall not normally interfere with the quantum of punishment, it is not as if in all cases no such interference is possible. A discretion is required to be exercised on the facts of each case which has been done in a case before us. It is also to be noted that the appellant has reached the age of superannuation in the year 2013. Therefore, we do not willing to



set aside the order of the learned Single Judge while confirming the award passed by the Labour Court. Accordingly, both the appeals are dismissed. No costs. Respondents are directed to carry out the direction of the learned Single Judge, within a period of 8 weeks from the date of receipt of a copy of this order.

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8. At this stage the learned counsel appearing for the appellant would fairly submitted that there is no need to remit the matter, since the maximum punishment as mentioned by the learned single Judge i.e. Compulsory Retirement can be directed to be imposed and it would save further time in getting the retirement benefits. The said course is also agreed upon by the counsel for the appellant.

9. Considering the said submissions made, we now hold that the order of the learned Single Judge stands modified that the punishment imposed one of dismissal from service by the Labour Court is modified to the effect of compulsory retirement. Consequently, the second respondent is directed to make the pension due within a period of 8 weeks from the date of receipt of a copy of this judgment.

10. In the result, the appeals are dismissed with the above direction. No costs.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Presiding Officer,
Labour Court,
Trichirappalli.
2. The Management,
Tamil Nadu State Transport Corporation Ltd.,
Kumbakonam Division II,
Collector's Office Road,
Trichirappalli.

+1cc to Mr.A.Rahul, Advocate SR.No.73960
+1cc to Mr.D.Sivaraman, Advocate SR.No.74051

JIKR

VB/JC/SAR2/08/09/2017/4P/5C

**Judgment made in
W.A. (MD) No.1612 of 2016 &
W.A. (MD) .No.1116 of 2017
22.08.2017**